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Sent: Wednesday, March 18, 2009 4:21 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; Tracy Hatch; ke2722@att.com; gene.watkins@cbeyond.net
Subject: Docket No. (Not assigned yet)
Attachments: Cbeyond's Complaint against AT&T for Anticompetitive Behavior, Violation of Interconnection Agreement, and Request for Investigation 03.18.09.pdf

090135-TP

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:

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- b. This filing is made in Docket No. (not assigned yet), In re: Complaint of Cbeyond Communications, LLC Against AT&T Florida For Anticompetitive Behavior And Violation of Interconnection Agreement.
- c. The document is filed on behalf of Cbeyond Communications, LLC.
- d. The total pages in the document is 12 pages.
- e. The attached document is Complaint of Cbeyond Communications, LLC Against AT&T For Anticompetitive Behavior, Violation of Interconnection Agreement, and Request for Investigation.

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DOCUMENT NUMBER-DATE

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3/18/2009

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Cbeyond
Communications, LLC
Against AT&T Florida
For Anticompetitive Behavior
And Violation of Interconnection
Agreement

DOCKT No. 090135-TP

FILED: March 18, 2009

**COMPLAINT OF CBEYOND COMMUNICATIONS, LLC AGAINST AT&T FOR
ANTICOMPETITIVE BEHAVIOR, VIOLATION OF INTERCONNECTION
AGREEMENT, AND REQUEST FOR INVESTIGATION**

Cbeyond Communications, LLC (Cbeyond), through undersigned counsel, pursuant to rules 25-22.036 and 28-106.201, Florida Administrative Code, files the following Complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) for (a) engaging in anticompetitive behavior in violation of sections 364.01(4), 364.10(1), and 364.3381, Florida Statutes; (b) violating the terms of the parties' interconnection agreement; and (c) engaging in cramming in violation of sections 364.604(2), 364.10(1), Florida Statutes, and rule 25-4.110(18), Florida Administrative Code.

Introduction

1. The name and address of the affected agency is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

2. The name and address of Complainant is:

Cbeyond Communications, LLC
320 Interstate North Parkway, Suite 300
Atlanta, Georgia 30339

3. The name, address, and telephone number of Complainant's representatives for purposes of service during the proceeding are:

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STATEMENT OF SUBSTANTIAL INTERESTS

4. Cbeyond is a CLEC certified to do business in Florida. Cbeyond serves business customers in Florida and directly competes with AT&T.

5. When Cbeyond wins an AT&T customer's business, Cbeyond submits a request to AT&T for the transfer, or port, of the customer's telephone numbers. At or near the same time as the telephone numbers are ported to Cbeyond, AT&T must update its billing systems to show the loss of the customer. This process prevents the customer from being billed by its former carrier (AT&T) and Cbeyond.

6. In addition, when a customer leaves AT&T for another carrier, AT&T must change its switch translations so that calls to the customer are properly routed to the new carrier. Failure to promptly enter the switch translation to route the calls to the customer's chosen carrier prevents the customer from receiving in-bound calls until the translations are properly entered.

7. On numerous occasions since June 2008, AT&T business customers have chosen to leave AT&T and transfer their service to Cbeyond. In many instances, AT&T has ported the customer to Cbeyond but has continued to bill the customer for service from AT&T even though

the customer receives service from Cbeyond. AT&T continues to bill its *former* customer for service it is no longer providing because it fails to timely update its billing records to reflect that the customer is no longer receiving service from it. On a recent change management call, AT&T personnel not only admitted that AT&T was aware that it was billing after termination of service but asserted that it expected to continue doing so.

8. AT&T's failure to timely update its records has resulted in Cbeyond customers receiving a bill from Cbeyond for service Cbeyond has provided and a bill from AT&T for the same time period, even though AT&T has provided no service to the customer for that time period.

9. These Cbeyond customers are understandably upset when they are double billed. They often blame Cbeyond for this billing error even though the problem is caused by AT&T's failure to promptly update its billing records once a customer has left.

10. In addition, AT&T has been slow to complete switch translation for customers coming from AT&T to Cbeyond. If switch translations are not completed timely, Cbeyond's new customers cannot receive any in-bound calls during the first several days that they are Cbeyond customers.

11. As in the double billing situation, customers are upset by their inability to receive in-bound calls and often blame Cbeyond for the problem when in actuality it is AT&T's failure to promptly enter the switch translation that causes the problem.¹

12. The behavior described above is anticompetitive and substantially affects Cbeyond's ability to bring on and serve new customers. Thus, its substantial interests are impacted.

¹ Not only is such behavior anticompetitive but it has the potential to compromise public safety in some situations. For example, if customer calls 911 and the 911 operator must call back, the call will be misrouted.

BACKGROUND

13. Beginning in June 2008, Cbeyond began to receive complaints from customers that they had received a bill both from Cbeyond and from AT&T, even though the customer was a Cbeyond customer for the period of time for which AT&T was attempting to bill it.

14. This double billing has resulted in many numerous irate customers. Some customers blamed the error on Cbeyond and returned to AT&T. Cbeyond has been obligated to expend significant resources to address customer complaints and address these issues with AT&T.

15. AT&T has blamed Cbeyond for its failures and has erroneously told customers that its double billing is caused by something Cbeyond is doing wrong. In doing so, AT&T has defamed Cbeyond's reputation and financially damaged Cbeyond.

16. Upon inquiry, Cbeyond learned that the double billing issue occurs as a result of AT&T's failure to timely update its records when a customer leaves it. Upon information and belief, this is an issue related to AT&T's failure to adequately staff its service centers to timely process customer change requests.

17. Additionally, AT&T management is aware of this issue and has acknowledged that there is a backlog of customer carrier change requests. AT&T has failed to resolve the problem despite numerous complaints from and discussions with Cbeyond. Recently during a change management call, AT&T admitted that it was aware that it was inappropriately billing customers, but also stated that it expected the problem to continue into the future. On that same call, AT&T admitted that it was also aware and attempting to resolve its failure to update switch translations as well.

18. In addition, upon information and belief, this situation has arisen only in the former BellSouth region, not in the larger AT&T region. Thus, it may have a relation to AT&T's OSS conversions.²

19. AT&T is also late in entering switch translations. When AT&T does not promptly enter switch translations Cbeyond customers cannot receive incoming calls for the first few days they have Cbeyond service.

AT&T'S BEHAVIOR IS ANTICOMPETITIVE

20. Section 364.01(4), Florida Statutes, provides that the Commission shall exercise its jurisdiction to:

Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior. . . .

21. Section 364.3381(3), Florida Statutes, provides that:

The commission shall have continuing oversight jurisdiction over cross-subsidization, predatory pricing, or other similar anticompetitive behavior and may investigate, upon complaint or on its own motion, allegations of such practices.

22. Rule 25-4.082(1), Florida Administrative Code, requires AT&T to "facilitate porting of the subscriber's telephone number upon request from the acquiring company." Thus, AT&T is required to facilitate moving a customer who wishes to receive service from another carrier. This facilitation must include appropriate billing changes or the entire purpose of number portability – allowing a consumer to easily change carriers when it so desires – will be unfairly hampered.

23. As described above, AT&T's behavior violates the above statutory and rule provisions because it interferes with Cbeyond's ability to procure and service its customers and

² See Audit filed in Docket No. 000121A-TP.

to compete with AT&T for such customers. AT&T's inappropriate billing of customers who have left it gives it an unfair competitive advantage and enables it to unfairly retain customers who have chosen to move to Cbeyond for service.

24. AT&T's failure to promptly enter switch translations results in customers not being able to fully access Cbeyond's service. Thus, it violates the above statutory provisions because it interferes with Cbeyond's ability to procure and service its customers and to compete with AT&T for such customers. This behavior gives AT&T an unfair competitive advantage, and enables AT&T to unfairly retain customers who have chosen to move to Cbeyond for service.

25. Section 364.10(1), Florida Statutes, provides that:

A telecommunications company may not make or give any undue or unreasonable preference or advantage. . . .

26. AT&T may not give itself an undue preference by failing to update its records. Timely updating would avoid the AT&T's anticompetitive behavior of billing a customer who has already left it.

27. Nor may AT&T give itself an undue preference by failing to promptly enter switch translations which results in a customer's inability to access all of Cbeyond's services.

**AT&T'S BEHAVIOR VIOLATES THE INTERCONNECTION AGREEMENT
BETWEEN AT&T AND CBeyond**

28. On March 13, 2007, BellSouth (now AT&T) and Cbeyond executed an Interconnection Agreement (ICA). The ICA was approved by the Commission in Docket No. 040514-TP. The ICA provides, among other things, that:

4.1 . . . The quality of the interconnection between the network of BellSouth and the network of Cbeyond shall be at a level that is at least equal in quality to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet

the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's customers and service quality as perceived by Cbeyond and its customers.

29. AT&T has violated these provisions by failing to timely update its records to provide for an appropriate transition for customers leaving AT&T and migrating to Cbeyond. Presumably, AT&T does not delay the translations necessary to route traffic to its own customers and affiliates. The delays currently occurring in the cessation of billing and correct switch translations are not consistent with any industry standard.

30. AT&T has violated the following provisions by failing to promptly enter switch translations:

8.6 Records Exchange and Misrouting of Traffic.

8.6.1 Misrouted Traffic.

8.6.2 The Parties shall route traffic to each other in a manner consistent with the Trunk Group Architectures selected by the Parties and as set forth in Section 4 of this Attachment 3, except as otherwise set forth in this Agreement (e.g., overflow) or in instances where a third party causes either Party to route traffic in a manner that is inconsistent with this Attachment.

8.6.3 In instances of misrouting, either Party may request that the Parties investigate, identify the cause of, and correct misrouting to the extent technically and economically feasible.

8.6.4 In the event that misrouting results in either Party's inability to bill or collect revenues from a third party and the Parties disagree as to the liability of the other Party for such revenues, then either Party may pursue the Dispute Resolution procedures set forth in this Agreement.

31. As a matter of federal law, the Commission's authority under 47 U.S.C. § 252(e) to approve interconnection agreements between telecommunications carriers gives it the authority to enforce such agreements and adjudicate disputes arising between carriers as to the implementation of such agreements. The Commission should find AT&T in violation of the parties ICA. The Commission should require AT&T to immediately clear the backlog of

customer change requests, timely process such requests going forward, and promptly enter switch translations.

AT&T'S BEHAVIOR VIOLATES THE PROHIBITION AGAINST CRAMMING

32. Section 364.604(2), Florida Statutes, provides:

A customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.

33. Rule 25-4.110(18), Florida Administrative Code, provides:

If a customer notifies a billing party that they did not order an item appearing on their bill or that they were not provided a service appearing on their bill, the billing party shall promptly provide the customer a credit for the item and remove the item from the customer's bill

34. AT&T is billing customers for services that were not provided, a practice known as "cramming." Therefore, AT&T has violated the above statutory and rule provisions which prohibit cramming.

35. The Commission should open an investigation to determine the magnitude and extent of this problem as it affects consumers who are attempting to leave AT&T.

Disputed Issues of Material Fact

36. Cbeyond is not aware of any material issues of disputed fact as to AT&T's failure to timely update its billing records to permit proper porting of customers from AT&T to Cbeyond to avoid double billing or its failure to promptly enter switch translations.

Ultimate Facts Alleged

37. Ultimate facts alleged include, but are not limited to:

a. AT&T has failed to timely update its billing records to permit proper porting of customers from AT&T to Cbeyond in violation of the authority set out herein.

b. AT&T has failed to timely enter switch translations resulting in the inability of Cbeyond customers to receive in bound calls for the first few days of their service with Cbeyond.

c. AT&T has violated the parties' Interconnection Agreement.

d. AT&T has engaged in unlawful cramming.

e. AT&T has engaged in anticompetitive conductive in violation of the Commission's statutes and rules.

Statutes and Rules Entitling Cbeyond to Relief

38. The statutes and rules entitling Cbeyond to relief include, but are not limited to:

a. Section 364.01(4), Florida Statutes;

b. Section 364.10(1), Florida Statutes;

c. Section 364.3381, Florida Statutes;

d. Section 364.604(2); Florida Statutes;

e. Section 364.10(1), Florida Statutes;

f. Rule 25-4.110(18), Florida Administrative Code;

g. Rule 25-4.082(1), Florida Administrative Code.

Relief Requested

39. The Commission should immediately require AT&T to update all backlogged billing for customers who have left AT&T to move to Cbeyond. The Commission should further require that when AT&T receives a request to port a customer for Cbeyond, that all required billing changes be accomplished within a time period that results in a seamless transition between carriers.

40. The Commission should immediately require AT&T to enter all switch translations within a time period that results in a seamless transition between carriers.

41. The Commission should find that AT&T's conduct in this matter has resulted in a violation of Florida Statutes and Commission rules as well as the ICA between the parties.

42. The Commission should open an investigation to determine the magnitude of AT&T's excessive billing and to ensure that all consumers are properly credited for this inappropriate billing.

WHEREFORE, Cbeyond requests that the Commission:

1. Immediately require AT&T to process all backlogged billing changes for customers who have left AT&T to move to Cbeyond. The Commission should further require that when AT&T receives a request to port a customer for Cbeyond, that all required billing changes be accomplished within a time period that results in a seamless transition between carriers;

2. Immediately require AT&T to enter all switch translations within a time period that results in a seamless transition between carriers;

3. Find that AT&T's conduct in this matter has resulted in a violation of Florida Statutes and Commission rules as well as the ICA between the parties and require it to immediately clear the backlog of customer change requests, timely process such requests going forward, and enter all switch translations within a time period that results in a seamless transition between carriers;

4. Open an investigation to determine the magnitude of AT&T's excessive billing problem and to ensure that all consumers are properly credited for this inappropriate billing; and

5. Grant such other relief as necessary.

s/ Vicki Gordon Kaufman

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Attorneys for Cbeyond

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Complaint of Cbeyond Communications, LLC Against AT&T for Anticompetitive Behavior, Violation of Interconnection Agreement, and Request for Investigation was served via Electronic Mail and U.S. Mail this 18th day of March, 2009 to the following:

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