

State of Florida



Public Service Commission

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CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: December 7, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Moore, Tan) *CTM RK TWT GP*
Division of Competitive Markets & Enforcement (Kennedy, Moses) *CS*
Division of Economic Regulation (Dickens, Hewitt) *BR O*

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

AGENDA: 12/19/06 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060554.RCM.DOC

Case Background

Section 2 of Chapter 2006-80, Laws of Florida, (Senate Bill 142) amended section 364.025, Florida Statutes, governing universal service, to provide that a local exchange telecommunications company is automatically relieved from its carrier-of-last-resort obligation (COLR) under certain enumerated circumstances. (Attachment C.) The COLR obligation requires local exchange telecommunications companies (LECs) to provide basic local telecommunications services¹ within a reasonable time to any person requesting such service

¹

"Basic local telecommunications service" means voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all

within the company's service territory until January 1, 2009. Section 364.025(1), Florida Statutes. The 2006 legislation automatically relieves a LEC of this obligation to customers in multitenant business or residential property, such as apartments, condominiums, subdivisions, office buildings, or office parks, when the owner or developer of the property:

1. Permits only one communications service provider to install its communications service-related facilities or equipment, to the exclusion of the local exchange telecommunications company, during the construction phase of the property;
2. Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the local exchange telecommunications company;
3. Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the local exchange telecommunications company, to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or dues; or
4. Enters into an agreement with the communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the local exchange telecommunications company's access to the property.

§ 364.025(6)(b), Fla. Stat. (2006). "Communications service" is defined in section 364.025(6)(a)3 as "voice service or voice replacement service through the use of any technology." The LEC relieved of its COLR obligation under the above provisions must notify the Commission of that fact in a timely manner. § 364.025(6)(c), Fla. Stat. (2006). In addition, the statute provides a method to reestablish the LEC's COLR obligation. § 364.025(6)(d), Fla. Stat. (2006).

Paragraph (6)(d) of section 364.025, Florida Statutes, provides that a LEC that is not automatically relieved of its COLR obligation may petition the Commission for a waiver of the obligation for good cause shown based on the facts and circumstances of provision of service to the multitenant business or residential property. The LEC filing such a petition is required to give notice at the same time to the building owner or developer. The Commission has 90 days to act on the petition. The Commission is required to implement this paragraph through rulemaking. Staff initiated this rulemaking to comply with the statute.

locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995. § 364.02 (1), Fla. Stat. (2006).

Docket No. 060554-TL
December 7, 2006

Staff conducted a rule development workshop on September 14, 2006, to receive comments on its draft of Rule 25-4.084, F.A.C. Participating in the workshop were local exchange companies BellSouth Telecommunications, Inc. ("BellSouth"), Verizon Florida, Inc. ("Verizon"), Embarq Florida, Inc. ("Embarq"); competitive local exchange carrier Time Warner Telecom of Florida, L.P.; the Florida Real Access Alliance, a representative of real estate owners; Lennar Developers, Inc.; the Florida Cable Telecommunications Association ("FCTA"); Comcast; the International Council of Shopping Centers; and the Building Owners and Managers Association of Florida ("BOMA"). Many of the participants also submitted post-workshop comments. Staff made several changes to the rule based on the participants' comments.

The Commission has rulemaking authority pursuant to sections 120.54, 350.127(2), and 364.025(6)(d), Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission adopt Rule 25-4.084, F.A.C., Carrier-of-Last-Resort; Multitenant Business and Residential Properties, to implement section 364.025(6)(d), Florida Statutes?

Recommendation: Yes.

Staff Analysis: Rule 25-4.084, F.A.C., prescribes the filing requirements for a petition for waiver of the COLR obligation. It requires the petitioning LEC to deliver a copy of the petition to the relevant property owner or developer and specifies the information that must be included in the petition. The rule requires the petitioner to include the specific facts and circumstances that demonstrate good cause for a waiver, and that interested persons have 14 days from receipt of the petition to file a response to the petition. The period of 14 days for a response is modeled on the time provided for comments on a petition in Rule 28-104.003, F.A.C., the uniform rule on rule waivers and variances. The uniform rule implements a statute requiring agencies to grant or deny a petition within 90 days after receipt of a completed petition. Rule 25-4.084 further provides that any response must include whether the respondent disputes the facts and circumstances alleged in the petition.

Workshop and Post-Workshop Comments

Good Cause Definition or Factors

At the rule development workshop and in post-workshop comments, the LECs asserted that the rule should include several factors that the Commission will consider in determining whether good cause exists for a waiver of the COLR obligation. These include whether the property owner or developer has entered into an agreement with another communications service provider or a provider of data, video or other services, and the effect of the agreement on the LEC's provision of service. Another factor is whether residents, tenants or occupants of the property have access to communications service from a source other than the LEC. Other factors could be considered by the Commission.

The Real Access Alliance, Lennar Developers, and FCTA opposed stating in the rule what constitutes good cause. Rather, they asked that the Commission limit the scope of its good cause inquiry to voice service and that any limitations imposed by the developer on a LEC's ability to provide any service other than voice service should not be a consideration in the Commission's determination. The Florida Real Access Alliance also asked for the rule to articulate facts and circumstances, or actions taken by a property owner, that do not constitute good cause.

Lennar Developers further asked that the Commission make clear in the rule that "good cause" is limited to a physical impairment in the COLR provider's ability to provide communications service (voice service or voice replacement service), or a significant economic impairment that results in precluding construction and operation of the provider's network to the premises and end users. Lennar asserted that this would add a certain level of regulatory

certainty that would help parties to resolve disputes during negotiations for service between the LECs and property owners.

Staff recommends that the Commission not attempt to define good cause in the rule, or to mandate what factors it will consider in making its determination. All or any of the factors suggested by the parties may be considered by the Commission without being stated in the rule, and whether or not good cause is established should be determined on a case-by-case basis. At this time, staff believes it is premature for the rule to go beyond prescribing requirements for filing and responding to a petition. Once the Commission gains some experience with adjudicating petitions for waiver of the COLR obligation based upon actual facts and circumstances, or by adjudicating complaints, it may have sufficient knowledge to address "good cause" by rulemaking.² In addition, staff believes that attempting to include provisions about good cause in the rule now will result in a protracted rulemaking given the significant differences of opinions of property owners and developers and the LECs.

Requiring Property Owners to Provide Information to LEC and Creating a Rebuttable Presumption of Good Cause

The LECs ask that the rule require owners and developers to provide specific information to the LEC in order for the LEC to assess its obligation to serve. The information the LECs want from a developer also includes the nature of any agreements the owner has entered into, or plans to enter into, with a provider of data, video or other service, the details of such services, and the name of the provider. Under the LEC's proposal, failure of an owner or developer to provide the information by notarized certification within 20 days of the LEC's request would create a rebuttable presumption of good cause for a waiver of the LEC's COLR obligation. In addition, a rebuttable presumption of good cause would exist if no response opposing a petition for waiver is filed or if a response does not comply with the rule.

Staff did not include such a requirement in the rule for several reasons. Default-type provisions are not appropriate because the Commission is not simply resolving a dispute between the LEC and a developer or property owner in proceedings to waive a COLR obligation. The Commission's duty goes beyond the two parties and reaches to the tenants or occupants of the multitenant property, who section 364.025, Florida Statutes, is designed to protect. The Commission also establishes policy and precedent with its decisions—decisions that should be based on the merits and its interpretation of law and the facts.

Section 364.025, Florida Statutes, establishes a policy of universal service and the COLR obligation—an obligation that exists unless one of the automatic exemptions expressed in subparagraphs 364.025(6)(b)1-4 applies, or unless the Commission finds good cause under

² There are two complaints and one petition for waiver of the COLR obligation presently pending before the Commission: Docket No. 060684-TP - In re: Complaint and petition for declaratory relief against BellSouth Telecommunications, Inc. for refusal to provide telephone service to a new development, by Litestream Holdings, LLC; Docket No. 060732-TL - In re: Complaint regarding BellSouth Telecommunications, Inc.'s failure to provide service on request in accordance with section 364.025(1), F.S., and Rule 25-4.091(1), F.A.C. by Lennar Homes, Inc.; and Docket No. 060763-TL - Petition by Embarq Florida, Inc. under section 364.025(6)(d), Florida Statutes, for relief from its carrier of last resort obligations.

paragraph 364.025(6)(d) to waive the obligation. Providing a rebuttable presumption in the rule would shift the burden of proof to the developer or property owner to demonstrate that the COLR obligation should not be waived. Staff believes that adding such a provision to the rule would be contrary to the statute and would stand the intent of the Legislature on its head.

Expedited Disposition

The LECs also asked that the rule include a provision stating that a petitioner may request expedited consideration, and that if the petitioner supports such a request with circumstances that demonstrate a need for expedited consideration, the Commission will grant or deny the petition for waiver within 30 days of its filing. Verizon asserted that in certain circumstances the local carrier (COLR provider) must make network construction decisions on short notice. If it does not know whether it must provide service, that is, it does not know whether conditions exist that establish an automatic statutory waiver, it risks either commencing uneconomic construction or waiting for a decision from the Commission and possible failure to meet COLR obligations on time if a waiver is denied. Lennar Developers suggested that the Commission consider providing for an expedited interim determination step in the rule for an owner or developer to obtain relief when it appears a LEC is declining to serve for reasons that would not meet a good cause standard.

Staff does not recommend including a provision requiring expedited action by the Commission in the rule. The relevant property owner or developer must have time to respond to the petition and the legal requirements for notice, the practicalities of scheduling, and the Commission's calendar would make it virtually impossible in most cases for the Commission to make a decision within 30 days of a petition's filing. The statute gives the Commission 90 days to act on a petition; however, there is nothing in the rule that would preclude a petitioner or a respondent from asking the Commission to expedite its decision at the time it files a petition. Under section 364.058(1), Florida Statutes, the Commission may conduct an expedited proceeding upon petition or its own motion. In addition, if there are no genuine issues as to material facts, any party may move for summary final order pursuant to Rule 28-106.204(4), F.A.C. If any party disputes the facts, it may ask for a hearing early in the proceedings, and need not wait to protest the Commission's proposed agency action.

Summary

Staff recommends the Commission adopt a rule that is limited to providing the detailed procedural requirements for petitions to waive the COLR obligation. Staff does not believe the Commission should attempt to resolve with this rule all of the disputes LECs and property owners or developers have or may have with each other about service availability, the scope of COLR obligations, the permissibility of access agreements, and the effect of exclusive agreements with providers of other services. For the most part, these issues will be resolved by the Commission when it decides petitions for waiver filed under this rule or complaints for violations based upon actual facts and circumstances, or by the LECs and owners in the course of their normal business negotiations. Additional rulemaking may be considered after the Commission resolves the issues on a case-by-case basis.

Statement of Estimated Regulatory Cost:

There should be little to no impact on individuals or companies subject to this rule because it merely adds detail to the process that is provided for by statute. A Statement of Estimated Regulatory Cost is attached. (Attachment B.)

Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or comments are filed, the rule as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

Staff Analysis: Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

Attachments

Rule
SERC
Statute

1 **25-4.084 Carrier-of-Last-Resort; Multitenant Business and Residential Property.**

2 (1) A petition for waiver of the carrier-of-last-resort obligation to a multitenant
3 business or residential property pursuant to Section 364.025(6)(d), Florida Statutes, shall be
4 filed with the Division of the Commission Clerk and Administrative Services and shall be
5 delivered by hand delivery on the same day, or by overnight mail on the day following filing,
6 upon the relevant owners or developers together with a copy of section 364.025(6) and this
7 rule.

8 (2) A petition for waiver of the carrier-of-last-resort obligation shall be limited to a
9 single development.

10 (3) The petition must include the following:

11 (a) The name, address, telephone number, electronic mail address, and any facsimile
12 number of the petitioner;

13 (b) The name, address, telephone number, electronic mail address, and any facsimile
14 number of the attorney or qualified representative of the petitioner if any;

15 (c) The address or other specific description of the property for which the waiver is
16 requested;

17 (d) The specific facts and circumstances that demonstrate "good cause" for the waiver
18 as required by Section 364.025(6)(d);

19 (e) A statement that interested persons have 14 calendar days from the date the
20 petition is received to file a response to the petition with the Commission, unless the
21 fourteenth day falls on a Saturday, Sunday, or holiday, in which case the response must be
22 filed no later than the next working day; and

23 (f) A statement certifying that delivery of the petition has been made on the relevant
24 owners or developers and the method of delivery.

25 (4) A response to a petition must include the following:

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1 (a) The name, address, telephone number, electronic mail address, and any facsimile
2 number of the respondent;

3 (b) The name, address, telephone number, electronic mail address, and any facsimile
4 number of the attorney or qualified representative of the respondent if any upon whom
5 service of pleadings and other papers shall be made; and

6 (c) Whether the respondent disputes the facts and circumstances alleged in the
7 petition.

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9 Specific Authority 350.127(2) FS.

10 Law Implemented 364.025 FS.

11 History–New.

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-M-E-M-O-R-A-N-D-U-M-

DATE: December 6, 2006
TO: Christiana T. Moore, Office of the General Counsel
FROM: Billy R. Dickens, Division of Economic Regulation **BRD** *SA* *W* *TS*
RE: Statement of Estimated Regulatory Costs for Proposed Rule 25-4.084

SUMMARY OF THE PROPOSED RULE

Rule 25-4.084, Florida Administrative Code, Carrier-of-Last Resort (COLR); Multitenant Business and Residential Property, is a proposed new rule created to fulfill the mandate of the Legislature provided in Section 364.025(6)(d), Florida Statutes, Universal Service. Rule 25-4.084 would codify what a local exchange telecommunications company, that is not automatically relieved of its carrier-of-last-resort obligation pursuant to Section 364.025(6)(d)1 through 4, F.S., must do to seek a waiver from the Commission. The rule specifies what information must be provided to the Commission in its petition.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY

The proposed rule amendment requires compliance for all ten incumbent local exchange companies (ILEC) subject to COLR obligations operating in Florida.

RULE IMPLEMENTATION, ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The proposed rule would provide the procedure for obtaining a waiver of COLR obligations and the contents of the petition. Because the proposed rule only codifies the procedures an ILEC must follow to obtain a waiver, there is no enforcement cost or impact on revenues for the agency or other state and local governmental entities.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

There should be minimal costs to the ILECs from filing a petition for COLR waiver provided there are no protests to the Proposed Agency Action Order.

IMPACT ON SMALL BUSINESSES, SMALL CITIES OR SMALL COUNTIES

Because the proposed rule specifies procedures that ILECs must follow, there should be no impact for small businesses, cities, and small county entities resulting from implementation of this rule.

BRD:kb

Cc: Mary Andrews Bane
Charles Hill
Ray Kennedy
Hurd Reeves

CHAPTER 2006-80

Committee Substitute for
Committee Substitute for Senate Bill No. 142

An act relating to communications; amending s. 364.051, F.S., relating to price regulation; allowing a telecommunications company to publicly publish price lists for nonbasic services; providing guidelines for such publication; allowing 1 day's notice for price changes to nonbasic services; deleting a company's option to elect that its basic services be treated as nonbasic services; requiring a company to request that the Public Service Commission lessen its service quality regulation; providing criteria for granting a petition to change regulatory treatment of retail services; amending s. 364.025, F.S.; providing definitions; providing that a local exchange telecommunications company obligated to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to customers in a multitenant business or residential property under certain circumstances; requiring the local exchange telecommunications company to notify the Public Service Commission when it is relieved of the obligation to provide service; providing for the local exchange telecommunications company to request a waiver of its carrier of last resort obligation from the commission; providing for carrier of last resort obligation to apply when specified conditions cease to exist; providing for effect of the act on the commission's jurisdiction; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (5), (6), and (7) of section 364.051, Florida Statutes, are amended to read:

364.051 Price regulation.—

(5) NONBASIC SERVICES.—Price regulation of nonbasic services shall consist of the following:

(a) Each company subject to this section shall, at its option, maintain tariffs with the commission or otherwise publicly publish containing the terms, conditions, and rates for each of its nonbasic services, and may set or change, on 1 day's ~~15 days'~~ notice, the rate for each of its nonbasic services. For a company electing to publicly publish the terms, conditions, and rates for each of its nonbasic services, the commission may establish guidelines for the publication. The guidelines may not require more information than what is required to be filed with a tariff. The, except that a price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period, and the rate shall be presumptively valid. However, for purposes of this subsection, the prices of:

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Ch. 2006-80

LAWS OF FLORIDA

Ch. 2006-80

1. A voice-grade, flat-rate, multi-line business local exchange service, including multiple individual lines, centrex lines, private branch exchange trunks, and any associated hunting services, that provides dial tone and local usage necessary to place a call within a local exchange calling area; and

2. Telecommunications services provided under contract service arrangements to the SUNCOM Network, as defined in chapter 282,

shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 2000; provided, however, that a petition to increase such rates may be filed pursuant to subsection (4) utilizing the standards set forth therein. There shall be a flat-rate pricing option for multi-line business local exchange service, and mandatory measured service for multi-line business local exchange service shall not be imposed. Nothing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, or functionally equivalent, nonbasic services in a specific geographic market or to a specific customer by deaveraging the price of any nonbasic service, packaging nonbasic services together or with basic services, using volume discounts and term discounts, and offering individual contracts. However, the local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers.

(b) The commission shall have continuing regulatory oversight of nonbasic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The cost standard for determining cross-subsidization is whether the total revenue from a nonbasic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and nonvolume-sensitive costs.

(c) The price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

(6) After a local exchange telecommunications company that has more than 1 million access lines in service has reduced its intrastate switched network access rates to parity, as defined in s. 364.164(5), the local exchange telecommunications company's ~~basic local telecommunications service may, at the company's election, be subject to the same regulatory treatment as its nonbasic services.~~ The company's retail service quality requirements that are not already equal to the service quality requirements imposed upon the competitive local exchange telecommunications companies shall at the company's request to the commission thereafter be no greater than those imposed upon competitive local exchange telecommunications companies unless the commission, within 120 days after the company's request election, determines otherwise. In such event, the commission may grant some reductions in service quality requirements in some or all of the company's local

Ch. 2006-80

LAWS OF FLORIDA

Ch. 2006-80

calling areas. The commission may not impose retail service quality requirements on competitive local exchange telecommunications companies greater than those existing on January 1, 2003.

(7) After If a local exchange telecommunications company that has more than 1 million access lines in service has reduced its intrastate switched network access rates to parity, as defined in s. 364.164(5) elects, pursuant to subsection (6), to subject its retail basic local telecommunications services to the same regulatory treatment as its nonbasic services, the local exchange telecommunications company may petition the commission for regulatory treatment of its retail services at a level no greater than that imposed by the commission upon competitive local exchange telecommunications companies. The local exchange telecommunications company shall:

(a) Show that granting the petition is in the public interest;

(b) Demonstrate that the competition faced by the company is sufficient and sustainable to allow such competition to supplant regulation by the commission; and

(c)(b) Reduce its intrastate switched network access rates to its local reciprocal interconnection rate upon the grant of the petition.

The commission shall act upon such a petition within 9 months after its filing with the commission. ~~In making its determination to either grant or deny the petition, the commission shall determine the extent to which the level of competition faced by the local exchange telecommunications company permits and will continue to permit the company to have its retail services regulated no differently than the competitive local exchange telecommunications companies are then being regulated.~~ The commission may not increase the level of regulation for competitive local exchange telecommunications companies to a level greater than that which exists on the date the local exchange telecommunications company files its petition.

Section 2. Subsection (6) is added to section 364.025, Florida Statutes, to read:

364.025 Universal service.—

(6)(a) For purposes of this subsection:

1. "Owner or developer" means the owner or developer of a multitenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.

2. "Communications service provider" means any person or entity providing communications services, any person or entity allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer.

3. "Communications service" means voice service or voice replacement service through the use of any technology.

Ch. 2006-80

LAWS OF FLORIDA

Ch. 2006-80

(b) A local exchange telecommunications company obligated by this section to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to any customers in a multitenant business or residential property, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, when the owner or developer thereof:

1. Permits only one communications service provider to install its communications service-related facilities or equipment, to the exclusion of the local exchange telecommunications company, during the construction phase of the property;

2. Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the local exchange telecommunications company;

3. Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the local exchange telecommunications company, to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or dues; or

4. Enters into an agreement with the communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the local exchange telecommunications company's access to the property.

(c) The local exchange telecommunications company relieved of its carrier-of-last-resort obligation to provide basic local telecommunications service to the occupants or residents of a multitenant business or residential property pursuant to paragraph (b) shall notify the commission of that fact in a timely manner.

(d) 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.

(e) If all conditions described in subparagraphs (b)1.-4. cease to exist at a property, the owner or developer requests in writing that the local exchange telecommunications company make service available to customers at the property and confirms in writing that all conditions described in subparagraphs (b)1.-4. have ceased to exist at the property and the owner or developer has not arranged and does not intend to arrange with another communications service provider to make communications service available to customers at the property, the carrier-of-last-resort obligation under this section shall again apply to the local exchange telecommunications company

Ch. 2006-80

LAWS OF FLORIDA

Ch. 2006-80

at the property; however, the local exchange telecommunications company may require that the owner or developer pay to the company in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the property initially, and the company shall have a reasonable period of time following the request from the owner or developer to make arrangements for service availability. If any conditions described in subparagraphs (b)1.-4. again exist at the property, paragraph (b) shall again apply.

(f) This subsection does not affect the limitations on the jurisdiction of the commission imposed by s. 364.011 or s. 364.013.

Section 3. The sum of \$800,000 of recurring funds from the General Revenue Fund is appropriated to the Office of Public Counsel for the 2006-2007 fiscal year.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor June 7, 2006.

Filed in Office Secretary of State June 7, 2006.