Timolyn Henry ORIGINAL

From: Fatool, Vicki [Vicki.Fatool@BellSouth.COM]
Sent: Thursday, October 05, 2006 4:50 PM
To: Filings@psc.state.fl.us
Subject: 060554-TL Comments Regarding Proposed Rule 25-4.084
Attachments: Document.pdf

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

C. BellSouth Telecommunications, Inc.
on behalf of James Meza III

D. 24 pages total (includes letter, certificate of service, pleading and attachments)

E. BellSouth Telecommunications, Inc. Comments Regarding Proposed Rule 25-4.084

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Legal Department

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October 5, 2006

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
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2540 Shumard Oak Boulevard
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Re: Docket No. 060554-TL: Proposed adoption of Rule 25-4.084, F.A.C., Carrier-of-Last Resort; Multitenant Business and Residential Properties

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Comments regarding proposed Rule 25-4.084, which we ask that you file in the captioned docket.

Copies have been served to the interested parties shown on the attached Certificate of Service.

Sincerely,

James Meza III

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

CERTIFICATE OF SERVICE
DOCKET NO. 060554-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via First Class U.S. Mail and/or Electronic Mail and (*) facsimile (where applicable) this 5th day of October, 2006 to the following Interested Persons:

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James Meza III

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Carrier-of-Last Resort; Multitenant Business and Residential Property	Docket No. 060554-TL
	Filed: October 5, 2006

COMMENTS FROM BELLSOUTH TELECOMMUNICATIONS, INC. REGARDING PROPOSED RULE 25-4.084

I. Introduction; Enabling Legislation and Commission Rule

BellSouth Telecommunications, Inc. ("BellSouth") submits these comments regarding proposed Commission Rule 25-4.084, Carrier-of-Last Resort; Multitenant Business and Residential Property ("Rule"), which supplement BellSouth's comments at the September 14, 2006 Rule development workshop.

The Florida Public Service Commission ("Commission") is promulgating the Rule pursuant to legislation enacted by the Florida Legislature during its 2006 session.[1] The legislation provides for automatic relief from the carrier-of-last-resort ("COLR") obligation for a local exchange telecommunications company ("LEC") under specified circumstances where an owner or developer of a multitenant business or residential property enters into certain arrangements with a communications services provider other than the LEC related to the property. The legislation further grants the Commission the authority to grant relief from the COLR obligation in circumstances in addition to those that create automatic relief under the legislation. Section 364.025(6)(d), Florida Statutes, which grants such authority to the Commission and pursuant to which the Commission is promulgating the Rule, provides as follows:

[1] Chapter 2006-80, Laws of Florida.

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.* (emphasis added).

Thus, the Florida Legislature defined several situations where COLR relief is automatic and transferred to the Commission the authority to administer its legislative policy by granting to the Commission the authority to define additional situations where "good cause" exists for COLR relief. Accordingly, as discussed in Part V(a) of these comments, the comments from the Florida Real Access Alliance ("Alliance") filed in this Docket on September 13, 2006 ("Alliance Comments") suggesting that the circumstances in Section 365.025(6)(b) providing for automatic COLR relief are the only circumstances under the statute that may yield COLR relief are entirely inaccurate and inconsistent with the plain meaning of the statute.[2]

The legislation contemplates COLR relief where the owner or developer of a property enters into certain agreements with a company other than the LEC relative to the property. As discussed in Part II of these comments, in today's environment, owners and developers are, in return for financial or other consideration from the providers to

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[2] Alliance Comments at 3, 9, 25-26.

developers, entering into such agreements with alternate providers with increasing frequency. Accordingly, the legislation and the Rule are of significant interest and importance to BellSouth.

Since the Rule must be reasonably related to the enabling legislation, the Commission must be mindful of the enabling legislation and its legislative purpose in developing the Rule.[3] In enacting Section 364.025, Florida Statutes, the Florida Legislature recognized that COLR relief is appropriate under certain circumstances where owner or developer/alternate provider agreements exist.

II. Types of Owner and Developer Agreements With Alternate Providers and Their Increasing Frequency

As stated above, in today's environment, owners and developers are, in return for financial or other consideration from the providers to developers, entering into agreements with alternate providers with increasing frequency. There are different kinds of agreements between owners and developers and alternate providers, including those that (a) restrict the ability of the LEC to provide service to customers, due to exclusive arrangements with the alternate provider; (b) entirely eliminate requests from customers for the LEC's services, due to "bulk" arrangements with the alternate provider (wherein an association contracts for services from the provider and the customers receive the services in return for payment of their association fees); and (c) preferred arrangements, such as exclusive marketing arrangements, that create an "unlevel playing field" for securing customers and, thus, significantly reduce requests from

[3] As discussed in Part V(b), infra, many of the Alliance's suggestions for the Rule must be rejected by the Commission since they are unrelated to the enabling legislation, the paragraph of the legislation under which rules are to be promulgated, and the legislative intent.

customers for the LEC's services. The agreements also introduce another provider at the property that offers services, or access to those services, to occupants.

Section 364.025(6) neither prohibits such agreements, nor requires owners or developers to allow the LEC or any other communications providers to place facilities on their properties to provide service (ie, "ma ndatory access"). Further, such issues are not within the scope of Section 364.025(6)(d), pursuant to which the Commission is promulgating the Rule. Accordingly, as discussed in Part V(b), infra, suggestions in the Alliance Comments for changes to the Rule that indicate that the legislation does not provide for such prohibitions or for "mandatory access" requirements are thus entirely irrelevant to the instant rulemaking.

The increasing frequency of exclusive agreements in the marketplace belies statements in the Alliance comments that owners and developers are doing all they can to ensure that their tenants have access to the maximum number of providers their property can support.[4] BellSouth has, thus far, filed 43 letters with the Commission advising of such agreements at 43 different properties. The frequency of these types of agreements and the other types of agreements described above has been steadily increasing, and BellSouth expects them to continue to increase. For example, developers are entering into agreements with alternate providers that will cover all of the property owner's future developments in certain geographic areas, alternate

[4] Alliance Comments at 2.

providers are making agreements with owners and developers a part of their business plans, and consultants are promoting these agreements.[5]

III. Proposals for Modification of Proposed Rule

With the enabling legislation and legislative purpose in mind, BellSouth offers the following proposals for modification of the proposed Rule. The proposals are in three categories that are not currently addressed in the Rule but, as explained below, can and should be addressed in the Rule: (a) owner or developer provision of information, (b) expedited Commission consideration of a petition for COLR relief and (c) factors to consider in assessing "good cause" for COLR relief. The documents jointly filed by BellSouth, Verizon Florida, Inc. and Embarq Florida, Inc. in this Docket ("Joint Filing") include suggested changes to the proposed Rule, which changes are further discussed below, to address these issues.

(a) Owner or Developer Provision of Information

BellSouth has experienced significant problems securing information from owners and developers regarding the facts and circumstances of provision of service to a development, including the nature of agreements owner or developer itself (or through a condominium or homeowners' association, in its initial position as the party controlling that association) has entered into or plans to enter into with an alternate provider. This issue falls squarely within the subject matter and intent of the enabling legislation – without this information, a LEC cannot apply the legislation to a property to determine

[5] See, e.g., www.broadstar.com stating the following: " Enabled by the fact that BroadStar's services and benefits to properties, developers and subscribers, more than rival any competitors (as further discussed herein), BroadStar's business model is to secure exclusive bulk services through long term Right-Of-Entry (ROE) agreements in Multiple Dwelling Units (MDU's) inclusive of hi gh density garden style and high rise apartment complexes and condominiums."; see also www.cnxntech.com; www.csiconsulting.net; www.midtowntechnologies.com.

whether (1) any of the circumstances resulting in automatic COLR relief under the legislation exist or (2) other circumstances to support a petition to the Commission for COLR relief exist. Also, if the information does not yield automatic relief or a petition, it may provide relevant information yielding changes to the proposed size or type of facilities to be placed by, or proposed services to be offered by, the LEC at the property. So, by not providing information at all, not providing accurate information, or not providing timely information, an owner or developer can not only frustrate intent of legislation, but completely "gut" it.

If the information is not provided at all or not timely provided, the unfair result is that the LEC is forced to provision service (versus having the opportunity to consider if the statute provides for automatic COLR relief or if good cause exists for a petition), since "time is running out" before the first anticipated service date at the new development. The LEC is "stuck between" the inability to apply the legislation and its statutory COLR obligation and attendant obligations under Commission rules. For example, Commission Rule 25-4.066 provides for the general expectation of provision of service within 3 days of a request and requires design and engineering in accordance with realistic anticipated customer demand for basic local telecommunications service.

If the owner or developer does not provide accurate information in a timely manner or at all, the LEC may incur costs to serve and later learn that its expenditures were unnecessary for service (and are not easily recoverable from the owner or developer), due to automatic COLR relief under the legislation or facts that support and result in petition for relief that is granted by Commission. Thus, non-provision of information by the owner or developer may result in the LEC incurring unnecessary costs

in furtherance of its regulatory obligations to serve, where the owner or developer has entered into arrangements that, under the new legislation, may eliminate those obligations. Being forced to incur costs due to the lack of provision of information necessary to assess if those costs must be incurred is a problem of significant proportion for BellSouth, a company that must compete in an ever-evolving, extremely competitive telecommunications market.

Importantly, timing is critical. Information cannot be provided at the last minute. The LEC needs information sufficiently in advance of the time that the LEC would otherwise need to start engineering, ordering and placing facilities to meet the expected first occupancy date to allow time for a petition, if appropriate. For example, since it may take 3-4 months (or more) to order and place facilities to serve, BellSouth needs information no later than 240 days in advance of first occupancy (or prior to performing preparatory work, like conduit placement, that may be requested of the LEC in advance of this time, as exhibited in the second example in Attachment 1).

Attachment 1 offers several examples of the significant problems BellSouth has encountered securing information from owners or developers at all or in a timely manner and exhibits the ramifications, described above, of the inability to secure the information. As this issue falls squarely within the subject matter and intent of the enabling legislation, the Rule can and should address the issue. The Joint Filing includes proposed changes to the Rule to address this issue. The proposed changes generally provide that (1) a rebuttable presumption of good cause to support a LEC's petition for COLR relief exists where the owner or developer fails to provide such requested information via a notarized certification to the LEC in a timely manner and (2) the presumption can be rebut only by

facts alleged in opposing comments that contradict the petitioner's alleged facts regarding non-timely provision of information. The proposed changes make clear that the information to be provided by the owner or developer does not include confidential financial terms of the arrangements with another provider.

(b) Expedited Consideration of Petition

BellSouth proposes that the Commission modify the Rule to provide for a LEC to request expedited consideration of a petition where the petition cites to circumstances that demonstrate need for expedited consideration. An example would be the need for consideration of a petition in a short interval due to a quickly approaching date customers will require service at the property. The Joint Filing includes proposed changes to the Rule to address this issue.

(c) Good Cause for COLR Relief – Factors to Consider

Another subject the Rule does not address that BellSouth believes the Rule can and should address is factors the Commission will consider in assessing whether "good cause" to grant a petition for COLR relief exists. This will lend additional certainty to all parties regarding when COLR relief may be available and will streamline application of legislation. The Joint Filing includes proposed changes to the Rule to address this issue.

The proposed changes include factors for the Commission to consider in determining whether good cause exists to grant COLR relief, including whether the owner or developer has entered into an agreement with another communications services provider or provider of data service, voice service or other substitute or similar service, how that agreement would affect the LEC's provision of service to the property and whether the occupants have access to communications service from a source other than

the LEC. The changes also provide (1) that a rebuttable presumption of good cause to support the LEC's petition for COLR relief exists where (A) no opposing comments are filed, (B) the opposing comments do not comply with the Rule or (C) the petitioner alleges facts demonstrating that the owner or developer has entered into or plans to enter into an agreement with an alternate provider and that the alternate provider will be offering or arranging for another provider to offer communications (voice) service at the property and (2) that the presumption can be rebut only by facts alleged in opposing comments that contradict the facts alleged in a petition supporting (A), (B) or (C).

The July 2006 "Intermodal Competition in Florida Telecommunications" report (the "Competition Report") prepared by NERA Economic Consulting, filed in the Joint Filing, evidences and describes competition in the telecommunications marketplace in Florida, including describing how network convergence has brought three different industry sectors into direct competition with each other, thus providing many alternative sources for services to Florida consumers.[6] The Competition Report is relevant in this Docket, as the competitive marketplace evidenced in the Competition Report is a factor that is relevant to, and supports, COLR relief.

The legislature established the COLR obligation at a time when the LECs were the only source for communications services in order to ensure that customers would have access to such services. The availability of such services from a variety of other sources erodes the need for the COLR obligation and justifies and demands COLR

[6] Competition Report at 1 (noting that several platform providers are competing with traditional wireline carriers to serve Florida consumers, including cable companies deploying broadband and telephony services, wireless carriers and broadband providers that enable customers to receive service from numerous VOIP providers).

relief,[7] such that the availability of such services from other sources is appropriate factor in the Commission's assessment of good cause. The Competition Report cites to the Florida PSC 2005 Competition Report wherein Commission staff concluded that, since wireless and VOIP competition have become a significant portion of the voice communications market, ". . . staff must conclude that they are providing functionally equivalent local exchange service to residential and business customers. . . ."[8] Accordingly, the proposed changes to the Rule in the Joint Filing include the following as a factor for the Commission to consider in determining whether good cause exists to relieve the LEC of the COLR obligation: whether the residents, tenants or occupants at the property have access to communications service from a source other than the LEC.

The factors referenced in the proposed changes to the Rule in the Joint Filing also include consideration of owner or developer agreements with alternate communications service providers or providers of other services. The definition of "communications service" in Section 364.025(6)(a)(3) includes voice or voice replacement service through the use of any technology. However, while the COLR obligation relates to basic local telecommunications (voice) service only, the Commission is in no way limited under paragraph (6)(d) from considering arrangements with an alternate provider for non-voice communications services in connection with a petition for COLR relief. The defined term "communications service" is not used in paragraph (6)(d); the paragraph simply refers to the Commission's authority to grant COLR relief for "good cause shown based upon the facts and circumstances of provision of service" to a property. Accordingly, the

[7] Competition Report at 71 (concluding that technological change, notably network convergence, described further in footnote 9, and intermodal competition, has essentially eliminated the natural monopoly justification for regulating ILECs, such that legislators and regulators should reevaluate old assumptions that may have applied decades ago but no longer hold true).

proposed changes to the Rule contemplate that owner or developer arrangements for non-voice services are relevant considerations in light of network convergence,[9] today's environment where customers desire bundles of different communications services from the same provider[10] and the adverse effect of such agreements on the LEC's ability to recover its investment.

IV. Additional Proposed Changes to the Rule

The Joint Filing includes several additional proposed changes to the Rule, which are not described in further detail in these comments.

V. Comments of the Florida Real Access Alliance

As explained below, the Alliance Comments are in large part irrelevant, inaccurate or misleading.

(a) Alliance Comments Fail to Recognize Section 364.025(6)(d)

The Alliance Comments assert that the statute and legislative history make clear that the circumstances in Section 364.025(6)(b), providing for automatic COLR relief, are the only circumstances under the statute that may yield COLR relief (and that the Rule should reflect this limitation).[11] This position is inaccurate and inconsistent with the plain meaning of the statute. The position completely fails to recognize Section 365.025(6)(d), the very paragraph under which the instant rulemaking is occurring, which

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[8] Competition Report at 2 (citing to the Florida PSC 2005 Competition Report at page 69).

[9] The Competition Report describes the technological forces that are driving network convergence and intermodal competition. Competition Report at 4. Convergence refers to the provisioning of similar bundles of voice, data, Internet access, TV and other communications and entertainment services by different types of network providers. As stated in the report, today, technologies are "converging" so that providers can offer multiple types of services over a single network, such that, with convergence, the same services are provided (and marketed) over various types of networks – e.g. traditional cable systems, traditional telephone networks and mobile wireless networks. Accordingly, for example, customers can secure voice services (for example, VOIP) from a data or cable provider.

[10] Cable companies have had great success in attracting customers to their bundled products. Competition Report at page 1.

[11] Alliance Comments at 3, 9, 25-26.

grants the Commission the authority to grant COLR relief under other facts and circumstances. Further, the position would effectively "write paragraph (6)(d) out of" the legislation and would result in the Commission not only failing to implement the legislature's directives but adopting rules that are directly contrary to its directives.

The Alliance Comments inaccurately suggest that that non-adoption in the final legislation of certain language in House Bill 817 (which language would have granted COLR relief under additional specified additional circumstances) supports the Alliance's position that the circumstances in Section 365.025(6)(b), providing for automatic COLR relief, are the only circumstances under the statute that may yield COLR relief.[12] Again, this position ignores the plain meaning of paragraph (6)(d) and the basis for it – namely, that the legislature transferred to the Commission the authority to administer its legislative policy by specifically granting to the Commission the authority to define additional situations where "good cause" exists for COLR relief. Where the plain meaning of the enabling legislation authorizes the Commission to grant COLR relief for good cause shown, there is no need to resort to legislative history to interpret the legislation.

(b) **Alliance Comments Are Unrelated to Enabling Legislation and Irrelevant to Instant Rulemaking**

The Alliance Comments themselves conflict with and negate the Alliance's assertion, discussed in Part V(a) above, that the legislation only provides for COLR relief under the "automatic COLR relief" portions of the legislation. The Alliance *does* suggest that good cause should be defined in way that further its objectives but that are

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[12] Alliance Comments at 7-8.

(1) wholly unrelated to the paragraph of the legislation pursuant to which rules are to be promulgated (they are simply statements desired by the Alliance) and (2) irrelevant to the instant rulemaking. [13] The Alliance suggests that the Rule clarify that the legislation creates no right of mandatory access to properties in favor of the LEC, provides no guaranteed rights for the LEC to provide services beyond basic local telecommunications services, preserves rights of property owners to require the LEC to enter into an "access agreement" to govern conduct at a property and does not increase the jurisdiction of the Commission to impose any standard on multi-tenant properties.[14]

As discussed in Part I of these comments, the enabling legislation provides, in paragraph (6)(d), for the Commission to promulgate rules regarding relieving the LEC from COLR relief under facts and circumstances where "good cause" is shown. The legislation contemplates COLR relief where the owner or developer of a property enters into certain agreements with a company other than the LEC relative to the property. The above proposals for inclusion in the Rule have nothing to do with the legislation, the legislative intent or good cause for COLR relief, and are thus irrelevant to the instant rulemaking, not reasonably related to the enabling legislation and not appropriate in the rules to be promulgated thereunder.

For example, the Alliance's suggestions that the Rule indicate that the legislation does not create mandatory right of access and indicate that "access agreements" are acceptable[15] are entirely inappropriate – the legislation does not in any way address

[13] Alliance Comments at 3-4, 23-24. On page 23 of the Alliance Comments, the Alliance states that it ". . . requests that the Commission expand the proposed rule to articulate specific examples of property owner conduct that does not constitute a physical access barrier or constitute a good faith basis for relief."
[14] Alliance Comments at 3-4, 23-24.

[15] The Alliance addresses mandatory access and "access agreements" in excruciating and completely irrelevant detail on pages 10 through 22 of its comments.

"mandatory access" or "access agreements" between the LEC and an owner or developer and does not create mandatory access rights. These suggestions are not within the scope of Section 364.025(6)(d). The Alliance is simply seeking to further its own legislative agenda by trying to introduce into the Rule concepts that it favors but that are unrelated to the legislation, and necessarily the rules to be promulgated thereunder.[16]

(c) **Alliance Comments Fail to Recognize Section 364.025(6)(e)**

The Alliance's suggestions that the Rule address circumstances under which the COLR obligation can be re-imposed at a property are misplaced.[17] Section 364.025(6)(e) specifically addresses circumstances under which the COLR obligation can be re-imposed, and, paragraph (6)(e) does not provide for the Commission to promulgate rules to implement that paragraph.

(d) **Alliance Comments About Exclusive Marketing Agreements Are Inaccurate**

BellSouth disputes the Alliance's statements that exclusive marketing agreements with an alternate provider could not impact a LEC's COLR obligation.[18] Such agreements impact the LEC, and the Commission has the authority to consider them in assessing "good cause" for COLR relief. Here, again, the Alliance fails to recognize paragraph (6)(d) of the legislation and that the Commission can thus consider such agreements in connection with assessing good cause for COLR relief.

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[16] For the same reasons, the Alliance's comments about impacting the ability of owners or developers to enter into exclusive contracts or ability to make bulk purchases on behalf of all residents at a property are also irrelevant to the instant rulemaking. The legislation does not limit owners' or developers' ability to enter into such contracts, and the subject is irrelevant to Section 364.025 (6)(d). Alliance Comments at 29-32.

[17] Alliance Comments at 13.

[18] Alliance Comments at 25.

An exclusive marketing agreement with another provider may restrict the LEC's access to the property to market its services and/or may provide for the owner or developer to encourage residents to buy services from the other provider, including giving only the other provider access to or information about those residents to allow for direct marketing by the other provider and referencing the other provider on its website and in connection with sales or rental activities. If the exclusive marketing agreement with an alternate provider markets the alternate provider's voice services, it will most certainly have an adverse effect on the LEC's ability to recover its investment, as it will reduce the number of customers that order the LEC's basic local telecommunications service at the property. If combined with exclusive marketing or other (e.g. bulk or exclusive) arrangements for non-voice services, such as video and/or data services, it will further reduce the number of customers ordering from the LEC, given factors such as customers' preferences for bundles of services from the same provider and the customers' ability to use one service for more than one purpose (for example, to employ data service to provide voice service). Section 364.025(6)(d) allows the Commission to consider such circumstances in determining if "good cause" for COLR relief exists, and BellSouth believes that the Commission must consider such circumstances in its assessment of good cause.

The Alliance seems to want its members to be able to recommend other providers to occupants (in order to make money from the alternate providers for the grant of such marketing rights), while retaining the LEC as "parachute" in case the alternate provider does not fulfill its obligations or meet the owner or developer's expectations but

completely disregarding the impact of the arrangements with the alternate provider on the LEC vis-à-vis its provision of service at the property.

(e) **Alliance Comments Regarding BellSouth Are Irrelevant to Instant Rulemaking and Inaccurate**

Parts VII and VIII (pages 22 – 28) of the Alliance Comments are also irrelevant, inaccurate and misplaced. The comments allege that BellSouth has misrepresented the new legislation and has inappropriately sought to use the legislation as means to enhance its leverage in negotiations. As stated by Commission staff at the Rule workshop, the allegations have no place in the instant rulemaking. BellSouth thus declines to address them in more detail here, but denies the assertions and points out that the assertions, again, are based upon the inaccurate premise that the circumstances in Section 365.025(6)(b), providing for automatic COLR relief, are the only basis for COLR relief under the legislation.

VI. Conclusion

In light of the enabling legislation and its legislative intent, the Commission has the authority to and should modify the Rule so that it includes the proposed changes to the Rule submitted in the Joint Filing relative to (a) developer provision of information, (b) expedited Commission consideration of a petition and (c) factors to consider in assessing good cause for COLR relief (as well as the other proposed changes to the Rule submitted in the Joint Filing). The Commission should reject the Rule proposals in the Alliance Comments, as they are not reasonably related to the enabling legislation, misconstrue the legislation and are irrelevant to the instant rulemaking.

Respectfully submitted this 5th day of October.

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Attachment 1

Examples of Problems Securing Information From Owners or Developers

- **Condominium in South Florida** - In June 2005, several months prior to the first expected occupancy date, BellSouth was in the process of installing cable in the building to arrange for providing service to residents when BellSouth was directed on-site to stop installation due to the developer's exclusive service agreement with another communications provider. BellSouth was told that the agreement restricted any other company from providing communications services at the property. The developer never previously shared this information with BellSouth, despite many prior communications with the developer's representatives regarding service to the property. In the absence of the information, and in furtherance of its COLR obligations and attendant obligations under Commission rules (e.g. Rule 25-4.066), BellSouth incurred in excess of $50,000 to engineer to prepare to serve. BellSouth is still trying to recover these costs from the developer.
- **Large Development in South Florida** – A large mixed-use development, currently under construction in South Florida, will have approximately 3,200 residential units in 9 buildings. Based upon prior communications with the developer's representatives during which they requested placement of conduit system for cable for BellSouth to serve the development, BellSouth incurred in excess of $300,000 to place conduit to serve residential and commercial portions of the property. The developer just recently advised BellSouth that the developer plans to enter into an agreement with an alternate provider to

serve residents. BellSouth has sent several inquiries to the developer to inquire about the nature of the arrangements with the alternate provider. The most recent response from the developer simply says that "[the developer] is not at liberty to discuss with [BellSouth] any particulars regarding service provider agreements with other vendors[.]" First residents are expected in February 2007. At this point, BellSouth cannot even determine if the property falls within the categories providing for automatic COLR relief under the legislation.

- **Condominium Now Under Construction in South Florida** – A condominium now under construction in South Florida is expected to have 414 units, and first occupants are expected in the 4th quarter of 2006. First, in/around April 2006, a developer's representative told BellSouth that it could not place facilities to serve due to an exclusive service agreement with another provider. Then, a different developer's representative told BellSouth that the developer's representative that provided the prior information was mistaken, such that BellSouth could come in and place facilities to serve. Then, in May, BellSouth requested information about the agreement with the other provider. BellSouth made several follow-up requests for information. Finally, at the end of July, the developer informed us of a bulk agreement for cable television service and exclusive marketing agreements. The developer refused to respond to additional requests about the services covered by the marketing agreements, citing confidentiality concerns, although BellSouth was not asking for any confidential "terms" of the deal. So, here, the developer first provided

inaccurate information, then, it took 3 months to get information from the developer about the nature of the agreements, and, ultimately, the information provided was not even complete, all while the first occupancy date is quickly approaching.