COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
MATTHEW M. CARTER II
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA

OFFICE OF THE GENERAL COUNSEL
MICHAEL G. COOKE
GENERAL COUNSEL
(850) 413-6189

Public Service Commission

November 1, 2007

VIA ELECTRONIC FILING

The Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **CC Docket No. 96-98, WT Docket No. 99-217**, Promotion of Competitive Networks in Local Telecommunications Markets
MB Docket No. 07-51, Exclusive Service Contracts for Provision of Video Services In Multiple Dwelling Units and Other Real Estate Developments

Dear Ms. Dortch:

Forwarded herewith are a Motion to File Supplemental Information and Florida Public Service Commission Order No. PSC-07-0862-FOF-TL.

Greg Shafer at (850) 413-6958 and Kevin Bloom at (850) 413-6526 are the primary staff contacts on these comments.

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:tf
cc: Brad Ramsay, NARUC

Before the
Federal Communications Commission
Washington, D.C. 20554

	)	
In the Matter of	)	
	)	CC Docket No. 96-98
Promotion of Competitive Networks in Local Telecommunications Markets	)	WT Docket No. 99-217
	)	
	)	
Exclusive Service Contracts for Provision of Video Services In Multiple Dwelling Units and Other Real Estate Developments	)	MB Docket No. 07-51

FLORIDA PUBLIC SERVICE COMMISSION

MOTION TO FILE SUPPLEMENTAL INFORMATION

The Florida Public Service Commission (FPSC) seeks to file the attached supplement to its October 23, 2007, comments in the above docket. This is a newly issued FPSC Order which relates to the matters of exclusive contracts.

While the sunshine prohibition, pursuant to FCC Rule 1.1203 (47 CFR 1.1203) has been triggered in MD Docket No. 07-51, but not Docket No. CC 96-98 and WT Docket No. 99-217, we request that this be filed in all of the above dockets. It is from a sister agency, should not be disruptive to the proceedings, presents no new issues, and provides additional information from the state level.

In the alternative, please file this only in the open dockets, CC Docket No. 96-98 and WT Docket No. 99-217.

Respectfully Submitted,

/ s /

Cindy B. Miller, Senior Attorney
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dated: November 1, 2007

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for relief from carrier-of-last-resort (COLR) obligations pursuant to Florida Statutes 364.025(6)(d) for two private subdivisions in Nocatee development, by BellSouth Telecommunications, Inc.	DOCKET NO. 060822-TL ORDER NO. PSC-07-0862-FOF-TL ISSUED: October 26, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER GRANTING PETITION FOR RELIEF
FROM CARRIER-OF-LAST-RESORT OBLIGATION

BY THE COMMISSION:

BACKGROUND

On December 22, 2006, BellSouth Telecommunications, Inc. d/b/a AT&T of the Southeast d/b/a AT&T Florida (AT&T) petitioned for relief from its carrier-of-last-resort (COLR) obligation to provide service at Coastal Oaks, Riverwood, and any other private communities in the development known as Nocatee. Nocatee is a 15,000 acre mixed-use development that spans the southeastern corner of Duval County and the northeast portion of St. Johns County, which will be developed over the next 20 to 25 years. It includes public and private communities. The two above-named private communities will consist of an estimated 1,919 single-family homes, although the initial building phase will consist of a total of 488 homes.

AT&T is seeking a waiver of its COLR obligation pursuant to Section 364.025(6)(d), Florida Statutes, which states:

> A local exchange telecommunications company that is not automatically relieved of its carrier-of-last-resort obligation pursuant to subparagraphs (b)1.-4. may seek a waiver of its carrier-of-last-resort obligation from the commission for good cause shown based on the facts and circumstances of provision of service to the multitenant business or residential property. Upon petition for such relief, notice shall be given by the company at the same time to the relevant building owner or

> developer. The commission shall have 90 days to act on the petition. The commission shall implement this paragraph through rulemaking.

We denied AT&T's petition using our proposed agency action process, by Order No. PSC-07-0296-PAA-TL, issued April 6, 2007. Because AT&T petitioned for a Section 120.57, Florida Statutes, hearing, we set this matter for an evidentiary proceeding on July 24, 2007.

We took evidence on two issues. The first issue is whether AT&T has demonstrated good cause to be relieved from its COLR obligation to provide voice service to the residents in the private subdivisions in the Nocatee development pursuant to Section 364.025(6)(d), Florida Statutes. The second issue is whether the developer must pay financial consideration to AT&T prior to AT&T installing its network facilities, pursuant to Rule 25-4.067, Florida Administrative Code (F.A.C.), and AT&T's tariffs, and if so, what amount is payable from Nocatee to AT&T. We have jurisdiction pursuant to Section 364.01 and 364.025, Florida Statutes.

LEGAL FRAMEWORK

Section 364.025(6)(d), Florida Statutes, provides in pertinent part that "a local exchange telecommunications company that is not automatically relieved of its carrier-of-last-resort obligation pursuant to subparagraphs (b)1.-4. may seek a waiver of its carrier-of-last-resort obligation from the commission for good cause shown based on the facts and circumstances of provision of service to the multitenant business or residential property." The statute does not define "good cause." As reflected in the parties' briefs, "good cause" is typically defined as "legally sufficient ground or reason." *Black's Law Dictionary* (8th ed. 2004). In this case, "good cause" means legally sufficient ground or reason to conclude that a waiver of a local exchange company's (LEC's) COLR obligation is in the public interest in keeping with the legislative intent generally reflected throughout Chapter 364, Florida Statutes, and specifically, Section 364.025(6), Florida Statutes.

Ultimately, Section 364.025(6)(d), Florida Statutes, grants to the Commission the discretion to determine whether approving a petition for waiver of COLR obligations would best serve the public interest in light of the legislative intent of our enabling statute.

DISCUSSION

AT&T argues that it has shown good cause for COLR relief under the circumstances it faces in this case. AT&T contends that good cause for COLR relief exists when: (1) a developer has entered into an exclusive or near exclusive agreement for video and data services with an alternative provider; (2) a developer expressly or effectively restricts the local exchange company (LEC) to providing voice service only; (3) providers other than the LEC will be or will have the capability of providing voice or voice replacement service to residents; and (4) the provision of voice service by the LEC is uneconomic.

Nocatee argues that Section 364.025(6), Florida Statutes, reflects the continuing legislative intent to preserve to the extent practical, the provision of universal voice service at

reasonable rates to consumers, by a carrier that has the statutory obligation to serve. Moreover, Nocatee asserts that, "for purposes of carrier-of-last-resort relief, the term 'service' means only voice or voice replacement services, which by definition would exclude video and broadband." Nocatee contends that the "language of the statute gives no indication that services beyond voice telephone service are to be considered when determining if the 'good cause' standard has been met."

We disagree that the statute must be read as narrowly as Nocatee suggests. We also do not agree that AT&T's four contentions necessarily define the meaning of good cause, nor do we adopt those contentions as our test for good cause pursuant to Section 364.025(6)(d), Florida Statutes. However, we find here a number of facts and circumstances worthy of consideration in determining whether good cause exists to grant AT&T relief from its COLR obligation. We have thoroughly reviewed the evidentiary record and the arguments of the parties and following are those facts that we consider significant within the context of the totality of the facts and circumstances attendant to this case.[1]

Based on the record, we conclude that Nocatee entered into an agreement with Comcast Corporation (Comcast) that effectively makes Comcast the exclusive provider for cable video and data services in the private subdivisions. Although Nocatee denies that the agreement with Comcast is exclusive, we find that Nocatee has entered into a compensation agreement with Comcast wherein Comcast will provide Nocatee with financial consideration in exchange for Nocatee restricting other providers, such as AT&T, from providing cable/video and data services in the private subdivisions. Nocatee will receive a percentage of Comcast's recurring revenue from the provision of voice, data, and video services. If Nocatee allows AT&T to provide video and data services over its network, Comcast has the option to terminate the agreement and the financial consideration that will be paid to Nocatee.

Nocatee is not willing to forego the financial compensation it will receive from Comcast in return for allowing AT&T to provide video and data services in the private subdivisions. In his deposition, Nocatee president, Richard T. Ray, stated, "As long as the agreement that we have right now with Comcast is active, then AT&T will be restricted from providing data and video services. I can't speak to what might happen in the future." Under the contract, Comcast will, in effect, be the only provider for wired cable and data services in the private subdivisions. In addition, Nocatee has effectively restricted AT&T to providing only voice service in the two private subdivisions by means of a proposed voice-only easement. The easement demonstrates, and Nocatee admits, that the rights granted to AT&T specifically exclude delivery of internet/data services, video/television services, or telecommunications services other than voice service at this time.

---

[1] We emphasize that while we consider the facts identified in our specific findings and holdings in the body of this order to be significant in our determination of good cause, they are significant within the context of the totality of the facts and circumstances of this specific case. These same facts, if found in future cases may or may not carry the same significance, depending on the totality of the circumstances attendant to each individual future case.

There are alternative service providers, other than AT&T, available to the residents of Nocatee. These service providers will have the capability of providing voice or voice replacement service, such as Voice over Internet Protocol (VoIP), to the residents. Nocatee admits that Comcast will be installing its own network to provide voice, data, and video services within the private subdivisions and admits that Comcast has a VoIP service that Comcast intends to offer. Also, Comcast's price list for Jacksonville, Orange Park, Fleming Island, and St. John's County includes Comcast Digital Voice Service. Additionally, AT&T Witness Elizabeth Shiroishi testified that so long as a resident has a broadband connection, he or she could have access to over-the-top VoIP service providers such as Vonage, Skype, or AT&T (CallVantage). Further, it is undisputed that residents will have access to wireless service within the Nocatee area.

Another factor we considered is whether the provision of voice service is uneconomic. AT&T estimated that it would cost at least $1.8 million, including overhead expense, to deploy its facilities in Nocatee. It is our practice to accept cost estimates, and AT&T's estimate appears to be reasonable. Nocatee asserted that it will not make any financial contribution to offset AT&T's cost to deploy its network. Thus, AT&T would be responsible for the full cost of the facilities.

In addition, we heard testimony about AT&T's potential revenue stream. Although not dispositive, if in five years the amount of exchange revenues collected do not equal or exceed the costs of AT&T's network deployment, then a reasonable argument can be made that the investment might be uneconomic.

AT&T expects to see a take rate of 20% or less, which seems to be a reasonable estimate. AT&T bases this estimate in part on its experience with its known take rate in Avalon, Phase I, another COLR case in which AT&T is the petitioner.[2] The developments in Nocatee and Avalon, Phase I, share sufficient similarities for the experience in Avalon, Phase I, to serve as a suitable foundation for AT&T's estimated take rate in the two Nocatee private subdivisions.

AT&T's estimated average revenue per unit, which is confidential, is also reasonable. Based on this estimated average revenue per unit and the take rate of 20%, AT&T projects that it would need to produce 2.5 times the projected revenues to recover the cost of its initial investment in five years. Based on these estimates, AT&T would not recover its initial investment for approximately 12 ½ years or more.

[2] Docket No. 070126-TL – Petition for Relief from carrier-of-last-resort obligation pursuant to Section 364.025(6)(d), Florida Statutes, for Villages of Avalon, Phase II, in Hernando County, by BellSouth Communications, Inc. d/b/a AT&T Florida.

DECISION

Based on a thorough review of the totality of the facts and circumstances presented in this proceeding and strictly limited to the specific fact pattern presented in this proceeding, we find that AT&T has demonstrated good cause for waiver of its COLR obligation in the private subdivisions of the Nocatee development. We find that if in the future the Commission finds that material changes in the facts and circumstances have occurred such that the waiver is not in the public interest, the Commission may reinstate AT&T's carrier-of-last-resort obligation.

Our decision here is not dispositive of future petitions by companies that come before us seeking a waiver of their COLR obligation. When considering whether there is good cause to waive a local exchange telecommunications company's COLR obligation, we shall look at each set of facts and circumstances on a case-by-case basis.

We further find that our decision to grant AT&T's petition for waiver of its COLR obligation renders moot any issue regarding whether AT&T may impose charges on the developer, Nocatee, as a condition of installing facilities.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc. d/b/a AT&T of the Southeast d/b/a AT&T Florida's petition for waiver of its carrier-of-last-resort obligation in two private subdivisions in Nocatee development is hereby granted. It is further

ORDERED that any issue regarding whether AT&T Florida may impose charges on the developer, Nocatee, as a condition of installing facilities, is hereby rendered moot by our decision to grant the waiver. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of October, 2007.

	/s/ Ann Cole
	ANN COLE Commission Clerk

This is an electronic transmission. A copy of the original signature is available from the Commission's website, www.floridapsc.com, or by faxing a request to the Office of Commission Clerk at 1-850-413-7118.

(S E A L)

HFM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.