

Timolyn Henry

ORIGINAL

From: Kelly, Tamela D [LTD] [Tamela.Kelly@embarq.com]
Sent: Thursday, October 05, 2006 5:00 PM
To: Filings@psc.state.fl.us
Cc: Masterton, Susan S [LTD]
Subject: 060554-TL, Embarq's Post Workshop Comments
Attachments: 060554-TL, Embarq's Post Workshop Comments, 10-5-06.pdf

Filed on Behalf of: Susan S. Masterton

Counsel
Embarq Florida, Inc.
1313 Blair Stone Road
Tallahassee, FL 32301
Telephone: 850/599-1560
Email: susan.masterton@embarq.com

Docket No. 060554-TL

Title of filing: Embarq's Post Workshop Comments

Filed on behalf of: Embarq Florida, Inc.

No of pages: 8

Description: Embarq's Post Workshop Comments

<<060554-TL, Embarq's Post Workshop Comments, 10-5-06.pdf>>

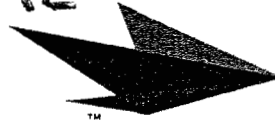
Tamela Kelly
 Legal Specialist
 Law & External Affairs-State External Affairs
 EMBARQ Corporation
 Voice: 850-599-1029 | Fax: 850-878-0777 | Email: tamela.kelly@EMBARQ.com
 Voice | Data | Internet | Wireless | Entertainment

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1
- OTH *Kim P.*

10/5/2006

DOCUMENT NUMBER-DATE
 09214 OCT-5 06
 FPSC-COMMISSION CLERK

ORIGINAL



Voice | Data | Internet | Wireless | Entertainment

EMBARQ™

Embarq Corporation
Mailstop: FLTLH00102
1313 Blair Stone Rd.
Tallahassee, FL 32301
EMBARQ.com

Electronic Mail Delivery

October 5, 2006

Ms. Blanca S. Bayó, Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-08050

RE: Docket No. 060554-TL – Embarq's Post Workshop Comments Regarding
Proposed adoption of Rule 25-4.084, F.A.C., Carrier-of-Last-Resort;
Multitenant Business and Residential Properties

Dear Ms. Bayó:

Enclosed for filing on behalf of Embarq Florida, Inc. is Embarq's Post Workshop
Comments regarding Proposed adoption of Rule 25-4.084, F.A.C., Carrier-of-Last-
Resort; Multitenant Business and Residential Properties.

Copies have been served as per the attached Certificate of Service.

If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

Susan S. Masterton

Enclosures

Susan S. Masterton
COUNSEL
LAW AND EXTERNAL AFFAIRS- REGULATORY
Voice: (850) 599-1560
Fax: (850) 878-0777

DOCUMENT NUMBER-DATE

09214 OCT-5 06

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic mail, except as noted with asterisk, to the parties listed below this 5th day of October, 2006.

Abel Law Firm
William P. Cox
P.O. Box 49948
Sarasota, FL 34230-6948

AIMCO Property Asset Management *
Steven D. Ira
3504 Lake Lynda Drive, Suite 100
Orlando, FL 32817
(* served via US mail)

Akerman Law Firm
Beth Keating
P.O. Box 1877
Tallahassee, FL 32302-1877

Bay Area Apt. Assoc.
Jeff Rogo
6107-B Memorial Hwy.
Tampa, FL 33615

Becker & Poliakoff Law Firm
Donna D. Berger
3111 Stirling Road
Fort Lauderdale, FL 33312-6525

BOMA /Greater Tampa Bay
Nena Gang
4509 George Rd.
Tampa, FL 33634

BOMA /Jacksonville
Shanin Clayton
6254 West Alfredo Drive
Jacksonville, FL 32244

BOMA /Miami-Dade
Carmen Vesga
Two South Biscayne Blvd
Suite 0204
Miami, FL 33131

BOMA /Orlando
Allyson Peters
PO Box 574163
Orlando, FL 32857-4163

BOMA /South Florida
Melani Schrul
7040 W. Palmetto Park Rd #4-668
Boca Raton, FL 33433

BOMA /Tallahassee
Chris M. Keena
315 S Calhoun St Suite 560
Tallahassee, FL 32301

BOMA Florida
Larry Bodkin
2563 Capital Medical Blvd.
Tallahassee, FL 32308

CB Richard Ellis
Chris Prather
Tampa, FL 33602

Colonial Properties Trust
Bert Locke, Jr. RPA
Vice President Property Operations
950 Market Promenade Ave., Suite 2200
Lake Mary, FL 32746

Comcast
Mr. Christopher McDonald
300 W. Pensacola St.
Tallahassee, FL 32301

Florida Cable Telecommunications
Association, Inc. (Gross)
Michael A. Gross
246 E. 6th Avenue
Suite 100
Tallahassee, FL 32303

Harrod Properties
Lynn Vilmar
777 S. Harbor Island Blvd.
Tampa, FL 33602

International Council of Shopping Centers
c/o Smith Bryan & Myers
Julie S. Myers
311 E. Park Avenue
Tallahassee, FL 32301

Florida Apartment Association
Jodi Chase
1566 Village Square Blvd., Ste. 2
Tallahassee, FL 32309

Legislative Chair, (BOMA) Florida
Debra K. Mink, RPA, President
Sunnyvale Building
3081 East Commercial Boulevard
Fort Lauderdale, FL 33308

Messer Law Firm
Floyd R. Self
P. O. Box 15579
Tallahassee, FL 32317

Miller Law Firm (06)
Gerard Lavery Lederer
1155 Connecticut Avenue, N.W.
Suite 1000
Washington, DC 20036-4320

Pennington Law Firm
Howard E. (Gene) Adams
P.O. Box 10095
Tallahassee, FL 32302-2095

Time Warner Telecom of Florida, L.P.
Carolyn Marek
233 Bramerton Court
Franklin, TN 37069

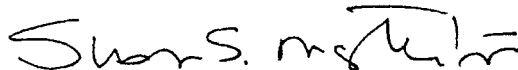
Florida Public Service Commission
Rick Moses
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Florida Public Service Commission
Theresa Tan
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

James Meza, III
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 N. Monroe St., Suite 400
Tallahassee, FL 32301-1556

David Christian
Verizon Florida, Inc.
106 East College Ave.
Tallahassee, FL 32301-7748

Dulaney L. O'Roark, III
Verizon Florida, Inc.
P.O. Box 110, FLTC 0007
Tampa, FL 33601-0110



Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Carrier-of-Last Resort; Multitenant) DOCKET NO: 060554-TL
Business and Residential Property)
_____) FILED: October 5, 2006

EMBARQ FLORIDA, INC.'S POST-WORKSHOP COMMENTS

In accordance with the schedule for filing comments established at the workshop held on September 14, 2006, Embarq Florida, Inc. ("Embarq") files its post-workshop comments in this docket. In addition to the comments provided herein, Embarq is jointly filing, with BellSouth Telecommunications, Inc. and Verizon Florida, Inc., proposed revisions to the rule ("Joint Rule Proposal") and a copy of a report on the status of communications competition in Florida that has been previously filed as part of the information provided to Commission staff for its annual competition report.¹

The status of competition

As reflected in the NERA report and the Commission's 2005 Report on the Status of Competition in the Telecommunications Industry, competition to provide voice and broadband services is flourishing in Florida. Alternatives for voice service take the form of alternative wireline providers (e.g., competitive local exchange carriers or CLECs), wireless providers and providers using broadband facilities to deliver voice services (including cable companies and voice over Internet protocol or VoIP providers). Providers, particularly cable providers, are marketing their voice services as an adjunct to broadband (i.e., high speed internet) services, as well as video services in many cases. The advent of this robust competition has provided an incentive to owners and developers of multitenant properties, including single-family subdivisions, to seek advantages in the

¹ NERA Economic Consulting, *Intermodal Competition in Florida*, July 2006

provision of these services to their properties, largely in the form of exclusive contracts with providers either for individual services (e.g., voice, broadband or video service) or for all such services provided to the multitenant property. Often (if not usually), these contracts provide some sort of financial sharing of the revenue obtained from residents for these services (e.g., in the form of door fees, percentages of monthly recurring charges, etc.) Frequently the developer will include the monthly recurring fees for these services in the rent or homeowners association dues, resulting in residents being forced to pay for the services from the contracted providers regardless of whether they actually desire or intend to use the services. These situations amount essentially to exclusive contracts, even if the developer does not formally exclude other providers from placing facilities or marketing their services in this area.

ILEC COLR Obligation

Section 364.025, F.S., requires ILECs, such as Embarq, to act as the “carrier of last resort” in their respective service territories. Historically the COLR obligation has been interpreted to mean that Embarq must provide service to anyone in its service territory who requests it, subject to only a few narrow conditions related to obtaining appropriate rights-of-way to place the necessary facilities and to allowing cost-recovery for extraordinary costs.

It is in the context of the increasing competition and consequent actions of multitenant property owners and developers described above that the Legislature enacted ch. 2006-80, Laws of Florida, amending section 364.025, F.S., to provide relief to ILECs from their carriers of last resort obligations in certain circumstances beyond the narrow circumstances previously contemplated in the law and rules. The law provides ILECs

automatic relief from their COLR obligations in various situations in which the ILEC is actually or effectively excluded from providing voice service because of an arrangement an owner or developer of a multitenant property has made with other voice service providers. In addition, the law allows ILECs to petition the Commission for relief from their COLR obligations based on a showing of “good cause.” This “good cause” petition process is the subject of the rulemaking in this docket.

“Good Cause” for COLR Relief

Contrary to the positions asserted by multitenant owner and developer representatives at the September 14th workshop, in enacting this petition process, the Legislature clearly envisioned that certain circumstances, in addition to the automatic circumstances set forth in the law, would justify relieving ILECs of their carrier of last resort obligations. Embarq believes that the rules should address these additional circumstances in the manner set forth in the Joint Rule Proposal. Circumstances Embarq believes show “good cause” for COLR relief include actions by developers to restrict (either contractually or through limitations in easement documents) the services ILECs may provide in their developments (often including attempting to restrict Embarq to providing only basic voice services) and actions to assess residents monthly fees to purchase another provider’s broadband service, even though competition for such services is not explicitly prohibited. In these situations, developers or owners may argue that they have not technically excluded the ILEC from providing voice services, therefore the automatic COLR exemption criteria are not met. They may also argue that because the ILEC’s COLR obligation goes only to basic services, restricting the ILEC to providing such services is compliant with the law. However, these arguments ignore that

Embarq's statutory price cap regulatory regime in place today recognizes that Embarq's ability to provide low cost basic services is contingent on its ability to recover its costs by offering the full panoply of services that it is legally authorized to provide. In fact, the attempts by multitenant property owners and developers to restrict and condition Embarq's ability to provide the services it is legally entitled to provide amounts to a usurpation of this Commission's regulatory jurisdiction over telecommunications companies in contravention of the exclusive regulatory jurisdiction accorded the Commission in section 364.01(2), Florida Statutes.

In the situations described above, customers have access to and are likely to avail themselves of other options for voice services, reducing the likelihood that the customers will choose to obtain any services from Embarq, including voice services. Embarq is thereby relegated to the position of a "fall back" provider, a position that Embarq cannot economically sustain because it cannot recover the costs it incurs to "stand ready" to provide service to anyone who asks, regardless of how many or how few.

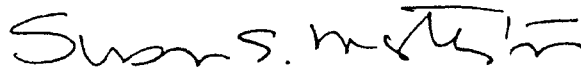
The potential for owners and developers to actually or effectively exclude Embarq from providing any or all of its services in a particular development also causes timing issues for Embarq in determining when and whether it should install facilities to serve the multitenant property. To avoid Embarq investing significant capital in a multitenant property it may ultimately be excluded from, Embarq needs certain information from owners and developers of multitenant properties in a timely fashion, so that Embarq can determine if the automatic criteria for relief from its COLR obligations are met, or if circumstances exist that would warrant Embarq petitioning the Commission for relief under section 364.025(6)(d), F.S. Embarq generally has found it difficult to obtain the

necessary information from owners and developers, particularly when the owner or developer is, in fact, negotiating with other providers with the intent of ultimately either excluding or severely limiting Embarq's provision of services at the property.

Joint Rule Proposal

The Joint Rule Proposal includes language that sets forth certain circumstances that the Local Carriers believe clearly constitute "good cause" for relieving ILECs of their carrier of last resort obligations, in addition, to the automatic criteria set forth in ch. 2006-80, L.O.F. In addition, the proposal addresses the ILECs timely need for information to determine the course of action they should take based on a developer's plans for providing service that may justify the ILEC in seeking relief under the "good cause" provision. Embarq urges the Commission to adopt the Joint Rule Proposal, as it clearly reflects the intent of the Legislature to allow the Commission to recognize additional circumstances, other than those listed in the statute, that justify relieving ILECs of their carrier of last resort obligations as they relate to certain multitenant properties.

Respectfully submitted this 5th day of October 2006.



Susan S. Masterton
1313 Blair Stone Road
Tallahassee, FL 32301
Voice: 850-599-1560
Fax: 850-878-0777
susan.masterton@embarq.com

Counsel for Embarq Florida, Inc.