

Ruth Nettles

From: Lynette Tenace [ltenace@kagmlaw.com]
Sent: Tuesday, February 03, 2009 11:28 AM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; Lisa Harvey; Beth Keating; rc1191@att.com; greg.follensbee@att.com; kmudge@covad.com; matt.feil@akerman.com; dkonuch@fcta.com; de.oroark@verizon.com; gene@penningtonlaw.com; douglas.c.nelson@sprint.com; Carolyn.ridley@twtelecom.com
Subject: Docket No. 000121A-TP
Attachments: Opposition to ATTs Request to Dismiss RCC Objection 02.03.09.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

Vicki Gordon Kaufman
Jon C. Moyle, Jr.
Keefe Anchors Gordon & Moyle
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828
vkaufman@kagmlaw.com
jmoyle@kagmlaw.com

b. This filing is made in Docket No. 000121A-TP, In re Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BellSouth Track)

c. The document is filed on behalf of Cbeyond Communications, LLD, Deltacom, Inc. and NuVox Communications, Inc.

d. The total pages in the document are 6 pages.

e. The attached document is Response in Opposition to AT&T's Request to Dismiss CLECS' Objection to AT&T Florida's Request for Confidential Classification.

Lynette Tenace

NOTE: New E-Mail Address
ltenace@kagmlaw.com



Keefe, Anchors, Gordon and Moyle, P.A.
The Perkins House
118 N. Gadsden St.
Tallahassee, FL 32301
850-681-3828 (Voice)
850-681-8788 (Fax)
www.kagmlaw.com

COM _____
ECR _____
GCL _____
OPC _____
RCP _____
SSC _____
SGA _____
ADM _____
CLK *Marquante*

The information contained in this e-mail is confidential and may be subject to the attorney client privilege or may constitute privileged work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the agent or employee responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you receive this e-mail in error, please notify us by telephone or return e-mail immediately. Thank you.

DOCUMENT NUMBER-DATE

00844 FEB-3 09

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BellSouth Track)

Docket No. 000121A-TP

Filed: February 3, 2009

RESPONSE IN OPPOSITION TO AT&T'S REQUEST TO DISMISS CLECS' OBJECTION TO AT&T FLORIDA'S REQUEST FOR CONFIDENTIAL CLASSIFICATION

Cbeyond Communications, LLC, Deltacom, Inc. and NuVox Communications, Inc. ("Joint CLECs") file this Response in Opposition to AT&T's Request to Dismiss CLEC's Objection to AT&T Florida's Request for Confidential Classification for substantial portions of the audit performed by Staff in this case. As grounds therefore, Joint CLECs state:

1. In April 2008, AT&T commenced the first step in a phased-in approach to implement a more uniform Operations Support Systems ("OSS") for competitive local exchange carriers ("CLECs") to access OSS across AT&T's 22-state operating region ("April Release").
2. Numerous CLEC-impacting issues arose in connection with the April Release.
3. On May 12, 2008, Cbeyond and Deltacom filed a Complaint against AT&T and requested, among other things, that the Commission commence an independent audit of the April Release and prohibit (or stay) AT&T from implementing any further CLEC-impacting OSS releases until AT&T implements the recommendations of the requested independent audit. NuVox intervened and joined in the Complaint on January 5, 2009.

4. On August 5, 2008, the parties entered into a Stipulation wherein they agreed that in lieu of an independent audit, Staff would conduct the audit.¹

5. Staff conducted the audit and provided a draft report to AT&T on November 26, 2008.

6. On January 9, 2009, AT&T filed a Request for Confidential Classification (“RCC”) of substantial portions of the audit in which it seeks to keep substantial portions of the audit from the public domain.

7. On January 22, 2009, Joint CLECs filed an objection to AT&T’s RCC of the audit.

8. On January 29, 2009, AT&T filed its request to dismiss Joint CLECs’ objection.

9. AT&T requests dismissal of Joint CLECs’ objection alleging 1) it serves no legitimate purpose, 2) it lacks any merit, and 3) it objects to an RCC that is similar to previous, uncontested RCCs. AT&T’s allegations fail because the basis for each is irrelevant.

10. AT&T leads off its response by claiming that Joint CLECs have no legitimate basis to object to AT&T’s RCC because Joint CLEC’s have reviewed the audit without redaction pursuant to a nondisclosure agreement. AT&T also asserts that Joint CLECs cannot credibly contend that the RCC impedes the review of the public version of the audit. Florida law and Commission rules are clear on the basis for confidentiality and the procedure for classification, and neither of AT&T’s claims is relevant under the law. As explained in detail in Joint CLECs’ objection, records in the possession of the Commission are public records unless exempted by law, and a request for confidential classification requires an appropriate demonstration of how the information qualifies for an exemption with the burden of proof on the requesting party.

¹ Order No. PSC-08-0618-PAA-TP

Unless this standard is met, the information is public record subject to inspection without reason or explanation.

11. Similar to the declarations made in its RCC, AT&T proclaims its RCC fully “comports and complies with applicable law,” cites the flawed explanation included in its RCC, and provides a new explanation for how some of the information in the audit might be deemed to warrant confidential classification. As explained in Joint CLECs’ objection, a declaration of confidentiality coupled with characterizations of the information neither demonstrates a statutory basis for confidentiality nor carries the required burden of proof. AT&T’s recent attempt to create a basis for its request is untimely and should be disregarded.²

12. AT&T’s final argument for dismissal of Joint CLECs’ objection is an allegation that the objection is “nothing more than [a] harassing maneuver” designed to waste time and money because AT&T has filed similar RCCs without objection by Joint CLECs. Like its companions above, this argument fails for lack of relevancy. In no way is the objection or lack thereof to a prior RCC part of the calculus for an RCC currently under consideration. AT&T has also failed to identify a prior, sustained RCC classifying information similar to that found in the current audit. Further, the suggestion that an objection to an unsubstantiated request for confidentiality is designed to waste resources is counter to the long held and revered notion that government records in Florida are by default open to the public. The present objection is even more appropriate given the serious and historic failure the RCC attempts to cover.

13. In summary, each of the arguments presented by AT&T in support of its request to dismiss Joint CLECs’ objection to AT&T’s RCC has no basis relevant to the standard for confidentiality created by Florida law.

² However, Joint CLECs would not object to the confidential classification of specific comments by AT&T employees quoted or described in the audit report where such classification is properly and timely requested.

WHEREFORE, for the reasons stated above, Joint CLECs oppose AT&T's Request to Dismiss CLEC's Objection to AT&T Florida's Request for Confidential Classification and request the Commission deny AT&T's request.

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman
Marcus B. Slager
Keefe Anchors Gordon & Moyle
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828 (Voice)
(850) 681-8788 (Facsimile)
vkaufman@kagmlegal.com
mslager@kagmlegal.com

Attorneys for Cbeyond
Communications, LLC, Deltacom,
Inc., and NuVox Communications,
Inc.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Response in Opposition to AT&T's Request to Dismiss CLEC's Objection to AT&T Florida's Request for Confidential Classification was served via Electronic Mail and U.S. Mail this 3rd day of February, 2009 to the following:

Adam Teitzman
Staff Counsel
Lisa Harvey
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0580
Email: ateitzma@psc.state.fl.us
lsharvey@psc.state.fl.us

Gregory Follensbee
AT&T Florida
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1561
Email: greg.follensbee@att.com

Beth Keating
Akerman Law Firm
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
Email: beth.keating@akerman.com

Katherine K. Mudge
Covad Communications Company
7000 N. MoPac Expressway, Floor 2
Austin, TX 78731
Email: kmudge@covad.com

Robert Culpepper
AT&T Florida
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1561
Email: rc1191@att.com

Matthew Feil
Akerman Senterfitt
105 East College Ave., Suite 1200
Tallahassee, FL 32301
Email: matt.feil@akerman.com

David A. Konuch
Florida Cable Telecommunications
Association, Inc.
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303
Email: dkonuch@fcta.com

Howard E. Adams
Pennington Law Firm
215 S. Monroe Street, 2nd Floor
Tallahassee, FL 32301
gene@penningtonlaw.com

Dulaney O'Roark, III
Verizon
Six Concourse Parkway
Suite 3200
Atlanta, GA 30328
Email: de.oroark@verizon.com

Carolyn Ridley, VP Regulatory Affairs
Time Warner Telecom of Florida, L.P.
555 Church Street, Suite 2300
Nashville, TN 37219
Email: Carolyn.ridley@twtelecom.com

Douglas C. Nelson
Sprint Nextel
233 Peachtree Street, N. E.
Suite 2200
Atlanta, GA 30303
Email: douglas.c.nelson@sprint.com

s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman