

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

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

DATE: March 1, 2007

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

FROM: Office of the General Counsel (Fudge) *CF*
 Division of Competitive Markets & Enforcement (Buys, Kennedy) *RK*
DB *BNT*

RE: Docket No. 060732-TL – 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.

AGENDA: 03/13/07 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060732.RCM.DOC

Case Background

On November 7, 2006, Lennar Homes, Inc. (Lennar) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for failure to provide service in violation of its Carrier of Last Resort (COLR) obligation. Lennar states that it is in the process of developing subdivisions and thus qualifies as an applicant under Rule 25-4.089(1), Florida Administrative Code, as well as an “owner or developer” under section 364.025(6)(a)(1), Florida Statutes. On December 1, 2006, BellSouth filed a Response to Lennar Homes, Inc.’s Complaint. On December 20, 2006, Lennar filed its Response to BellSouth’s Assertion of Affirmative Defenses.

DOCUMENT NUMBER-DATE

01898 MAR-15

FPSC-COMMISSION CLERK

During its 1995 session, the Legislature created section 364.025, Florida Statutes, Universal Services. At the time, section 364.025(1), Florida Statutes, provided in part:

It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local exchange telecommunications companies be used to satisfy these objectives. For a period of 4 years after the effective date of this section, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory.

Section 364.025, Florida Statutes, has been amended several times since its 1995 adoption by the Legislature. Each time the carrier of last resort obligation was nearing expiration, the Legislature saw fit to amend the statute, extending the date on which the carrier of last resort obligation would be sunset.

In 2006, the Legislature amended section 364.025, Florida Statutes, by defining certain conditions wherein an incumbent local exchange company would not be required to serve as carrier of last resort for certain multitenant business or residential properties. Even so, the carrier of last resort obligation was retained by the Legislature.

Lennar Complaint

In the process of developing the "Echo Lake" project, Lennar began discussion with BellSouth to serve as the telecommunications provider for Echo Lake. As a result of those discussions, BellSouth sent a letter to Lennar, attached hereto as Attachment A, requiring the developer to execute the letter before BellSouth would incur costs to prepare the property for BellSouth service.¹ Lennar contends that the letter indicates that if any affiliated party, homeowner, or condominium association enters into an exclusive marketing agreement, exclusive service agreement, or bulk service agreement with a provider of any voice, data, or video service, within 18 months of first occupancy, Lennar will be responsible to BellSouth for any "unrecovered costs associated with the engineering and installation of the initial facilities."

Lennar contends that there are only four specific circumstances which automatically eliminates the COLR obligation if the owner or developer:

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;

¹ BellSouth sent similar letters to other Lennar developments including Copper Creek and Madeira Isles. Exhibits 2 and 3 to Lennar's Complaint.

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.

If the LEC believes one of the conditions cited above has occurred, the LEC must notify the Commission of that fact in a timely manner.

Absent one of the circumstances identified above occurring, a LEC may seek a waiver of its COLR obligation "for good cause shown based on the facts and circumstances of provision of service to the multitenant business or residential property."

Lennar argues that "by attempting to bully Lennar into the certifications described in the letter, it appears that BellSouth is trying to use the new law as a veritable sledgehammer in negotiations to extract more favorable terms and conditions of service." In addition, Lennar contends that the certifications required by BellSouth fall short of the "good cause" required by section 364.025, Florida Statutes, and that section 364.025, Florida Statutes, does not indicate that services other than voice service should be considered when determining whether the good cause standard has been met. Lennar states that the new law was designed to relieve BellSouth of its COLR obligation when conditions for providing its basic local telecommunications service to customers at a property are prohibitive, not just when conditions are competitive.

BellSouth Response

On December 1, 2006, BellSouth filed its response and affirmative defense. BellSouth alleges that Lennar has not requested that BellSouth provide any services to Lennar and thus, Lennar lacks standing to bring the complaint. BellSouth proceeds to admit or deny each paragraph of the Complaint.

Lennar Response

On December 20, 2006, Lennar filed a Response to BellSouth's assertion of affirmative defenses. Lennar argues that BellSouth has improperly pled its affirmative defense because it did not state with specificity the grounds for the defense, as well as the substantial matters of law intended to be argued. Lennar goes on to state that it has requested that BellSouth extend its

facilities and make service available to LHI homes in the Echo Lake project, as well as to the Copper Creek and Madera Isles projects.

Next, Lennar explains that it meets the standing test identified in *Agrico Chemical Co. v. Dept. of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981). First, the attestations required by BellSouth's letter impairs Lennar's ability to freely contract with cable and broadband providers. Second, the timely provision of the carrier of last resort obligation is within the zone of interest that section 364.025, Florida Statutes, was designed to protect.

February 13, 2007 Agenda Conference

At the February 13, 2007, Agenda Conference, the parties agreed to a resolution on the provision of service to the three properties that are the subject of the complaint. In addition, BellSouth withdrew the letter that was the subject of staff's recommendation and agreed not to send out any letter to developers in the next 30 days.

On February 22, 2007, the parties submitted proposed letters for review and also position papers on the policies at issue in this docket. The Commission has authority over this matter pursuant to section 364.025, Florida Statutes.

Discussion of Issues

Issue 1: Is BellSouth's COLR letter of engagement in compliance with section 364.025, Florida Statutes?

Recommendation: Yes, staff recommends that the Commission find that BellSouth's COLR letter of engagement is in compliance with section 364.025, Florida Statutes. **(FUDGE, KENNEDY, D. BUYS)**

Staff Analysis: At the February 13, 2007, Agenda Conference, BellSouth agreed to cease sending the letter complained of in this docket for 30 days. On February 22, 2007, BellSouth submitted its revised letter (Attachment A) and a network planning letter. (Attachment B). Also on February 22, 2007, Lennar filed similar letters.² Lennar is concerned that BellSouth is seeking information on video or data services or marketing arrangements that are not an appropriate basis for seeking a waiver. To address this issue, BellSouth has proposed sending two separate letters. The first is a purely COLR letter. BellSouth has framed the second letter as a Network Planning Letter.

BellSouth's proposed COLR letter reflects the conditions for automatic waiver contained in section 364.025(6)(b)1-4, Florida Statutes. The letter does not seek any information on video or data services, or marketing agreements of which Lennar has complained. Therefore, staff believes the COLR letter is in compliance with section 364.025(6)(b), Florida Statutes.

The network planning letter proposed by BellSouth seeks information to "(1) assist AT&T Florida (AT&T) in network planning for the Development and (2) allow AT&T Florida to determine if circumstances exist that allow AT&T Florida to petition the Florida Public Service Commission to be relieved of its [COLR] obligation to provide basic local telecommunications service, under section 364.025(6)(d), Florida Statutes." While Lennar did not directly address AT&T's letter, Lennar is concerned about AT&T's ability to solicit information about cable, video, and data services relating to COLR relief and the extent to which BellSouth will use the information.

The Network Planning Letter seeks the information through Yes/No answers and to the extent and explanation is necessary AT&T seeks only generalities. Moreover, to the extent that the Developer contends that the requested information is confidential, AT&T maintains that it will not share such designated information with any third parties.

Staff believes that the Network Planning Letter clearly sets forth the reasons for the information and the extent to which AT&T will use the information. More importantly, the letter does not condition AT&T's COLR obligation on a response to the letter, although a response, if any, may lead BellSouth to seek a waiver. Further, staff is reluctant to recommend that the

² Lennar filed letters similar to those proposed by BellSouth. (Attachments C and D) However, this recommendation concerns the propriety of BellSouth's letter and its compliance with section 364.025, Florida Statutes. Consequently, staff has confined its review to those letters submitted by BellSouth and whether those letters are in compliance with the statute.

Docket No. 060732-TL

Date: March 1, 2007

Commission set limits on AT&T's Network Planning Letter except for statements that may constitute a violation of Section 364.025, Florida Statutes.

Staff believes that because the Network Planning Letter does not condition compliance with the COLR obligation on a response to the letter and does not violate section 364.025, Florida Statutes, the Commission should find that BellSouth's COLR letter of engagement is in compliance with section 364.025, Florida Statutes.

Docket No. 060732-TL

Date: March 1, 2007

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. **(FUDGE)**

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.

DRAFT 2/20/2007

Sender's Name
Sender's Address
Sender's Phone
Sender's email
Sender's Fax

(Enter Today's Date)

(Enter Recipient's Name) (Must be Legal Entity Name of Property Owner/Developer)
Attn: (Enter Name of Authorized Rep of Recipient)
(Enter Recipient's Address)

RE: (Enter Project Name/Phase of Project/Location)

Dear (Enter Authorized Rep Name):

It is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T Florida") understanding that (Company Name) is developing the above development (the "Development") located in AT&T Florida's franchised service area. AT&T Florida looks forward to building a successful relationship that will enable you and the occupants at the Development to enjoy AT&T Florida's full panoply of services, which may include voice, data and video. If at any time I can answer questions about AT&T Florida and the services that may be available to the Development, please feel free to contact me.

As with any successful relationship, however, AT&T Florida needs to understand the facts and circumstances of providing services at the Development. Thus, before we can proceed with plans to serve the Development, we are requesting information to enable AT&T Florida to decide whether circumstances exist that impact AT&T Florida's "carrier of last resort" (or "COLR") obligation to provide basic local exchange telecommunications service under Section 364.025, Florida Statutes, attached as Attachment A. You may also receive a second letter asking a few additional questions about the circumstances of providing other services at the Development.

1. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership of control over the Development has entered into any exclusive service arrangements with a communications service provider other than AT&T Florida, such that AT&T Florida will not be permitted to install its facilities at the Development to provide voice service.

Yes _____ No _____

If no, are such arrangements planned? Yes _____ No _____

2. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership of control over the Development has entered into arrangements with a communications service provider other than AT&T Florida, where charges

for voice service provided by the other provider will be collected by any of those parties from occupants or residents at the Development in any manner, for example, via rent, fees, or dues.

Yes ___ No ___

If no, are such arrangements planned? Yes ___ No ___

3. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership of control over the Development has entered into arrangements with a communications service provider other than AT&T Florida that grant incentives or rewards to any of those parties contingent upon provision of voice service at the Development by the other provider or upon restriction of AT&T Florida's access to the Development.

Yes ___ No ___

If no, are such arrangements planned? Yes ___ No ___

4. Will AT&T Florida be restricted in any way from providing voice service at the Development?

Yes ___ No ___

If the answer above is "yes," please explain, in general terms, how AT&T Florida will be restricted: _____

Please provide responses, signed by an authorized representative of (Company Name), to the address indicated above by (Date). If AT&T Florida believes that your responses indicate that conditions exist at the Development that would provide the basis for relief of AT&T Florida's COLR obligation under Section 364.025(6), Florida Statutes, which would then impact AT&T Florida's plans to serve the Development, you will be notified. If you have any questions, please call (###-###-####).

Sincerely,

AT&T Florida

(Owner/Developer Company)

Signed by: _____

(Authorized Representative)

Printed Name: _____

Title: _____

Date: _____

364.025, Florida Statutes - Universal service.--

(1) For the purposes of this section, the term "universal service" means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas. It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local exchange telecommunications companies be used to satisfy these objectives. Until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory.

(2) The Legislature finds that each telecommunications company should contribute its fair share to the support of the universal service objectives and carrier-of-last-resort obligations. For a transitional period not to exceed January 1, 2009, the interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall be established by the commission, pending the implementation of a permanent mechanism. The interim mechanism shall be applied in a manner that ensures that each competitive local exchange telecommunications company contributes its fair share to the support of universal service and carrier-of-last-resort obligations. The interim mechanism applied to each competitive local exchange telecommunications company shall reflect a fair share of the local exchange telecommunications company's recovery of investments made in fulfilling its carrier-of-last-resort obligations, and the maintenance of universal service objectives. The commission shall ensure that the interim mechanism does not impede the development of residential consumer choice or create an unreasonable barrier to competition. In reaching its determination, the commission shall not inquire into or consider any factor that is inconsistent with s. 364.051(1)(c). The costs and expenses of any government program or project required in part II of this chapter shall not be recovered under this section.

(3) If any party, prior to January 1, 2009, believes that circumstances have changed substantially to warrant a change in the interim mechanism, that party may petition the commission for a change, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances, including that the provider's customer population includes as many residential as business customers. The commission shall act on any such petition within 120 days.

(4)(a) Prior to January 1, 2009, the Legislature shall establish a permanent universal service mechanism upon the effective date of which any interim recovery mechanism for universal service objectives or carrier-of-last-resort obligations imposed on competitive local exchange telecommunications companies shall terminate.

(b) To assist the Legislature in establishing a permanent universal service mechanism, the commission, by February 15, 1999, shall determine and report to the President of the Senate and the Speaker of the House of Representatives the total forward-looking cost, based upon the most recent commercially available technology and equipment and generally accepted design and placement principles, of providing basic local telecommunications service on a basis no greater than a wire center basis using a cost proxy model to be selected by the commission after notice and opportunity for hearing.

(c) In determining the cost of providing basic local telecommunications service for small local exchange telecommunications companies, which serve less than 100,000 access lines, the commission

shall not be required to use the cost proxy model selected pursuant to paragraph (b) until a mechanism is implemented by the Federal Government for small companies, but no sooner than January 1, 2001. The commission shall calculate a small local exchange telecommunications company's cost of providing basic local telecommunications services based on one of the following options:

1. A different proxy model; or
2. A fully distributed allocation of embedded costs, identifying high-cost areas within the local exchange area the company serves and including all embedded investments and expenses incurred by the company in the provision of universal service. Such calculations may be made using fully distributed costs consistent with 47 C.F.R. parts 32, 36, and 64. The geographic basis for the calculations shall be no smaller than a census block group.

(5) After January 1, 2001, a competitive local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that competitive local exchange telecommunications company. Upon petition of a competitive local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the competitive local exchange company. The commission may establish the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the competitive local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations.

(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.

(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 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.

History.--s. 7, ch. 95-403; s. 18, ch. 97-100; s. 1, ch. 98-277; s. 1, ch. 99-354; s. 1, ch. 2000-289; s. 2, ch. 2000-334; s. 4, ch. 2003-32; s. 2, ch. 2006-80.

DRAFT 2/20/2007

Sender's Name

Sender's Address
Sender's Phone
Sender's email
Sender's Fax

(Enter Today's Date)

(Enter Recipient's Name) (Must be Legal Entity Name of Property Owner/Developer)
Attn: (Enter Name of Authorized Rep of Recipient)
(Enter Recipient's Address)

RE: (Enter Project Name/Phase of Project/Location)

Dear (Enter Authorized Rep Name):

It is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T Florida") understanding that (Company Name) is developing the above development (the "Development") located in AT&T Florida's franchised service area. AT&T Florida looks forward to building a successful relationship that will enable you and the occupants at the Development to enjoy AT&T Florida's full panoply of services, which may include voice, data and video. If at any time I can answer questions about AT&T Florida and the services that may be available to the Development, please feel free to contact me.

As with any successful relationship, however, AT&T Florida needs to understand the facts and circumstances of providing services at the Development. Thus, before we can proceed with plans to serve the Development, we are requesting information to (1) assist AT&T Florida in network planning for the Development and (2) allow AT&T Florida to determine if circumstances exist that allow AT&T Florida to petition the Florida Public Service Commission ("Florida PSC") to be relieved of its carrier of last resort ("COLR") obligation to provide basic local exchange telecommunications service, under Section 364.025(6)(d), Florida Statutes. In a separate letter, AT&T Florida requested information about other facts and circumstances that might impact AT&T Florida's COLR obligation, and attached a copy of the statute to that letter.

Please respond to the following questions.

1. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership or control over the Development has entered into any exclusive service arrangements with a communications service provider other than AT&T Florida, such that AT&T Florida will not be permitted to install its facilities at the Development to provide any of the following services.

Data: Yes _____ No _____

If no, are such arrangements planned? Yes _____ No _____

Video: Yes _____ No _____

If no, are such arrangements planned? Yes _____ No _____

2. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership or control over the Development has entered into any arrangements with a communications service provider other than AT&T Florida, where charges for any of the following services provided by the other provider will be collected by any of those parties from occupants or residents at the Development in any manner, for example, via rent, fees, or dues.

Data: Yes _____ No _____

If no, are such arrangements planned? Yes _____ No _____

Video: Yes _____ No _____

If no, are such arrangements planned? Yes _____ No _____

4. Will AT&T Florida be restricted in any way from providing data or video service at the Development?

Yes _____ No _____

If the answer above is "yes," please explain, in general terms, how AT&T Florida will be restricted: _____

Please provide responses, signed by an authorized representative of (Company Name), to the address indicated above by (Date). If you do not provide the requested information, AT&T Florida will make network planning decisions based on information otherwise available and may use the lack of information as a basis to seek COLR relief from the Florida PSC. If you consider the information requested to be confidential, please indicate in your response the information you consider to be confidential, and AT&T Florida will not share that information with any third parties. If you have any questions, please call (###-###-####).

Sincerely,

AT&T Florida

(Owner/Developer Company)

Signed by: _____

(Authorized Representative)

Printed Name: _____

Title: _____

Date: _____

Sender's Name
Sender's Address
Sender's Phone
Sender's email
Sender's Fax

(Enter Today's Date)

(Enter Recipient's Name) (Must be Legal Entity Name of Property Owner/Developer)

Attn: (Enter Name of Authorized Rep of Recipient)

(Enter Recipient's Address)

RE: (Enter Project Name/Phase of Project/Location) – Carrier of Last Resort Obligation (COLR)

Dear (Enter Authorized Rep Name):

It is our understanding that (Company Name) is developing and/or constructing residential homes in the (Development Name and Phase Where Applicable) (the "Development") located in BellSouth's franchised service area. As part of its planning process, BellSouth needs certain information to assist us in determining if Bell South's "carrier of last resort" obligations under Florida law apply to the Development.

By way of explanation, pursuant to Section 364.025(1), Florida Statutes, BellSouth is generally categorized as the carrier of last resort ("COLR") in its franchised service territory, which means that BellSouth will furnish basic local exchange voice telecommunications service within a reasonable period of time to any person requesting such service within the company's territory. However, under certain circumstances set forth in Section 364.025(6)(b), Florida Statutes, (a copy of which is attached) BellSouth is automatically relieved of its obligation to serve multi-tenant properties. Additionally, if the specified circumstances do not exist, Section 364.025(6)(d), Florida Statutes, (attached), provides that BellSouth may seek a waiver of its COLR obligation from the Florida Public Service Commission (FPSC). The FPSC will only grant such waiver if it finds that good cause exists for the granting of such waiver.

Please respond to the following questions by (Date):

1. Please indicate if any exclusive service arrangements have been agreed to with a provider other than BellSouth for the provision of basic local exchange voice telecommunications service to the Development:

Yes _____ No _____

If no, are such arrangements planned? Yes _____ No _____

2. Are any agreements in existence or planned under which basic local exchange voice telecommunications service will be exclusively provided and billed to the Home Owners Association?

Yes____ No_____

3. Will BellSouth be restricted in any way from providing basic local exchange voice telecommunications service service?

Yes____ No_____

If the answer above is "yes," please explain, in general terms, how BellSouth will be restricted.

Responses should be provided to the address indicated above and signed below by an authorized representative of (Company Name) by (Date). If BellSouth believes that your responses indicate that conditions exist at the subject property that would provide the basis for automatic relief of BellSouth's obligation to serve, you will be promptly notified. If you have any questions, please call (###-###-####).

Sincerely,

BellSouth Telecommunications, Inc.

(Enter Sender's Name to Print Under Signature)
(Must be Director Level or Above)

(Owner/Developer Company)

Signed by: _____
(Authorized Representative)

Printed Name: _____

Title: _____

Date: _____

Attachment A

364.025, Florida Statutes - Universal service.--

(1) For the purposes of this section, the term "universal service" means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas. It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local exchange telecommunications companies be used to satisfy these objectives. Until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory.

(2) The Legislature finds that each telecommunications company should contribute its fair share to the support of the universal service objectives and carrier-of-last-resort obligations. For a transitional period not to exceed January 1, 2009, the interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall be established by the commission, pending the implementation of a permanent mechanism. The interim mechanism shall be applied in a manner that ensures that each competitive local exchange telecommunications company contributes its fair share to the support of universal service and carrier-of-last-resort obligations. The interim mechanism applied to each competitive local exchange telecommunications company shall reflect a fair share of the local exchange telecommunications company's recovery of investments made in fulfilling its carrier-of-last-resort obligations, and the maintenance of universal service objectives. The commission shall ensure that the interim mechanism does not impede the development of residential consumer choice or create an unreasonable barrier to competition. In reaching its determination, the commission shall not inquire into or consider any factor that is inconsistent with s. 364.051(1)(c). The costs and expenses of any government program or project required in part II of this chapter shall not be recovered under this section.

(3) If any party, prior to January 1, 2009, believes that circumstances have changed substantially to warrant a change in the interim mechanism, that party may petition the commission for a change, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances, including that the provider's customer population includes as many residential as business customers. The commission shall act on any such petition within 120 days.

(4)(a) Prior to January 1, 2009, the Legislature shall establish a permanent universal service mechanism upon the effective date of which any interim recovery mechanism for universal service objectives or carrier-of-last-resort obligations imposed on competitive local exchange telecommunications companies shall terminate.

(b) To assist the Legislature in establishing a permanent universal service mechanism, the commission, by February 15, 1999, shall determine and report to the President of the Senate and the Speaker of the House of Representatives the total forward-looking cost, based upon the most recent commercially available technology and equipment and generally accepted design and placement principles, of providing basic local telecommunications service on a basis no greater than a wire center basis using a cost proxy model to be selected by the commission after notice and opportunity for hearing.

(c) In determining the cost of providing basic local telecommunications service for small local exchange telecommunications companies, which serve less than 100,000 access lines, the commission

shall not be required to use the cost proxy model selected pursuant to paragraph (b) until a mechanism is implemented by the Federal Government for small companies, but no sooner than January 1, 2001. The commission shall calculate a small local exchange telecommunications company's cost of providing basic local telecommunications services based on one of the following options:

1. A different proxy model; or
2. A fully distributed allocation of embedded costs, identifying high-cost areas within the local exchange area the company serves and including all embedded investments and expenses incurred by the company in the provision of universal service. Such calculations may be made using fully distributed costs consistent with 47 C.F.R. parts 32, 36, and 64. The geographic basis for the calculations shall be no smaller than a census block group.

(5) After January 1, 2001, a competitive local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that competitive local exchange telecommunications company. Upon petition of a competitive local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the competitive local exchange company. The commission may establish the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the competitive local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations.

(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.

(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 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.

History.--s. 7, ch. 95-403; s. 18, ch. 97-100; s. 1, ch. 98-277; s. 1, ch. 99-354; s. 1, ch. 2000-289; s. 2, ch. 2000-334; s. 4, ch. 2003-32; s. 2, ch. 2006-80.

Docket No. 060732-TL
Date: March 1, 2007

ATTACHMENT D

Sender's Name

Sender's Address
Sender's Phone
Sender's email
Sender's Fax

(Enter Today's Date)

(Enter Recipient's Name) (Must be Legal Entity Name of Property Owner/Developer)
Attn: (Enter Name of Authorized Rep of Recipient)
(Enter Recipient's Address)

RE: (Enter Project Name/Phase of Project/Location) – Network Planning

Dear (Enter Authorized Rep Name):

It is our understanding that (Company Name) is developing and/or constructing residential homes in the (Development Name and Phase Where Applicable) (the "Development") located in BellSouth's franchised service area. In addition to its planning associated with the offering of basic local exchange voice telecommunications service to the Development, BellSouth is evaluating the feasibility of offering data, video or video transport and other advanced services within the Development. However, before BellSouth can commit to providing these additional services to the Development, we are requesting certain information to assist us in our network planning process. This information will assist us in determining what types of facilities should be installed in addition to those required to provide basic local exchange voice telephone service. We are requesting network planning information concerning the provision of basic local exchange voice telephone service in a separate letter to you.

You should be aware that you are not required to respond to this letter. However, BellSouth will not necessarily provide the advanced services described above if it is not able to make a determination, based on available information, that its investment in the advanced network facilities required to do so is economically justified.

The information requested below will be used by BellSouth solely for network planning purposes related to the portion of the BellSouth network that will potentially serve the Development. BellSouth commits to use any information we receive from you solely for this stated purpose, and the information you provide will be made available within BellSouth only to its employees engaged in this aspect of network planning. Under no circumstances will any of the information you provide be made available without your prior written consent to BellSouth employees or any other third party engaged in any manner in the design, pricing, marketing, or sales of BellSouth services or the competitive analysis or monitoring of other service providers.

Moreover, BellSouth may only decline to provide voice service if the specific conditions set forth in Section 364.025(6)(b and d), Florida Statutes, exist at the referenced location.

Please respond to the following questions by (Date):

1. Please indicate if any exclusive service arrangements have been agreed to with a provider other than BellSouth for any of the following services:

Data: Yes _____ No _____
If no, are such arrangements planned? Yes _____ No _____

Video: Yes _____ No _____
If no, are such arrangements planned? Yes _____ No _____

2. Are any of the following arrangements agreed to or planned?

Data will be exclusively provided and billed to the Home Owners Association:
Yes _____ No _____

Video will be exclusively provided and billed to the Home Owners Association:
Yes _____ No _____

3. Will BellSouth be restricted in any way from providing data, video or video transport services?
Yes _____ No _____

If the answer above is "yes," please explain, in general terms, how BellSouth will be restricted.

Responses should be provided to the address indicated above and signed below by an authorized representative of (Company Name) by (Date).

Sincerely,

BellSouth Telecommunications, Inc.

(Enter Sender's Name to Print Under Signature)
(Must be Director Level or Above)(Network Planning

(Owner/Developer Company)

Signed by: _____
(Authorized Representative)

Printed Name: _____

Title: _____

Date: _____