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October 31, 2006

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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. Bayo:

Enclosed are Post-Workshop Comments of the Florida Real Estate Alliance for filing in the above captioned matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact the undersigned at 202 785-0600.

Respectfully submitted,

s/ Gerard Lavery Lederer

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Enclosures

**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 31st day of October, 2006 to the following interested Persons:

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s/ Gerard Lavery Lederer

Gerard L. Lederer

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

IN RE: CARRIER OF LAST RESORT;)	
MULTI-TENANT BUSINESS AND)	DOCKET NO.
RESIDENTIAL PROPERTY)	060554-TL

**SUPPLEMENTAL POST-HEARING COMMENTS OF THE FLORIDA REAL
ACCESS ALLIANCE**

I. INTRODUCTION.

The members of the Florida Real Access Alliance¹ (“Alliance”) continue to be grateful to the Commission and its professional staff for your collective effort to inform and invite the real estate community to provide comments in this docket. The Alliance filed Comments in this proceeding,² participated in the September 14, 2006 workshop, and later at the request of staff filed a number of research papers referenced in the Alliance’s Comments.³

¹ The members of the Alliance are the following national real estate associations and their respective Florida affiliates: The Building Owners and Managers Association International (“BOMA”), the Institute of Real Estate Management (“IREM”), the International Council of Shopping Centers (“ICSC”), the National Apartment Association (“NAA”), the National Association of Industrial and Office Properties (“NAIOP”), the National Association of Realtors (“NAR”), the National Association of Real Estate Investment Trusts (“NAREIT”), the National Multi-Housing Council (“NMHC”). A description of the parties and an example of one of their Florida affiliates were attached to the Alliances Comments filed in September 13, 2006.

² Florida Public Service Commission, *In Re: Carrier-of-Last-Resort; Multi-tenant Business and Residential Property*, Dkt. No. 060554-TL, Comments of the Florida Real Estate Alliance filed September 13, 2006.

³ See Florida Public Service Commission, *In Re: Carrier-of-Last-Resort; Multi-tenant Business and Residential Property*, Dkt. No. 060554-TL, Filings of Florida Real Estate Alliance, September 28, 2006.

II. UPDATES

The Alliance files these comments for three purposes:

- First, the Alliance would incorporate by reference the recently filed complaint by Litestream.⁴ Neither the Alliance, nor its counsel, has first hand knowledge of the actions that led up to the filing of the Litestream complaint. Still, the Litestream complaint, taken as well-pleaded, paints a vivid picture of an ILEC's misconduct consistent with the abuses outlined in the Alliance's Comments. The bullying tactics are also consistent with the ILEC's market power, coupled with a lack of understanding in much of the real estate community of the status of COLR obligations. Absent Commission action, these two factors, when coupled with the well publicized weakening in the real estate market, can only result in increasingly aggressive ILEC conduct moving forward. The Commission has now been given two examples of overly aggressive actions by at least one ILEC in Florida. Should the Commission fail to act promptly and forcefully in this docket and the Litestream matter, the signal it will send Florida ILECs is that they are free to employ the recently enacted COLR relief legislation (SB 142) as a weapon with which to bludgeon any developer or property owner that would dare to enter into negotiations with any entity for voice, data or video services that might compete with the ILEC.
- Second, the Alliance has been led to understand that the Commission staff is not predisposed to employ as a base for any rule the ILEC *Joint Filing Of Proposed Rule*

⁴ Florida Public Service Commission, *Complaint and Petition for Declaratory Relief of Litestream Holdings, LLC, Against BellSouth Telecommunications, Inc.*, Docket No. 060608-TP, filed October 17, 2006

25-4.084.⁵ Nonetheless, the Alliance would like to have on record its reaction to the proposed ILEC rule. That reaction may be found in Attachment A, the ILEC proposal with changes in redline.

- Finally, the Alliance would bring to the Commission's notice an October 20, 2006 filing by Atlantic Broadband with the Federal Communications Commission in the docket to address the AT&T-BellSouth merger.⁶ The Alliance does not offer the letter for its statements with respect to the underlying merger, but to share with the Commission but another example of at least one ILEC's bullying tactics. Atlantic Broadband explains to the FCC:

We have witnessed first hand the anticompetitive tactics BellSouth uses to intimidate customers who choose Atlantic Broadband as their video and Internet Provider. The attached letter (COLR threat letter) is an example of BellSouth's heavy handed threat to withhold basic telephone service from an Atlantic Broadband customer who chose us for television and high speed Internet service.

III. CONCLUSION

No less than three examples of ILEC bullying tactics have been shared with the Commission.

The Alliance has been told that there are many more examples of these tactics and we are encouraging all such parties to come forward and share their experiences with the Commission. Still, the Commission should not wait until this conduct become so widespread as to become an industry norm. The Commission must act in an expedited fashion to clarify that Florida ILECs, absent being denied physical access to a property continue to bear COLR obligations. Further

⁵ Florida Public Service Commission, *In Re: Carrier-of-Last-Resort; Multi-tenant Business and Residential Property*, Dkt. No. 060554-TL, Joint Filing Of Proposed Rule 25-4.084 And Intermodal Competition Report, filed October 5, 2006.

⁶ *Application for Consent to Transfer of Control Filed by AT&T Inc. and BellSouth Corporation*, Dkt. No. 06-45, Comments of Atlantic Broadband filed October 20, 2006.

the bullying tactics experienced by the parties in the three examples of cited by the Alliances must come to an end or in the alternative the Commission should take any and all actions available to end such practices.

Respectfully submitted,

s/ Gerard Lavery Lederer

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Attorney for the Florida Real Estate Alliance

October 31, 2006

ATTACHMENT A

25-4.084 Carrier-of-Last-Resort: Multitenant Business and Residential Property.

(1) A local exchange telecommunications company (LEC) need not provide service to a development unless such services have been requested in a manner consistent with current Florida statutes or Commission rules;

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2 A local exchange telecommunications company (LEC) seeking to be relieved of its carrier-of-last-resort obligation under Section 364.025(6)(d) shall file a petition for relief from the carrier-of-last-resort obligation to a multitenant business or residential property pursuant to Section 364.025(6)(d) Florida Statutes within 10 business days of the date on which they received a request for services. Said petition shall be filed with the Division of the Commission Clerk and Administrative Services and shall be served by hand delivery or overnight mail upon the relevant owners or developers together with a copy of section 364.025(6) and this rule and an explanation in plain English, not dissimilar to the text of a proposed cover letter as provided in paragraph 10 below to make clear the severity of the proceedings and the potential for the loss of carrier of last resort services.

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(3) A petition for relief from the carrier-of-last-resort obligation shall be limited to a single development,

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(4) The petition must include the following:

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

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

c) The address or other specific description of the property for which the relief is requested;

d) The specific facts and circumstances that demonstrate "good cause" for the relief as required by Section 364.025(6)(d);
e) A statement that interested persons have 10 calendar days from the date the petition is filed with the Commission to file comments to the Commission, in accordance with subsection (4); and
f) A statement certifying that service of the petition has been made on the relevant owners or developers in accordance with subsection (1).

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(5) (a) Comments in opposition to a petition for relief from the carrier-of-last resort obligation shall be filed within 20 calendar days (or 15 business days) from the date the Petition is filed with the Commission, unless the twentieth day falls on a Saturday, Sunday, or holiday, in which case the comments must be filed no later than the next working day.

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(b) Comments in opposition to a petition for relief from the carrier-of-last-resort obligation must include the following:

1. The name, address, telephone number, electronic mail address, and any facsimile number of the responding party;

2. The name, address, telephone number, electronic mail address, and any facsimile number of the attorney or qualified representative of the responding party if any; and

3. Response to the specific facts and circumstances alleged in the petition.

(6) Among the factors to be considered by the Commission in determining whether good cause exists to relieve the LEC of the carrier-of-last-resort obligation are the following:

- a) Whether the owner or developer has entered into an exclusive agreement with another communications service provider, which provides for the denial of access to the development.; and
- c) Whether the residents, tenants or occupants at the development are being denied access to communications service from the Carrier of Last Resort.

(7) A petition may include a request by the LEC for expedited consideration by the commission, which shall not be given but for extenuating circumstances requiring such treatment and never if one of the two parties objects to such expedited consideration. Therefore any request for expedited consideration shall be supported by affidavits outlining assertions of uncontested facts, that demonstrate the need for expedited consideration. If the request for expedited consideration is supported by such circumstances, the commission will grant or deny the petition within 30 days of the filing of the petition.

Were the real estate community to agree that the requirement of paragraphs 7 & 8, below, are reasonable, which we do not – we cannot accept the language as it imposes an affirmative burden on the property owner and subjects the property owner to the jurisdiction of the PUC, an action that was specifically rejected by the legislature in passage of the underlying legislation. Florida law, both statutory and regulations outline with specificity what is required to have the COLR serve a development. The LEC community and the Commission were not empowered by the bill to expand on those terms.

(8) A rebuttable presumption exists that the LEC has an ongoing COLR obligations if a request for COLR services has been made pursuant to current Florida laws. None of the following actions shall be considered to provide the LEC good cause for a waiver of its COLR obligations

- a) Limiting the COLR to providing only basic local telecommunications service services at the development;
- b) Requiring the COLR to execute a property access agreement, so long as said agreement is consistent with Florida statutes and Florida Commission rules,
- c) Entering into a preferred provider contract, or exclusive marketing agreement with an entity other than the COLR so long as the contract does not require the developer to bar access to the LEC.”

(9) If the LEC is relieved of the LEC’s carrier-of-last-resort obligation for a property, it shall also be relieved for that property of any obligations under Commission rules that flow from such obligation, including Rules 25-4.066 and 25-4.067.

(10) Terms used in this rule shall have the meanings set forth in Section 364.025(6).

(11) The text of the cover letter required in paragraph two shall be consistent with the following text:

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- Deleted: (7) The LEC requires specific information from an owner or developer regarding the facts and circumstances concerning a property to assess its obligation to serve that property under Section 364.025 The specific information shall be in the form of a notarized certification from an authorized representative of the owner or developer and shall include the information requested by the LEC, which may include the following:¶
a) the first date customers will require communications service at the property;¶
b) whether any of the conditions listed in Section 364.025(6)(b)1-4 exist at or with respect to the property;¶
c) information about the nature of (... [1]
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Date

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Address of Developer

Dear Sir or Madam:

You have requested that our company provide service to your development as the carrier of last resort. This letter is to inform you that we have filed the enclosed petition for relief of our obligation to serve with the Florida Public Service Commission. You must respond to this petition at the Florida Commission within 20 days of receiving this notice or run the risk of losing the guaranteed service from us as the carrier of last resort.

Provision of carrier of last resort services is an obligation imposed on us by the laws of Florida in exchange for various rights and privileges granted our company. In 2006, the Florida legislature passed a law providing for circumstances in which we may petition to be relieved of our obligations to serve as the carrier of last resort. A copy of the legislation creating these exceptions as well as the Florida Public Utility Commission's rules governing the process by which a petition for relief shall be considered are enclosed.

You may file your response to this petition by mail or email at the below addresses. You may choose to respond to the claims outlined in our petition in detail, or simple affirm or deny the allegation contained therein. Unless, however, your file your response with the Commission, the Commission is not capable of making an informed decision in this matter.

The loss of service by the carrier of last resort is a serious matter that could jeopardize your tenant's safety and or decrease the value of your property. We urge you to take all appropriate steps to address this matter.

Commission mailing address _____ Commission e-mail address.

(7) The LEC requires specific information from an owner or developer regarding the facts and circumstances concerning a property to assess its obligation to serve that property under Section 364.025. The specific information shall be in the form of a notarized certification from an authorized representative of the owner or developer and shall include the information requested by the LEC, which may include the following:

- a) the first date customers will require communications service at the property;
- b) whether any of the conditions listed in Section 364.025(6)(b)1-4 exist at or with respect to the property;
- c) information about the nature of any agreements the owner or developer has entered into or plans to enter into with another communications service provider or provider of data service, video service or other substitute or similar service, including the types of services covered by those agreements and the nature of the rights extended to and arrangements with the other provider under the agreements;
- (d) the name of the other provider with which the owner or developer has or plans to contract;
- e) whether the other provider will be offering or arranging for another identified provider to offer communications services at the property and the type of those communications services; and
- f) whether the owner or developer intends to exclude the LEC from providing communications service, data service, video service or other substitute or similar service at the property.

/8) The information requested by the LEC shall not include confidential financial terms of the agreements the owner or developer has entered into or plans to enter into with another provider. The information referenced in subsection (7) is not information regarding confidential financial terms.

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(10) Notwithstanding subsection 9c, if, within 20 calendar days of the LEC's request, the LEC receives from the owner or developer a notarized certification that the requested information is not yet available, and that states the first date that customers will require service at the property, then the owner or developer may provide the requested information by notarized certification to the LEC within a reasonable time after it becomes available to the owner or developer, provided that the certified information is received by the LEC no later than 240 days prior to the previously certified date that customers will first require service.

(11) The notarized certification referenced in subsections (7) and (10) shall be in substantially the following form:

The undersigned, an authorized representative of (Insert) name of owner or Developer provides and certifies the accuracy of the following information regarding the facts and circumstances concerning [insert name of property]:

[insert response to LEC's requests for information]

[Signature of authorized representative of owner or developer, full printed name and title of individual signing.

Sworn to and subscribed before me this day of (year),
by, who is personally known to me or who has produced (type of
identification) as identification.

(Signature of Notary Public)

(Print. Type or Stamp Commissioned Name of Notary Public)

(12) If a rebuttable presumption of good cause for relief from the LEC's carrier-of-last resort obligation exists under subsection (9), then to secure the relief, the LEC shall file a petition for relief with the Commission under subsection (1), alleging facts supporting the application of subsection (9). The presumption may be rebutted only by facts alleged in opposing comments filed under subsection (4) that contradict the facts alleged in the petition supporting the application of subsection (9). If such contradictory facts are not presented, the presumption shall not be rebutted, and the Commission shall grant the petition.