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: January 22, 2009

OBJECTION TO AT&T'S REQUEST FOR CONFIDENTIAL CLASSIFICATION

Cbeyond Communications, LLC, Deltacom, Inc. and NuVox Communications, Inc. ("Petitioners"), pursuant to rule 25-22.006(3)(b), Florida Administrative Code, file this Objection to AT&T's Request for Confidential Classification for substantial portions of the audit performed by Staff in this case. As grounds therefore, Petitioners state:

Introduction

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 of substantial portions of the audit in which it seeks to keep substantial portions of the audit from the public domain.

Standard Governing Requests for Confidential Classification

7. Documents submitted to the Public Service Commission are public records unless exempted by law from public disclosure. Chapter 119.01, Florida Statutes. The Public Service Commission has consistently held that "the right of access to governmental records is an important and longstanding Florida tradition embodied in both Florida Statutes and the Declaration of Rights provision of the state Constitution." Order No. PSC-05-1026-CFO-TP and Order No. PSC-04-1111-CFO-TL.

8. Exemptions from Chapter 119, Florida Statutes, are to be narrowly construed. Order No. PSC-05-1026-CFO-TP, citing Seminole County v. Wood, 512 So. 2d 1000 (Fla 5th DCA 1987), rev. denied 520 So. 2d 586 (Fla. 1986); City of St. Petersburg v. Romine ex rel. Dillinger, 719 So.2d 19 (Fla 2nd DCA 1998).

9. Section 364.183, Florida Statutes, provides an exemption from public disclosure for "confidential proprietary business information," defined as "information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would

[1] Order No. PSC-08-0618-PAA-TP

cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public."

10. Rule 25-22.006(4)(c), F.A.C., requires a request for confidential classification to "demonstrate how the information asserted to be confidential qualifies as one of the statutory examples listed in Section 364.183(3) … Florida Statutes" or explain how the ratepayers or the utility's business operations will be harmed by disclosure if no statutory example is applicable.

11. Pursuant to Rule 25-22.006(4)(e), F.A.C., the requesting party bears the burden of proof "to show that the material in question contains bona fide proprietary confidential business information."

12. Rule 25-22.006(4)(e), F.A.C., allows the denial of a request for confidential classification as facially insufficient if it fails to provide the required justification.

AT&T Has Failed to Meet the Clear Standard for a Facially Sufficient Request

13. AT&T's request for confidential classification should be denied because it is facially insufficient.

14. AT&T seeks to redact substantial portions of the audit based on one of the statutory examples listed in Section 364.183(3), Florida Statutes. Specifically, AT&T's request for confidential classification identifies section 364.183(3)(e), Florida Statutes, as its basis for confidentiality, which protects "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information."

15. The burden is on AT&T to demonstrate how the information qualifies under the example. Rule 25-22.006(4)(c), F.A.C. However, AT&T fails to provide any demonstration of how the redacted information qualifies under 364.183(3)(e), Florida Statutes. Instead, its request

characterizes the information as "proprietary and confidential" and asserts the "disclosure of such information *could* harm the business operations" (emphasis added). The explanation section of Attachment A to AT&T's request merely asserts confidentiality without explanation. The section declares the information "proprietary and confidential," describes the information as "of a technical nature," and represents that "AT&T derives economic value from this information not being generally known to, and not being readily ascertainable by competitors who can obtain economic value from its disclosure." The section further asserts that the information relates to AT&T's Key Learning Review process and software defect management process, is considered proprietary and confidential by AT&T because it describes internal operations regarding OSS software releases, and *could* cause harm to AT&T if disclosed (emphasis added).

16. None of the assertions in AT&T's request demonstrate how the information relates to AT&T's competitive interests or how the information would impair the competitive business of AT&T if disclosed. Instead, the section merely declares the information confidential, refers vaguely to derived value, and asserts the possibility of harm to AT&T.

17. Since these assertions do not demonstrate how the redacted information qualifies as "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information," AT&T's request is facially insufficient because it fails to provide the required justification and should be denied.

AT&T Has Failed to Meet its Burden of Proof for a Substantively Sufficient Request

18. Even if AT&T's request for confidential classification is deemed facially sufficient for consideration, it should be denied because AT&T has not met its burden of proof.

19. As described above, AT&T has failed to provide any demonstration for its asserted confidentiality by way of explanation within its request for confidential classification.

Instead, AT&T provided general assertions and vague possibilities of harm. Further, AT&T has provided no evidence through affidavit or otherwise to base its claim.

20. Attachment A identifies by page and line all of the information for which AT&T requests confidentiality. The redacted information describes 1) the quantity and categories of key learnings resulting from the software deployment, 2) the quantity and descriptions of software defects, 3) project management failings, and 4) issues with the classification, management, and resolution of software defects. None of the redacted sections appear to fall within the statutory example of confidential proprietary business information identified by AT&T because there is no indication that the disclosure of such information will impair the competitive business of AT&T. The following are examples of such redactions:

a. Pages 2, 3, 15, 16, 21-24, 32, 33, and 65-71 include redactions that appear to be related to the quantity, category, discussion, or details of key learnings;

b. Pages 3, 27, 28, 30-33, 36, 37, 85, and 73-79 include redactions that appear to be related to the quantity and descriptions of software defects;

c. Pages 17 and 18 include redactions that appear to be related to significant key learnings and root causes;

d. Page 18 includes a redaction that appears to be related to a description of what a "job aid describing the key learnings reporting process states;" and,

e. Page 20 includes a redaction that appears to be related to Staff's concern that several "key learnings resolutions are merely statements or promises to do better in the future."

For each of these examples, no explanation of competitive impairment is offered by AT&T, and no apparent competitive impairment is created by disclosure.

21. Instead, the items identified by AT&T as confidential appear to be at most embarrassing criticisms of the company's management of its recent, large software deployment. Such information is not properly characterized as confidential proprietary business information. In Southern Bell Telephone and Telegraph Company v. Beard, 597 So. 2d 873, 876 (Fla. 1st DCA 1992) the Court agreed with the PSC's determination that the statutory exemption for proprietary confidential business information should be narrowly construed and did not apply to the company's internal self-analysis where only embarrassment to management was asserted as harm. In the present request, the redacted information may amount to an embarrassing level of criticism of management, but such criticism does not support a classification of confidentiality.

22. AT&T has provided no demonstration showing how the redacted information meets the statutory example of confidential proprietary business information and no affidavit or testimony of the redacted information's confidential nature. Further, the redacted items do not appear to be "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information." Therefore, AT&T has failed to provide proof required by rule 25-22.006(4)(e), F.A.C., showing "that the material in question contains bona fide proprietary confidential business information," and AT&T's request for confidential classification must be denied.

WHEREFORE, for the reasons stated above, Petitioners object to AT&T's Request for

Confidential Classification as facially and substantively insufficient.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Objection to AT&T's Request for Confidential Classification was served via Electronic Mail and U.S. Mail this 22nd day of January, 2009 to the following:

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