

5/29/2009 2:39 PM

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Ruth Nettles

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From: Evan Katz [ekatz@clective.com]  
Sent: Friday, May 29, 2009 2:26 PM  
To: Filings@psc.state.fl.us  
Subject: Re: Docket: 090246-TP

Attachments: Docket 090246-TP Clective Florida Response to att objection With CoverLetter.pdf; Docket 090246-TP Clective Confidential Information Filing Request.pdf



Docket



Docket

46-TP Clective N6-TP Clective (

Dear Ms. Cole,

Re: Clective Telecom Florida, LLC  
Docket 090246-TP

Please see attached updated files:

-Response to AT&T Florida's objection and petition to cancel Clective Florida's CLEC certificate. (Filename: Docket 090246-TP Clective Florida Response to att objection With CoverLetter.pdf)

-Confidentiality request (Filename: Docket 090246-TP Clective Confidential Information Filing Request.pdf)

Sincerely,  
Evan Katz  
ekatz@clective.com  
404.272.0445

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Evan Katz  
Managing Director  
Clective GA, Inc.  
ekatz@clective.com  
404.272.0445

DOCUMENT NUMBER DATE

05380 MAY 29 09

FPSC-COMMISSION CLERK

**Clective Telecom Florida, LLC**  
**2090 Dunwoody Club Drive**  
**Suite 106-257**  
**Atlanta, GA 30350**

May 29, 2009

Ms. Ann Cole, Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32309-0850

Re: Docket No. 090246-TP: Notice of Adoption of Existing Interconnection Agreement Between BellSouth Telecommunications, Inc. and CBeyond Communications, Inc. by Clective Florida, LLC

Dear Ms. Cole:

Enclosed is Clective Telecom Florida LLC's Response to the May 8, 2009 filing by AT&T in the above-referenced docket.

Copies have been served to AT&T Florida.

Sincerely,



Patricia Morris

DOCUMENT NUMBER- DATE

05380 MAY 29 8

FPSC-COMMISSION CLERK

**STATE OF FLORIDA  
FLORIDA PUBLIC SERVICE COMMISSION**

Notice of Adoption of Existing Interconnection : Docket No. 090246-TP  
Agreement Between BellSouth :  
Telecommunications, Inc. and CBeyond :  
Communications, Inc. by Clective Florida, LLC : May 29, 2009

**RESPONSE OF CLECTIVE FLORIDA, LLC TO AT&T FLORIDA'S OBJECTION  
AND PETITION TO CANCEL CLECTIVE FLORIDA'S CLEC CERTIFICATE**

Clective Telecom Florida, LLC ("Clective") hereby submits this Response to BellSouth Telecommunications d/b/a AT&T Florida's ("AT&T Florida") filing made on May 8, 2009 in the above-referenced matter. AT&T Florida provides the Florida Public Service Commission ("Commission") with no adequate reasons to deny Clective its request to adopt the CBeyond Communications, Inc. ("CBeyond") Agreement or to cancel the Clective CLEC Certificate.

As set forth below in more detail, AT&T Florida (along with AT&T Georgia) has undertaken a crusade against Clective and Clective Georgia to completely wipe Clective out of business. AT&T Florida has gone so far as to file false statements in its May 8<sup>th</sup> filing. Further, AT&T Florida feebly attempts to link the issues between AT&T Georgia and Clective Georgia with the issues presented in the current matter before the Commission. As AT&T Florida is certainly aware, Clective Georgia is a separate and distinct entity from Clective Florida. AT&T Florida's attempt to lump the two entities together is similar to AT&T Connecticut (The Southern New England Telephone Company) being lumped into AT&T Florida (BellSouth Telecommunications, Inc.). While all of these entities may have a common owner (AT&T owns both AT&T Florida and AT&T Connecticut), they are separate entities with separate corporate existences. The disputes that have arisen in Georgia between Clective Georgia and AT&T Georgia should not impact Clective Florida. Further, AT&T Florida conveniently omits the extensive and extreme measures that Clective Georgia has undertaken to settle the claims in

Georgia only to have AT&T Georgia unreasonably reject the overtures. Clective Florida believes that AT&T Georgia's rejection is most likely based on AT&T's belief it can simply bleed Clective to death in both Florida and Georgia. Clective will not bleed to death even if it must be on life support for the duration of the games that AT&T Florida would like to play before the Commission.<sup>1</sup>

**I. Clective Florida Has The Technical, Financial and Managerial Capability To Run A CLEC**

AT&T Florida points solely to the dispute between AT&T Georgia and Clective Georgia for its reasoning that Clective Florida lacks the ability to be a CLEC. Such an assertion is specious and completely inappropriate. First, Clective Georgia and Clective Florida are completely separate entities, albeit for common ownership. Second, Clective Georgia continues to have a good faith dispute before the Georgia Public Service Commission that is yet unresolved. The dispute has resulted in the disconnection of Clective Georgia services by AT&T Georgia even though the dispute is pending before the Georgia PSC. In order to avoid the disconnection, Clective Georgia attempted various, albeit perhaps disparate, means to obtain an injunction against AT&T Georgia. While each of these attempts failed for various reasons, Clective Georgia should not be viewed negatively for its valiant attempts against the mighty AT&T legal machine. To the contrary, Clective Georgia's attempts demonstrate the extent to which it believes that the dispute between AT&T Georgia and Clective Georgia is genuine.

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<sup>1</sup> AT&T Florida also makes reference to a possible connection between Clective and GlobalNaps. While AT&T Florida would like to think that every person ever affiliated with GlobalNaps represents all that is evil in the world, most GlobalNaps employees and contractors are law-abiding persons looking to support and care for their families. Mr. Katz is no different. Mr. Katz was a contractor to GlobalNaps in Atlanta, Georgia (not an employee as believed by AT&T). Neither Clective nor its ownership is related to GlobalNaps. AT&T cannot simply prevent any person ever affiliated with GlobalNaps to not be part of the telecommunications industry or to not earn a living.

Instead of showing an inability to run a CLEC, the dispute in Georgia and the extent to which Clective Georgia is pursuing the dispute demonstrates the great ability to run a CLEC.

For the Commission's edification, the dispute in Georgia arises out of the fact that Clective Georgia terminates VoIP traffic to AT&T Georgia. The current interconnection agreement between Clective Georgia and AT&T Georgia states that "For traffic that originates from a traditional telephone device and terminates to a non-telecommunications device ("Phone-to-Computer") or originates from a non-telecommunications device and terminates to a traditional telephone device ("Computer-to-Phone"), the Parties have been unable to agree as to whether Voice of Internet Protocol ("VOIP") transmissions which cross local calling area boundaries constitute Exchange Access Traffic. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional nature of VOIP, the Parties agree to abide by any effective and applicable FCC and/or state commission rules and orders regarding the nature of such and the compensation payable by the Parties for such traffic, if any."

As the Commission is surely aware, neither the Georgia Public Service Commission nor the Federal Communications Commission has made any rules, orders, or regulations regarding the nature of VoIP traffic that would allow AT&T to charge the rate it claims is due. *In the Matter of IP-Enabled Services*, 22 F.C.C.R. 11275, 11281 fn.50 (2007); *In the Matter of Universal Service Contribution Methodology*, 21 F.C.C.R. 7518, 7537 (2006); *In the Matter of Vonage Holdings Corporation*, 19 F.C.C.R. 22404 (2004). To date, the industry, as a whole, continues to debate whether VoIP traffic is telecommunications services or information services. If such traffic is information services, it is not subject to charges under the ICA. According to the ICA, so long as this debate continues to rage at the FCC, there is no compensation payable to

AT&T for such traffic. AT&T has, of course, taken the opposite position. Clective Georgia is hopeful that the Georgia Commission will hear this matter soon and resolve the dispute.

As the Commission can surely appreciate, AT&T Georgia's barbaric tactics against Clective Georgia has caused Clective Georgia to attempt to resolve the dispute even to Clective Georgia's own detriment. The Commission should be aware that Clective Georgia has offered AT&T Georgia a significant downpayment on the entire claimed arrearage with an aggressive payment plan for the balance (full payment within 15 months). In addition, Clective Georgia has stated that it will limit all VoIP traffic being terminated to AT&T Georgia to traffic that terminates to AT&T Georgia's end-users (i.e., reciprocal compensation traffic which is bill and keep under the CBeyond interconnection agreement). In this regard, Clective Georgia would not incur additional disputed bills and AT&T Georgia would get paid. Beyond these concessions, Clective Florida has offered to delay its commencement of services in Florida until Clective Georgia operates for two (2) months under the settlement proposal thereby demonstrating Clective Georgia's and Clective Florida's good faith intent to live up to its agreement.

Although Clective Georgia and Clective Florida have offered an extremely favorable settlement to AT&T, AT&T has flatly rejected the offer. Clective Florida and Clective Georgia can only imagine that AT&T simply believes that the longer it strangles Clective as a whole, and its sole shareholder in particular, the less ability Clective will have to fight back against the AT&T behemoth. The Commission should have confidence that Clective has no plans to back down from this fight and will not be intimidated.

## **II. Deposit Issues**

As a further attempt to make Clective Florida's attempt to enter the Florida market impracticable, AT&T Florida demanded a security deposit of over \$100,000 from Clective Florida. AT&T Florida claimed that the deposit was based on the disputed billing in Georgia. First, Clective Florida should not be subject to such a deposit requirement. As indicated above, Clective Florida is willing to limit its traffic to only reciprocal compensation traffic. Clective Florida will eventually also include transit traffic, but it is willing to initially terminate only reciprocal compensation traffic until it can establish a credit history. Such a limitation would limit any billing from AT&T Florida to only minimal amounts.

Second, AT&T Florida has falsely accused Clective Georgia of not agreeing to the absurd deposit. When it became clear that AT&T Georgia would not accept a reasonable settlement, Clective Florida decided that its only choice to generate revenue was to capitulate to AT&T Florida's absurd demands. Thus, on morning of May 8 2009, Clective Georgia's counsel sent a letter to AT&T indicating that it would agree to the deposit requirements. AT&T Florida's response that afternoon was the AT&T filing with the Commission. As indicated in the Motion filed simultaneously with this document, Clective Florida is asking the Commission to sanction AT&T Florida for filing false statements with the Commission and, to the extent AT&T Florida claims an "internal miscommunication" for failing to correct their submission.

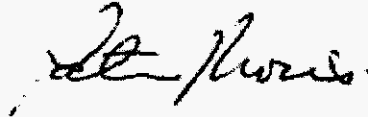
## **III. Regulatory Assessment Fee**

As the Commission is aware, Clective Florida has now paid the Regulatory Assessment Fee. Clective Florida believed that it did not owe the Fee because it was not yet operating in Florida. Clective Florida's misunderstanding has been corrected and the Fee has been paid.

## **CONCLUSION**

For the foregoing reasons, Clective Florida requests that the Commission immediately require AT&T Florida to agree to adopt the CBeyond Interconnection Agreement and establish a reasonable deposit.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patricia Morris". The signature is written in a cursive style with a large initial "P".

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Patricia Morris  
Clective Telecom Florida, LLC  
Its President