

Matilda Sanders

From: Woods, Vickie [vf1979@att.com]
Sent: Tuesday, July 03, 2007 2:24 PM
To: Filings@psc.state.fl.us
Subject: 060822-TL AT&T's Prehearing Statement
Importance: High
Attachments: Preheari.pdf; LEGAL-#683154-v1-060822-TL_Prehearing_Statement.DOC

ORIGINAL

A. Vickie Woods
 Legal Secretary to James Meza III and Manuel A. Gurdian
 AT&T Florida
 150 South Monroe Street
 Suite 400
 Tallahassee, Florida 32301
 (305) 347-5560
vickie.woods2@bellsouth.com

B. Docket No.: 060822-TL

Petition of BellSouth Telecommunications, Inc. for Relief from Carrier-of-Last Resort Obligations Pursuant to Florida Statutes §364.025(6)(d)

C. AT&T Florida
 on behalf of Manuel A. Gurdian

D. 13 pages total (.pdf) (includes letter, pleading and Certificate of Service)
 11 pages total (word doc.)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Prehearing Statement

.pdf .word doc.

<<Preheari.pdf>> <<LEGAL-#683154-v1-060822-TL_Prehearing_Statement.DOC>>

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. GA623

DOCUMENT NUMBER-DATE

05577 JUL-3 5

7/3/2007

FPSC-COMMISSION CLERK

Manuel A. Gurdian
Attorney

AT&T Florida
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

ORIGINAL

July 3, 2007

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

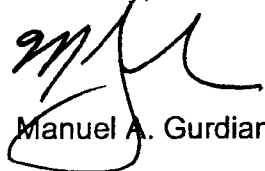
**Re: Docket No.: 060822-TL
Petition of BellSouth Telecommunications, Inc. for Relief from
Carrier-of-Last-Resort Obligations (COLR) Pursuant to Florida
Statutes §364.025(6)(d) for two private subdivisions in Nocatee
development**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's
Prehearing Statement, which we ask that you file in the captioned docket.

Copies were served to the parties shown on the attached Certificate of Service.

Sincerely,



Manuel A. Gurdian

Enclosures

cc: All Parties of Record
Jerry D. Hendrix
E. Earl Edenfield, Jr.
James Meza III

DOCUMENT NUMBER-DATE

05577 JUL-3 07

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 060822-TL

I HEREBY CERTIFY that a true and correct copy was served via (*) Electronic Mail, (**) Federal Express and First Class U. S. Mail this 3rd day of July, 2007 to the following:

Florida Public Service Commission

Patrick Wiggins, Staff Counsel (*)
Rick Mann, Staff Counsel (*)
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
pwiggins@psc.state.fl.us
rmann@psc.state.fl.us

Nocatee Development Company

Attention: Richard T. Ray
4314 Pablo Oaks Court
Jacksonville, Florida 32224

Anne T. Klinepeter, Registered Agent
4314 Pablo Oaks Court
Jacksonville, FL 32224

The Parc Group, Inc.

Attention: Richard T. Ray
4314 Pablo Oaks Court
Jacksonville, Florida 32224

Anne T. Klinepeter, Registered Agent
4314 Pablo Oaks Court
Jacksonville, FL 32224

SONOC Company, LLC

Attention: Richard T. Ray
4310 Pablo Oaks Court
Jacksonville, Florida 32224

DDI, Inc., Registered Agent
4310 Pablo Oaks Court
Jacksonville, FL 32224

Toll Jacksonville Limited Partnership

250 Gibraltar Road
Horsham, PA 19044

CT Corporation System, Registered Agent
1200 South Pine Island Road
Plantation, FL 33324

Pulte Home Corporation

100 Bloomfield Hills Parkway
Suite 300
Bloomfield Hills, MI 48304

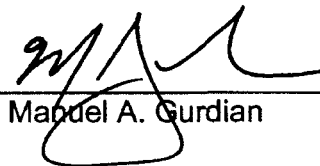
CT Corporation System, Registered Agent
1200 South Pine Island Road
Plantation, FL 33324

Nocatee Development

Company/SONOC Company LLC

M. Lynn Pappas (*)
c/o Pappas Law Firm
245 Riverside Avenue, Suite 400
Jacksonville, FL 32202
Tel. No. (904) 353-1980
Fax No. (904) 353-5217
lpapas@papnet.com

Floyd R. Self (+) (*) (**)
Messer Caparello & Self, P.A.
Regional Center Office Park
2618 Centennial Place
P.O. Box 15579 (32317)
Tallahassee, FL 32308
Tel. No. (850) 222-0720
Fax. No. (850) 224-4359
fself@lawfla.com
Represents Nocatee



Mandel A. Gurdian

(+) Signed Protective Agreement

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:)
) Docket No. 060822-TL
 Petition of BellSouth Telecommunications,)
 Inc. for Relief from Carrier-of-Last-Resort)
 Obligations Pursuant to Florida Statutes)
 §364.025(6)(d).)
 _____) Filed: July 3, 2007

AT&T FLORIDA'S PREHEARING STATEMENT

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), in compliance with the Order Establishing Procedure (Order No. PSC-07-0473-PCO-TL) issued on June 1, 2007, Order Modifying Procedure (Order No. PSC-07-0518-PCO-TL) issued on June 18, 2007 and Second Order Modifying Procedure (Order No. PSC-07-0523-PCO-TL) issued on June 21, 2007, hereby submits its Prehearing Statement for Docket No. 060822-TL.

A. Witnesses

AT&T Florida proposes to call the following witnesses to offer testimony on the issues in this docket:

<u>Witness</u>	<u>Issue</u>
Larry Bishop	1
Elizabeth R.A. Shiroishi	1

AT&T Florida reserves the right to file rebuttal testimony, to call additional witnesses to respond to and address Florida Public Service Commission ("Commission") inquiries, to issues raised by Nocatee Development Company, SONOC Company, LLC, Toll Jacksonville Limited Partnership, Pulte Home Corporation and Parc Group, Inc. (hereinafter collectively referred to as "Nocatee" or "Developer") in any potential

DOCUMENT NUMBER-DATE
 05577 JUL-3 07
 FPSC-COMMISSION CLERK

rebuttal testimony (which has not been filed), and to issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on July 9, 2007. Further, because the deadline for AT&T Florida to file rebuttal testimony is July 6, 2007, AT&T Florida reserves the right to supplement and revise this list as appropriate.

B. Exhibits

- * LB- 1 attached to the Direct Testimony of Larry Bishop
Drawing of Nocatee Development
- * LB- 2 attached to the Direct Testimony of Larry Bishop
September 25, 2006 correspondence from Developer to AT&T Florida
- * LB- 3 attached to the Direct Testimony of Larry Bishop
September 25, 2006 correspondence from Developer's counsel to AT&T Florida
- * LB- 4 attached to the Direct Testimony of Larry Bishop
September 26, 2006 correspondence from Developer's counsel to AT&T Florida
- * LB- 5 attached to the Direct Testimony of Larry Bishop
September 28, 2006 correspondence from Developer's counsel to AT&T Florida
- * LB- 6 attached to the Direct Testimony of Larry Bishop
December 13, 2006 correspondence and proposed easement from Developer to AT&T Florida
- * LB- 7 attached to the Direct Testimony of Larry Bishop
January 3, 2007 correspondence from AT&T Florida to Developer
- * LB- 8 attached to the Direct Testimony of Larry Bishop
January 23, 2007 correspondence from Developer's counsel to AT&T Florida
- * LB- 9 attached to the Direct Testimony of Larry Bishop
Diagram of fiber-to-the-curb architecture
- * LB- 10 attached to the Direct Testimony of Larry Bishop
Projected costs for each phase of Riverwood and Coastal Oaks
- * LB- 11 attached to the Direct Testimony of Larry Bishop
Diagrams of planned build-out of Riverwood and Coastal Oaks

- * LB- 12 attached to the Direct Testimony of Larry Bishop
Estimated build-out costs for Riverwood (Areas 1-4) and Coastal Oaks (1 & 2a)
- * LB- 13 attached to the Direct Testimony of Larry Bishop
May 8, 2007 correspondence from AT&T Florida to Developer
- * LB- 14 attached to the Direct Testimony of Larry Bishop
AT&T Florida's five year annual exchange revenue calculations
- * ERAS- 1 attached to the Direct Testimony of Elizabeth R.A. Shiroishi
Comcast Website Page
- * ERAS- 2 attached to the Direct Testimony of Elizabeth R.A. Shiroishi
AT&T Florida's A5 Tariff – Charges Applicable Under Special Conditions
- * Any exhibits attached to AT&T Florida's rebuttal testimony to be filed on July 6, 2007.
- * AT&T Florida's Responses to all Data Requests issued by Staff, including but not limited to AT&T Florida's Responses to Data Requests Nos. 1 to 10.
- * AT&T Florida's Responses to all Interrogatories and Requests for Production issued by Staff and Nocatee, including but not limited to Nocatee's First Request for Production of Documents, Staff's First Set of Interrogatories and First Request for Production of Documents and Staff's Second Set of Interrogatories and Second Request for Production of Documents.
- * Nocatee's Responses to any discovery issued by Staff or AT&T Florida.
- * Staff's Responses to any discovery issued by AT&T Florida or Nocatee.
- * All transcripts of any depositions that may take place prior to the discovery cut-off date.

AT&T Florida expressly reserves the right to file exhibits to its rebuttal testimony to be filed on July 6, 2007. Moreover, AT&T Florida reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. AT&T Florida also reserves the right to utilize any exhibit introduced by any party or Staff and the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

C. Statement of Basic Position

During the 2006 legislative session, the Florida Legislature enacted legislation that, in certain instances, provides relief for a local exchange carrier (“LEC”) from Carrier-of-Last-Resort (“COLR”) obligations. The COLR statute provides two avenues for a LEC to obtain COLR relief. *See Florida Statutes § 364.025(6).*

The first avenue provides for automatic relief in four specific scenarios generally applicable when property owners or developers have entered into some type of arrangement with a communications services provider, as defined in § 364.025(6)(a)(3), Florida Statutes, other than the LEC. *See Florida Statutes § 364.025(6)(b)(1)-(4).* The second avenue applies when none of those four specific automatic relief scenarios are present. *See Florida Statutes § 364.025(6)(d).* In that situation, the LEC may petition the Commission for COLR relief, which shall be granted upon good cause shown:

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.

Florida Statutes § 364.025(6)(d). It is this second avenue that serves as the basis for AT&T Florida’s Petition and Protest for relief of its carrier-of-last-resort obligations.

The overriding policy question that the Commission must determine in this case is whether developers can manipulate Florida’s COLR statute to force traditional phone companies to make uneconomic investment where consumers have access to voice services from other providers while also stifling consumer choice for the suite of

communications and entertainment services that residents expect. AT&T Florida supports the idea that consumers should be free to choose any company they want for video, data, and voice service. To this end, AT&T Florida wants to serve all customers in its service territory by offering the broadest, most comprehensive and value-added set of products and services. In fact, AT&T Florida has invested, and will continue to invest, hundreds of millions of dollars in Florida to be able to offer consumers meaningful video, data, and voice competition. And that is exactly why AT&T Florida takes issue with the current situation at Nocatee. AT&T Florida wants to use its investment dollars wisely to bring Florida residents all of our advanced services instead of using those dollars to bring a single, unnecessarily duplicative service.

AT&T Florida submits that this is a case of first impression for AT&T Florida's service territory and that the Commission should take whatever action is within its power to discourage this type of developer conduct. Although the Commission does not have regulatory authority over developers, or over broadband data and video services, the Commission is in a position to influence the outcome of this situation. By granting COLR relief under this particular set of facts and circumstances, the Commission sends a message to developers that using the COLR obligation to force redundant, uneconomic decisions is not in the best interest of the public. Further, by requiring AT&T Florida to invest substantial amounts of money in a duplicative network limited to providing voice service, the Commission will effectively shift those investment dollars away from other consumers in the state who would stand to receive the full suite of advanced services from AT&T Florida.

AT&T Florida believes that it should be relieved of its COLR obligation for the provision of basic local telecommunications service to the Riverwood and Coastal Oaks subdivisions for two primary reasons: (1) the residents of Nocatee can obtain voice service from other alternative providers, including but not limited to Comcast; and (2) because the developer has restricted residents' choice by granting Comcast the exclusive right to provide service or market its services in the development, serving Nocatee with voice service only results in an uneconomic investment for AT&T Florida and effectively denies advanced services to even more Florida consumers.

D. AT&T Florida's Position on the Issues

Issue 1: Under Section 364.025(6)(d), Florida Statutes, has AT&T Florida shown good cause to be relieved of its Carrier-of-Last-Resort obligation to provide service at the Coastal Oaks and Riverwood subdivisions in the Nocatee development located in Duval and St. Johns Counties?

Position: Yes.

A. **Good Cause Analysis**

AT&T Florida has shown "good cause" under Section 364.025(6)(d), Florida Statutes, for the Commission to relieve AT&T Florida of its COLR obligations for the provision of basic local telecommunications service to the Riverwood and Coastal Oaks subdivisions based upon the following facts and circumstances:

- The two private subdivisions in Nocatee that are the subject of AT&T Florida's Petition consist of 1,919 single family homes (891 at Coastal Oaks and 1,028 at Riverwood).
- The developer of Nocatee has entered into an exclusive service arrangement with Comcast – a non-Commission regulated competitor of

AT&T Florida – for data and video service. This arrangement permits Comcast to be the only provider of landline data or video service in these private subdivisions. In return for this exclusive right, Comcast has likely provided the developer with economic consideration.

- The developer has also entered into an exclusive marketing agreement with Comcast for its voice services in Riverwood and Coastal Oaks. Again, in return for this exclusive marketing right, Comcast has likely provided the developer with economic consideration.
- Through a proposed voice-only easement, the developer is contractually prohibiting AT&T Florida from providing anything other than voice services to the residents of Riverwood and Coastal Oaks in perpetuity.
- As a result of this voice-only easement, AT&T Florida will not be able to offer the residents of Riverwood and Coastal Oaks AT&T Florida's full panoply of services that exist today and that will exist in the future, including data and video services. Conversely, Comcast will be able to offer its "triple-play" of voice, data, and video to every-single resident of Nocatee.
- AT&T Florida estimates that it will cost at least \$1.8 million to deploy facilities to provide voice service to the residents of all of the phases of Riverwood and Coastal Oaks.
- Based on AT&T Florida's recent experience in another single-family development where AT&T Florida can only provide voice service, AT&T

Florida believes that its “take rate” for its voice only services in Riverwood and Coastal Oaks will be 20% or less.

- AT&T Florida has requested that Nocatee pay construction charges less AT&T Florida’s five times annual anticipated revenue pursuant to Rule 25-4.067, F.A.C. and AT&T Florida’s Tariff, § A5, for the first phases of Riverwood and Coastal Oaks. The estimated build-out costs for the first phase of both subdivisions totals \$611,601. Five times annual anticipated revenue for both subdivisions amounts to \$167,666. The remaining \$443,935 is the responsibility of the customer, which in this case is the developer.
- Every resident of the Riverwood and Coastal Oaks subdivisions will have the option of voice service even if AT&T Florida is relieved of its COLR obligation.
- To date, the developer has refused to pay any amounts to offset AT&T Florida’s costs to deploy unnecessary and duplicative facilities.

Accordingly, based upon the foregoing facts and circumstances, AT&T Florida has shown “good cause” under Section 364.025(6)(d), Florida Statutes, and AT&T Florida should be relieved of its COLR obligation to provide basic local telecommunications service to the Riverwood and Coastal Oaks subdivisions.

B. Special Construction Analysis

In the event that the Commission determines that AT&T Florida is not relieved of its COLR obligation, the Commission must then determine whether AT&T Florida is not required to install facilities until the developer pays AT&T Florida charges pursuant to

AT&T Florida's Tariff, § A5. This analysis and decision is entirely independent of the good cause analysis under Section 364.025, Florida Statutes, but equally important because it has wide-ranging ramifications on the historical and ongoing business operations of the industry.

AT&T Florida is entitled to charge the developer per Rule 25-4.067(1), F.A.C. and AT&T Florida's § A5 for the cost to construct line extension facilities to the extent the cost exceeds the estimated five year exchange revenue. Per AT&T Florida's Tariff, payment of special construction "is due upon presentation of a bill for the specially constructed facilities." §A5.2.2.2(B). Should the requesting party fail to pay in advance, then AT&T Florida has no obligation to deploy facilities. The Commission should find that, in this situation, AT&T Florida's Tariff governs and that AT&T Florida has no obligation to proceed with installing facilities irrespective of any COLR obligation, should the developer refuse to pay the requested construction charges. There is no justification for treating developers any differently than every other customer that is required to pay special construction for facilities. Such customers should all be treated in a non-discriminatory manner pursuant to AT&T Florida's Tariff.

Accordingly, based upon the language of Rule 25-4.067(1), F.A.C. and AT&T Florida's Tariff § A5, the Commission should find that AT&T Florida is not required to install facilities to the Riverwood and Coastal Oaks subdivisions until the developer pays AT&T Florida's charges pursuant to AT&T Florida's Tariff.

E. AT&T Florida's Notice of Intent to Use Confidential Information at Hearing

AT&T Florida was requested to provide and has provided confidential information to Commission Staff and to the Parties in response to data requests and

discovery requests by Staff and the Parties, and may provide additional confidential information in response to future discovery or in connection with its Rebuttal Testimony.

AT&T Florida has requested or intends to request confidentiality for the following:

1. AT&T Florida's Response to Staff's Data Request, Item Nos. 1, 5 and 7;
2. Direct Testimony of Beth Shiroishi – p.13, footnote 2;
3. Direct Testimony of Larry Bishop – Exhibits LB-10, LB-12, LB-13 and LB-14;
4. AT&T Florida's Response to Staff's First Request for Production of Documents Nos. 3, 4, 5, 6, 7, 13, 14, 16, and 17 and attachment to First Set of Interrogatories No. 18;
5. AT&T Florida's Response to Nocatee's First Request for Production of Documents.

AT&T Florida reserves the right to use any such information at hearing, subject to appropriate measures to protect its confidentiality.

F. Stipulations

AT&T Florida is unaware of any stipulations at this time.

G. Pending Motions

AT&T Florida is not aware of any pending motions in this proceeding.

H. Objections to Witness Qualifications

AT&T Florida is unable to address witness qualifications at this time, since no testimony has been filed by Nocatee or Staff. AT&T Florida expressly reserves the right to object to a witness qualifications should Nocatee or Staff file testimony by the date required by the Order Establishing Procedure.

I. Other Requirements

AT&T Florida does not know of any requirement of the Order Establishing Procedure with which it cannot comply.

Respectfully submitted this 3rd day of July, 2007.

AT&T FLORIDA



James Meza III

~~AUTHORIZED HOUSE COUNSEL NO. 464260~~

Tracy W. Hatch

Manuel A. Gurdian

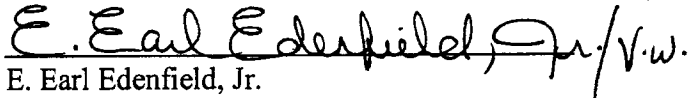
c/o Nancy H. Sims

150 South Monroe Street

Suite 400

Tallahassee, Florida 32301

(305) 347-5558



E. Earl Edenfield, Jr.

AT&T Southeast

675 West Peachtree Street, Suite 4300

Atlanta, Georgia

(404) 335-0763