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November 7, 2006

VIA HAND DELIVERY

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

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060732-TL

Complaint of Lennar Homes, Inc. Against BellSouth Telecommunications, Inc.
for Failure to Provide Services in Accordance with Section 364.025(1), Florida Statutes.

Dear Ms. Bayó:

Enclosed for filing, please find an original and 15 copies of the above-referenced Complaint and Request for Expedited Treatment, as well as a copy of the complaint (without attachments) on diskette.

Your assistance in this matter is greatly appreciated.

Sincerely,

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Seth Keating
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
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{TL106746;1} Enclosures

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FPSC-COMMISSION CLERK

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:)
Complaint of Lennar Homes, Inc.)
Against BellSouth Telecommunications,)
Inc. for Failure to Provide Services in)
Accordance with Section 364.025(1),)
Florida Statutes.)

Docket No. 060732-TL
Filed: November 7, 2006

**COMPLAINT REGARDING BELLSOUTH'S
FAILURE TO PROVIDE SERVICE AND
REQUEST FOR EXPEDITED TREATMENT**

Pursuant to Rule 25-22.036(2), Florida Administrative Code, Lennar Homes, Inc. ("Lennar") by and through its undersigned counsel, on behalf of itself and its affected affiliates, hereby files this Complaint against BellSouth Telecommunications, Inc. ("BellSouth") for failure to provide service upon request in accordance with Section 364.025(1), Florida Statutes. BellSouth's refusal to install and provide service is also in direct violation of its carrier-of-last-resort obligation, as well as Rule 25-4.091(1), Florida Administrative Code, which requires BellSouth, upon receipt of a proper application, to install sufficient underground distribution system facilities to ensure safe and adequate telephone service for the reasonably foreseeable future.

In spite of good faith efforts by Lennar to resolve what has become an ongoing issue with BellSouth across several Lennar developments, as well as other properties on which Lennar is a builder, BellSouth now has informed Lennar that it will not provide service to homes built by Lennar in the "Echo Lake" development,¹ unless Lennar certifies that no competitor contracts

¹ Located in Indian River County at 3900 21st Street, SW, in Vero Beach, Florida. Lennar is a builder in this development. In other developments referenced in this complaint, Lennar is the builder/developer.

whatsoever exist with regard to the development.² BellSouth has imposed the same requirement with regard to other developments for which Lennar is the builder/developer, including Copper Creek and Madeira Isles.³ The imposition of this requirement by BellSouth not only violates Section 364.025(1), Florida Statutes, but it also constitutes anticompetitive behavior, the effects of which are exacerbated by BellSouth's expressed desire to enter into exclusive contracts with Lennar in its own right. This is precisely the type of conduct that the Legislature has charged the Commission with preventing, in accordance with Section 364.01(4)(g), Florida Statutes.

Lennar respectfully requests that the Commission enter an Order requiring BellSouth to immediately take any and all action necessary to install and provide service to Echo Lake, Copper Creek, Madeira Isles, and all other similarly situated Lennar properties, in compliance with Section 364.025(1), Florida Statutes, and Rule 25-4.091, Florida Administrative Code.⁴ Lennar further requests that BellSouth be prohibited from requiring Lennar to make any certifications regarding Lennar contracts with competitive providers of data and cable/video services, and that BellSouth also be instructed that it may not require specific contractual information regarding service or marketing contracts entered into by Lennar with such providers as a precursor to initiating service.

In support of this complaint, Lennar states as follows:

1. Lennar Corporation was founded in 1954 in Miami, Florida, and is organized under the laws of the State of Delaware. It is a \$10.5 billion multidivisional, national

² See Exhibit 1, attached and incorporated herein, consisting of a Letter dated September 21, 2006, from Barbara Ball, Director – Planning and Provisioning for BellSouth, to Jeremy Earle, with Lennar.

³ See Exhibit 2, attached and incorporated herein, consisting of a Letter dated September 7, 2006, from Barbara J. Ball, Director – Planning and Provisioning/BellSouth. Copper Creek is a 320-acre mixed-use project in the early stages of marketing and development. See also Exhibit 3, attached and incorporated herein, consisting of a Letter dated September 21, 2006, from Barbara J. Ball, Director-Planning and Provisioning, to Jeremy Earle with Lennar.

⁴ This practice is affecting, and is expected to affect, other developments on which Lennar is either a builder, or for which it is the builder/developer for the entire property.

homebuilding company, and financial services provider. Through its financial services operations, Lennar also provides high-speed Internet and cable television services.

2. Lennar Homes, Inc. is one of Lennar Corporation's principal subsidiaries. It specializes in home construction, as well as in managing the design, marketing and development of condominiums and residential properties. It conducts business throughout Florida, including BellSouth Telecommunications, Inc.'s territory.

3. Petitioner's name, address and telephone number are as follows:

Lennar Homes, Inc.
700 Northwest 107th Avenue
Miami, Florida 33172
(305) 559-4000

4. Petitioner's representatives' names, addresses, and telephone numbers are:

Beth Keating
Akerman Senterfitt
P.O. Box 1877
Tallahassee, FL 32302-1877
(850) 521-8002

and

James M. Tobin
Law Office of James M. Tobin
Two Embarcadero Center, Suite 1800
San Francisco, CA 94111
(415) 732-1700

5. BellSouth is a corporation organized and formed under the laws of the state of Georgia, with its principal office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth is an Incumbent Local Exchange Carrier ("ILEC") certificated by this Commission to provide local exchange telecommunications services in the State of Florida. BellSouth's address in the State of Florida for service of process is:

James Meza, III, General Counsel

c/o Nancy H. Sims, Director of Regulatory Affairs
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301

JURISDICTION

6. The Florida Commission has clear jurisdiction in this matter pursuant to Sections 364.025, 364.01(4), and 364.15, Florida Statutes, and Rule 25-4.091, Florida Administrative Code.

FACTUAL ALLEGATIONS

7. Lennar is currently in the process of building homes at "Echo Lake," a residential enclave on 130 acres near Vero Beach. This development is anticipated to contribute to the overall economic and business growth of the area in which it is located. As a corporation responsible for building homes in this new subdivision, Lennar qualifies as an "applicant" under Rule 25-4.089(1), Florida Administrative Code, for purposes of Rule 25-4.091(1), Florida Administrative Code, as well as an "owner or developer" as provided in Section 364.025(6)(a)(1), Florida Statutes.

8. Lennar is also in the process of marketing and developing the Copper Creek subdivision, located at 12500 Glades Cut-Off Road, in Port St. Lucie, Florida, as well as the Madeira Isles subdivision, located at 3900 25th Street SW, in Vero Beach, Florida. These developments are also anticipated to contribute to the overall economic development and business growth of the areas in which they are located. As a corporation responsible for the development of these properties, Lennar qualifies as an "applicant" under Rule 2504.089(1),

Florida Administrative Code, for purposes of Rule 25-4.091(1), Florida Administrative Code, as well as an "owner or developer" as provided in Section 364.025(6)(a)(1), Florida Statutes.

9. Over the course of developing this project, Lennar has engaged in discussions with providers of cable, high-speed data service, and telecommunications services regarding possible terms and conditions of service to the development, as well as agreements for marketing rights with regard to the service that would be offered to customers in the development.

10. As a result of those discussions, Lennar determined that the preferred course of action would be to have BellSouth serve as the telecommunications provider for Echo Lake, and consequently, discussions were initiated with Mr. Dave Brunisifski at BellSouth by Mr. Jeremy Earle of Lennar regarding provision of telecommunications service by BellSouth to the Echo Lake project.

11. Subsequent to the discussion between Mr. Earle and Mr. Brunisifski, Ms. Barbara J. Ball, Director – Planning and Provisioning for BellSouth, sent a letter to Mr. Earle indicating BellSouth's desire to move forward to serve the project.

12. Ms. Ball's letter, however, which is attached and incorporated herein as Exhibit 1, also contains a troubling request to Lennar. Ms. Ball states therein that:

Before BellSouth incurs costs to prepare the property for BellSouth service, we require an authorized representative of the developer or affiliated property owner to sign and return this letter. Once we receive the signed letter, BellSouth will commence planning and engineering activities when appropriate to serve the property. . . . (emphasis added).

13. By requiring the developer/owner to sign the letter, BellSouth requires that the developer/owner, in this case Lennar, make certain certifications regarding access to the property to provide and install service. Lennar does not take issue with this aspect of the letter. However, the letter also requires that Lennar certify that:

- ✦ BellSouth will not be restricted in any way from providing any service that it desires to offer at the property.

and

- ✦ The developer, any affiliated property owner or other affiliated party, and any homeowners or condominium association, have not entered into, and do not plan to enter into, an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement (i.e., charges for services provided to residents are collected through rent, fees, dues, or other similar mechanism), with another service provider for communications services, including any voice, data, or video service.

(emphasis added).

14. The September 21, 2006, letter further states that if Lennar or 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."

15. Ms. Ball indicates that the letter must be signed and returned by October 3, 2006.

16. Upon information and belief, Lennar understands that BellSouth has sent letters containing similar, if not identical, language to other owner/developers in its Florida service area. See Comments filed September 13, 2006, by Florida Real Access Alliance in Docket No. 060554-TL, at p. 23, fn. 27 through p. 28, and Exhibit F; Complaint and Petition of Litestream Holdings, LLC in Docket No. 060684-TP; and the October 20, 2006, letter of Atlantic Broadband to FCC Commissioners Copps and Adelstein with regard to the *Application for Consent to Transfer Control Filed by AT&T, Inc. and BellSouth Corporation*, WC Docket No. 06-74, attached and incorporated herein as Exhibit 8.

LEGAL ARGUMENTS

17. Section 364.025(1), Florida Statutes, provides in pertinent part:

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 territory.

This provision encapsulates the so-called "carrier-of-last-resort" obligation.

18. Rule 25-4.091(1), Florida Administrative Code, states that:

Upon receipt of a proper application the utility shall install an underground telephone distribution system with sufficient and suitable materials which, in its judgment, will assure that the applicant will receive reasonably safe and adequate telephone service for the reasonably foreseeable future.

19. During this past Legislative Session, the 2006 Legislature passed Senate Bill 142, which was ultimately approved by the Governor. The new law includes additions to Section 364.025, Florida Statutes, including four (4) specific circumstances in which the carrier-of-last-resort obligation will be deemed automatically eliminated based on the actions of the owner or developer of a property. The obligation is eliminated when the owner or developer:

- ✦ 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;
- ✦ 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;
- ✦ 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

- ✦ 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.

Section 364.025(6)(b)(1 – 4), Florida Statutes. If the circumstances set forth above occur, the local exchange telecommunications company must notify the Commission of that fact in a timely manner. Section 364.025(6)(c), Florida Statutes.

20. In situations where the circumstances set forth above do not exist to automatically eliminate the carrier-of-last-resort obligation, the new law allows the local exchange telecommunications company to seek a waiver of its 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." This provision requires notice to the affected building owner or developer, and the Commission is required to rule on such a petition within 90 days. Section 364.025(6)(d), Florida Statutes.⁵

21. "Communications service," as used in Section 364.025(6), Florida Statutes, is defined as, "voice service or voice replacement service through the use of any technology." Section 364.025(a)(3.), Florida Statutes.

22. As the term "communications service" is used in Section 364.025(6)(b)(1-4), Florida Statutes, the law is clear on its face that a local exchange telecommunications company is automatically relieved of its carrier-of-last-resort obligation only if an owner or developer enters into an agreement, or otherwise engages in a practice, that would: (1) exclude a local exchange telecommunications company from installing its facilities, in favor of another communications

⁵ This provision also requires the Commission to commence rulemaking to implement this subsection, which the Commission has done in opening Docket No. 060554-TL.

service provider's communications service-related facilities; (2) effectively ban the local exchange telecommunications company from providing communications service by allowing other communications services providers to provision any or all communications services on the property; (3) result in a bulk agreement for the provision of communications service to the occupants or residents of the property; or (4) otherwise restrict or limit the local exchange telecommunications company's access to the property in favor of another communications service provider. In other words, the local exchange telecommunications company must demonstrate that it is either legally or physically restricted from providing voice or voice replacement service to the property, or that there is a significant economic impediment to providing service (i.e. the prospective customers are already paying for voice or voice replacement service with another carrier through a bulk service arrangement). Thus, Section 364.025(6)(b), Florida Statutes, certainly provides no support for BellSouth's demand for certifications regarding any services other than voice or voice replacement service.

23. Section 364.025(6)(d), Florida Statutes, also does not provide a basis for Ms. Ball's letter. While BellSouth is allowed to petition the Commission for a waiver of its obligation to serve pursuant to this provision, its obligation to provide service is not removed unless and until the Commission approves such a waiver. Here, BellSouth has not filed such a petition for waiver with the Commission.

24. By attempting to bully Lennar into the certifications described in Ms. Ball's 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.⁶ This was simply not the intent of the Legislature and is certainly not allowed by the clear language of the new law.

⁶ Lennar notes that its project managers throughout BellSouth territory in Florida have noted a significant slow-down by BellSouth with regard to provision of telecommunications service at numerous projects, which appears to

25. Furthermore, the certifications that BellSouth is endeavoring to extract from Lennar most certainly fall short of the "good cause" demonstration that the Legislature contemplated in passing Senate Bill 142. First and foremost, the language of the new bill gives no indication that services beyond voice service are to be considered when determining if the "good cause" standard has been met. Rather, throughout the text, the service at issue is referred to either as "communications service," which is defined in Section 364.025(a)(3), supra, or it is referred to as the local exchange telecommunications company's "carrier-of-last-resort" obligation, which is set forth in Section 364.025(1), Florida Statutes. Neither of these provisions refers to the panoply of other competitive services that the local exchange telecommunications company may offer. These definitions are, instead, specifically tied to "voice or voice replacement" service, as provided in the new law, or to basic local telecommunications service, which is defined in Section 364.02(1), Florida Statutes, in pertinent part, as:

voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing.

Thus, there is no support whatsoever in the language of the law for BellSouth to avoid serving a property based upon agreements for cable services, data services, or marketing services.

26. Equally telling is the fact that the Florida Legislature specifically rejected language that would have expanded the bases for waiver or elimination of the carrier-of-last-resort obligation to include other competitive services, such as cable, data, and perhaps even marketing arrangements. As set forth in Exhibit 4 to this Petition, the original version of House

be directly tied the status of negotiations for the provision of other services to the various projects. See, for instance, Exhibit 9, consisting of October 12, 2006, letter from Mr. Brian L. Coffey to Mr. Lance Mills at BellSouth regarding lack of progress at Bent Creek Development.

Bill 817, which was one of the bills in which the carrier-of-last-resort relief provisions were originally placed, contained an additional basis for automatic relief from the carrier-of-last-resort obligation:

Restricts or limits the types of services that may be provided by an eligible telecommunications carrier or enters into an agreement with a communications service provider which restricts or limits the types of services that may be provided by an eligible telecommunications carrier.

This provision was, however, eliminated very early on in the legislative process, demonstrating the Legislature's intent to focus the bill on the service that is directly associated with the carrier-of-last-resort obligation, voice service.

27. The language included in the new law, as well as that which was specifically excluded, makes it perfectly clear that the new law was designed to relieve BellSouth of its carrier-of-last-resort obligation when conditions for providing its basic local telecommunications service to customers at a property are prohibitive, not just when conditions are competitive.

28. Most obviously egregious is BellSouth's demand for information regarding marketing agreements, which can in no way impair BellSouth's ability to provide service. For instance, marketing agreements may restrict BellSouth's ability to place advertising materials in the community access areas and rights of way of a property, but certainly can have no impact on materials BellSouth might send directly to a resident's house or advertisements BellSouth places on the television, radio, or in local newspapers. Even if it were possible to place the most stringent of advertising restrictions on BellSouth with regard to a particular property, it would be impossible to avoid or negate the plethora of public advertising a resident would encounter upon leaving the property. To argue that any sort of advertising or marketing arrangement could significantly impair BellSouth's ability to provide communications service is simply unrealistic.

29. Similarly, service agreements with data or cable services providers may impact the package of services that BellSouth offers at a property, but certainly would not physically or legally impair BellSouth's ability to provision communications services, which was clearly the Legislature's only concern. As highlighted by the Senate Staff's reference to its Interim Report in the staff analysis that accompanied Senate Bill 142, the Legislature intended to address situations in which the local exchange telecommunications company cannot gain access to rights-of-way or telecommunications closets, but has, nonetheless, been asked to provide service by a tenant.⁷ This reference is yet another clear indicator that the Legislature did not intend to address competitive issues pertaining to other types services, nor did it intend to impair or impinge on owners' property rights and ability to freely contract for services.

30. BellSouth is trying to use the new law, via its letters to developers, to extract as much information as possible about the circumstances, terms, and conditions of agreements that developers, such as Lennar, may have with providers of services that compete with any aspect of BellSouth's current, and anticipated, bundled service package. In fact, in another Lennar development, 360 Condominiums, BellSouth demanded information pertaining to agreements for cable and Internet service with another provider, as well as "specific information" regarding the nature of the marketing agreement with that provider. See Exhibit 6 to this Complaint, August 3, 2006, letter from Sharon Liebman, counsel for BellSouth, to Jim Tobin.⁸ While it appears that Lennar has reached an acceptable resolution with BellSouth as it pertains to the 360

⁷ Exhibit 5, Staff Analysis of Senate Bill 142, referencing Report 2006-106 - *Review of Access by Communications Companies to Customers in Multi-tenant Environments*, Committee on Communications and Public Utilities (September 2005).

⁸ Coincidentally, on August 3, 2006, it was reported that BellSouth had entered into a deal with DIRECTV® to offer its digital satellite service as part of BellSouth's bundled package of service throughout the Southeast. <http://www.bizjournals.com/nashville/stories/2004/08/02/daily8.html> Thereafter, on September 19, 2006, BellSouth announced that it had entered into non-exclusive agreements with DirecTECH and MasTec, Inc., DIRECTV Master System Operators, to jointly market and deploy DIRECTV® services to the residential multi-dwelling unit (MDU) market in BellSouth's service area. (BST news release - http://bellsouth.mediaroom.com/index.php?s=press_releases&item=2914).

Condominiums property, BellSouth has nonetheless refused to provide DSL service, or "Fast Access," to customers in that development (including its own customers), even though it has now agreed to provide voice service. BellSouth has refused to do so simply because Lennar has declined to provide what BellSouth considers to be a sufficient level of detail regarding contracts Lennar has with the referenced cable and Internet service provider.⁹ Lennar acknowledges that the federal courts have determined that BellSouth is not obligated to provide "Fast Access." Thus, this Complaint, like the new provisions of Section 364.025, Florida Statutes, focuses on BellSouth's refusal to provide "voice service." Nevertheless, Lennar is greatly concerned that BellSouth's decision not to provide DSL service, in this context, further evidences BellSouth's intent to use the new law to attempt to coerce Lennar into disclosing proprietary contractual provisions with other providers and to force Lennar into exclusive agreements with BellSouth.

31. The net effect of this scheme is the elimination of choices for Lennar and its customers – not through legitimate, competitive means, but through tactics that can only be construed as anticompetitive conduct in violation of Section 364.01(4)(g), Florida Statutes. BellSouth is refusing to provide service in accordance with its statutory obligations in order to extract more favorable terms and conditions for service, including exclusion of any other provider of services that compete with the products included in BellSouth's bundled package of services.

32. To be clear, there are no conditions at Echo Lake that would trigger the automatic elimination of BellSouth's carrier-of-last-resort obligation under Section 364.025(6)(b), Florida Statutes. Lennar also believes that conditions do not exist that would demonstrate "good cause" for granting a waiver of BellSouth's obligations to serve. That being said, the law squarely

⁹ See Exhibit 7, attached and incorporated herein, consisting of September 8, 2006, Letter from Sharon Liebman to Jim Tobin.

places responsibility upon BellSouth to either notify the Commission that circumstances do exist that would eliminate its duty to serve or to file a petition for waiver of its obligation to serve. BellSouth has done neither ... it is simply declining to serve under the guise that it needs more information or assurances regarding its ability to provide the full range of services it offers, as well as information regarding the circumstances applicable to other service providers to the property.¹⁰

33. As Lennar commented at the September 14, 2006, workshop in Docket No. 060554-TL and reiterated the same in its October 4, 2006, post-workshop comments, Lennar's customers want the option of obtaining service from a high-profile service provider such as BellSouth. Thus, unless BellSouth is directed to cease and desist this inappropriate strong-arm tactic and provide service in accordance with Section 364.025(1), Florida Statutes, Lennar will find itself in the difficult position of either contracting solely with BellSouth for its complete package of bundled services (i.e. voice, high-speed internet, and video), as well as marketing rights, or it will have to forego service by BellSouth entirely. Either way, Lennar's customers will have fewer options for service, which will impact the property value. Furthermore, Lennar will be prevented from negotiating deals with a full range of providers in order to obtain the most cost-effective means of obtaining service for its properties, thus, reducing the return on investment for development projects. It is also foreseeable that, long term, this will negatively impact the number of competitive alternatives that are available to developers and have serious consequences for the building industry as a whole, which contributes significantly to economic development in this State.

¹⁰ Should BellSouth elect to file a Petition for Waiver in response to this complaint, such Petition would not negate this Complaint, because the law requires that BellSouth seek a waiver of the carrier-of-last-resort requirement before declining to serve, which is not what occurred in this case. As such, Lennar suggests that consolidation in accordance with Rule 28-106.108, Florida Administrative Code, would be the most appropriate procedural path.

34. In Lennar's business, perhaps more than most, time is truly money. Echo Lake is currently scheduled to begin development in December of 2006. The projected date for obtaining certificates of occupancy is January 2008.¹¹ As with all Lennar projects, the Echo Lake project has been coordinated on a precise timeline and any delays can dramatically compound costs. These costs must either be absorbed, reducing the return on the investment in the project, or they are passed on to Lennar's customers at the risk that the higher price will lower or slow the take rate for the development.

35. The injury resulting from BellSouth's actions is immediate and it is real. While BellSouth is likely to allege that the offending letters are subject to additional negotiation, that is not the context in which the letters have been presented to Lennar.¹² The timing of the letters leave little or no room for any real discussion. Moreover, BellSouth is well-aware that further negotiations regarding BellSouth's duty to serve will jeopardize the project schedules, thus increasing the project costs for Lennar. Every day of delay results in Lennar being contractually responsible for additional fees to project coordinators, for contractors, and for laborers, and also subjects Lennar to increases in costs for materials. Again, for Lennar, time is money, a fact that BellSouth is employing to its advantage by refusing to "prepare the property for BellSouth service. . ." unless Lennar signs and returns the certification letter. BellSouth's refusal to serve pending receipt of the signed letter is, however, anticompetitive and barred by law.

¹¹ Likewise, Madeira Isles is scheduled to begin development November 2006, with a projected certificate of occupancy date of September 2007. Copper Creek is already in development, with completion scheduled for March 2007, and projected certificate of occupancy date of October 2007.

¹² For instance, see Exhibits 10 and 11, which are attached and incorporated herein, and consist of an October 26, 2006 letter to Lance Mills with regard to the Copper Creek subdivision, and the November 1, 2006, response of BellSouth, respectively.

CONCLUSION

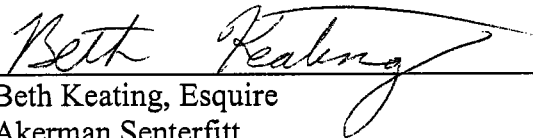
In conclusion, Lennar respectfully seeks the Commission's expeditious assistance in this matter, and asks that the Commission take any and all action necessary to ensure the just, speedy, and inexpensive determination of this case, in accordance with Rule 28-106.211, Florida Administrative Code. BellSouth is refusing to provide service to Lennar's homes at Echo Lake, as well as the other developments referenced herein, unless and until Lennar certifies to BellSouth's satisfaction that Lennar does not have service or marketing agreements with providers of cable or data services that might impair or restrict BellSouth's ability to provide these types of services in Echo Lake. There is simply no basis in law for this refusal. The new additions to Section 364.025, Florida Statutes, provides four specific bases for declining to serve, upon notification to the developer and the Commission. No such notice has been received by Lennar. The statute also allows BellSouth to seek a waiver of its obligation to serve for "good cause." To Lennar's knowledge, no such petition has been filed. BellSouth is, therefore, in violation of Section 364.025(1), Florida Statutes, and Rule 25-4.019(1), Florida Administrative Code. Furthermore, its assertions in Ms. Ball's September 21, 2006, letter that it will not incur costs to serve until Lennar makes certain certifications regarding contracts with other providers rise to the level of anticompetitive conduct in violation of Section 364.01(4)(g), Florida Statutes. As such, Lennar asks that the Commission act on an expedited basis to require BellSouth to come into compliance immediately so that Lennar may proceed with construction at the Echo Lake project, and other similarly situated projects, in accordance with its own customers' expectations.

For all the foregoing reasons, Lennar respectfully requests that the Commission provide the following relief:

1. Require BellSouth to fulfill its obligation to serve Lennar's homes at Echo Lake, and other similarly situated Lennar developments, in accordance with Section 364.025(1), Florida Statutes, and Rule 25-4.091(1), Florida Administrative Code, without further delay;
2. Require BellSouth to cease and desist any requirement for certifications by Lennar pertaining to services other than "communications services" before it will proceed to serve Lennar's homes at the Echo Lake development or any other Lennar development in Florida; and
3. Provide the relief requested on an expedited basis in order to alleviate the financial "bleeding" that is already causing significant injury to Lennar, as the practice complained of herein continues to cause delay to Lennar projects;
4. Impose any and all such other relief that the Commission may deem appropriate.

Respectfully submitted this 7th day of November, 2006.

Lennar Homes, Inc.


Beth Keating, Esquire
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
beth.keating@akerman.com

James M. Tobin
Law Office of James M. Tobin
Two Embarcadero Center, Suite 1800
San Francisco, CA 94111
(415) 732-1700

Attorneys for Lennar Homes, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and U.S. Mail First Class to James Meza, III c/o Nancy H. Sims, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, FL 32301-1556, and that a copy has also been provided to the persons listed below this 7th day of November, 2006:

Patrick Wiggins, Supervising Attorney
Florida Public Service Commission,
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Beth Salak, Director/Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

By: 

Beth Keating
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
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BellSouth Telecommunications, Inc.
Planning and Provisioning
3300 Okeechobee Road
Fort Pierce, Florida 34947

Office: 772 460-4452
Fax: 772 466-5651

September 21, 2006

Lennar Homes
1015 North State Road 7, Suite C
Royal Palm Beach, Florida 33411

ATTN: Jeremy Earle
Land Development Manager

RE: Echo Lake/Vero Beach, Florida

Dear Jeremy:

This letter is a follow-up to conversations you have had with Dave Brunisifski regarding BellSouth's service provisioning to the referenced project. Included in this letter is important information regarding BellSouth's requirements preparatory to our commencing work on this project. We thank you for considering BellSouth and look forward to working with your team.

Before BellSouth incurs costs to prepare the property for BellSouth service, we require an authorized representative of the developer or affiliated property owner to sign and return this letter. Once we receive the signed letter, BellSouth will commence planning and engineering activities when appropriate to serve the property. By signing this letter, you agree that:

- The developer or its affiliated property owner will grant to BellSouth, at no cost, easements for the placement of its cables and equipment within the property at mutually agreeable locations. To meet the estimated service dates of this project, easements must be granted and recorded by 10/31/2006.
- BellSouth will be provided with site plans and valid addresses for the project as soon as they are available. The plans will include lot lines and measurements.
- To the extent required by applicable laws and rules, or as otherwise agreed upon, the developer or its affiliated property owner will provide support structures necessary for the installation of BellSouth's facilities (for example, conduits, trenches, pullboxes, equipment space, backboards, electrical power, as applicable.)
- BellSouth will not be restricted in any way from providing any service that it desires to offer at the property.
- The developer, any affiliated property owner or other affiliated party, and any homeowners or condominium association, have not entered into, and do not plan to enter into, an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement (i.e., charges for services provided to residents are collected through rent, fees, dues, or other similar mechanism), with another service provider for communications services, including any voice, data, or video service.

EXHIBIT 1

In addition, if Lennar Homes or any affiliated party or homeowners or condominium association enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement (as defined above) with another service provider for communications services, including any voice, data, or video service, within 18 months of the date of first occupancy, Lennar Homes will be responsible to BellSouth for the then unrecovered costs associated with the engineering and installation of the initial facilities.

Please sign where indicated below and return the signed letter to Dave Brunisifski by 10/03/2006. By signing this letter, you agree that, if BellSouth proceeds with engineering and construction work and ultimately does not provide service to residents due to any of the conditions above not being met, or other conditions that limit BellSouth's ability to provide service, then you will reimburse BellSouth for the costs of such work. This cost recovery would be in addition to any other remedies available to BellSouth. You will promptly inform BellSouth if the conditions are not met or of any limiting conditions.

The person signing below must be a representative who is authorized to sign for your company and by signing below represents that he or she has that authority.

Thank you for choosing BellSouth. If you have any questions, please contact the engineer Dave Brunisifski at 772 460-4452.

Sincerely,

BellSouth Telecommunications, Inc.



For

Barbara J. Ball
Director - Planning and Provisioning

Accepted and Agreed By:

By: _____
(Authorized Representative)

Name: _____

Title: _____

Date: _____



BellSouth Telecommunications, Inc.
Planning and Provisioning
2021 So. Military Trail
Room 107
West Palm Beach, FL 33415

Office: 561-439-9110
Fax: 561-964-3499

09-07-2006
LENNAR HOMES
SOUTH FLORIDA LAND DIVISION

ATTN: DANIEL WILKINSON
561 371-9070

RE: COPPER CREEK

Dear Mr. Wilkinson:

This letter is a follow-up to conversations you have had with Jimmy Farless regarding BellSouth's service provisioning to the referenced project. Included in this letter is important information regarding BellSouth's requirements preparatory to our commencing work on this project. We thank you for considering BellSouth and look forward to working with your team.

Before BellSouth incurs costs to prepare the property for BellSouth service, we require an authorized representative of the developer or affiliated property owner to sign and return this letter. Once we receive the signed letter, BellSouth will commence planning and engineering activities when appropriate to serve the property. By signing this letter, you agree that:

- The developer or its affiliated property owner will grant to BellSouth, at no cost, easements for the placement of its cables and equipment within the property at mutually agreeable locations. To meet the estimated service dates of this project, easements must be granted and recorded by 11-01-2006.
- BellSouth will be provided with site plans and valid addresses for the project as soon as they are available. The plans will include lot lines and measurements.
- To the extent required by applicable laws and rules, or as otherwise agreed upon, the developer or its affiliated property owner will provide support structures necessary for the installation of BellSouth's facilities (for example, conduits, trenches, pullboxes, equipment space, backboards, electrical power, as applicable.)
- BellSouth will not be restricted in any way from providing any service that it desires to offer at the property.
- The developer, any affiliated property owner or other affiliated party, and any homeowners or condominium association, have not entered into, and do not plan to enter into, an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement (i.e., charges for services provided to residents are collected through rent, fees, dues, or other similar mechanism), with another service provider for communications services, including any voice, data, or video service.

EXHIBIT 2

In addition, if LENNAR HOMES or any affiliated party or homeowners or condominium association enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement (as defined above) with another service provider for communications services, including any voice, data, or video service, within 18 months of the date of first occupancy, LENNAR HOMES will be responsible to BellSouth for the then unrecovered costs associated with the engineering and installation of the initial facilities.

Please sign where indicated below and return the signed letter to Lance Mills by 09-22-2006. By signing this letter, you agree that, if BellSouth proceeds with engineering and construction work and ultimately does not provide service to residents due to any of the conditions above not being met, or other conditions that limit BellSouth's ability to provide service, then you will reimburse BellSouth for the costs of such work. This cost recovery would be in addition to any other remedies available to BellSouth. You will promptly inform BellSouth if the conditions are not met or of any limiting conditions.

The person signing below must be a representative who is authorized to sign for your company and by signing below represents that he or she has that authority.

Thank you for choosing BellSouth. If you have any questions, please contact the engineer Lance Mills at 772 460-4511.

Sincerely,

BellSouth Telecommunications, Inc.

Barbara J. Ball
Director - Planning and Provisioning

Accepted and Agreed By:

By: _____
(Authorized Representative)

Name: _____

Title: _____

Date: _____

BellSouth Telecommunications, Inc.
Planning and Provisioning
3300 Okeechobee Road
Fort Pierce, Florida 34947

Office: 772 460-4452
Fax: 772 466-5651

September 21, 2006

Lennar Homes
1015 North State Road 7, Suite C
Royal Palm Beach, Florida 33411

ATTN: Jeremy Earle
Land Development Manager

RE: Madeira Isles/Vero Beach, Florida

Dear Jeremy:

This letter is a follow-up to conversations you have had with Dave Brunisifski regarding BellSouth's service provisioning to the referenced project. Included in this letter is important information regarding BellSouth's requirements preparatory to our commencing work on this project. We thank you for considering BellSouth and look forward to working with your team.

Before BellSouth incurs costs to prepare the property for BellSouth service, we require an authorized representative of the developer or affiliated property owner to sign and return this letter. Once we receive the signed letter, BellSouth will commence planning and engineering activities when appropriate to serve the property. By signing this letter, you agree that:

- The developer or its affiliated property owner will grant to BellSouth, at no cost, easements for the placement of its cables and equipment within the property at mutually agreeable locations. To meet the estimated service dates of this project, easements must be granted and recorded by 10/31/2006.
- BellSouth will be provided with site plans and valid addresses for the project as soon as they are available. The plans will include lot lines and measurements.
- To the extent required by applicable laws and rules, or as otherwise agreed upon, the developer or its affiliated property owner will provide support structures necessary for the installation of BellSouth's facilities (for example, conduits, trenches, pullboxes, equipment space, backboards, electrical power, as applicable.)
- BellSouth will not be restricted in any way from providing any service that it desires to offer at the property.
- The developer, any affiliated property owner or other affiliated party, and any homeowners or condominium association, have not entered into, and do not plan to enter into, an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement (i.e., charges for services provided to residents are collected through rent, fees, dues, or other similar mechanism), with another service provider for communications services, including any voice, data, or video service.

EXHIBIT 3

In addition, if Lennar Homes or any affiliated party or homeowners or condominium association enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement (as defined above) with another service provider for communications services, including any voice, data, or video service, within 18 months of the date of first occupancy, Lennar Homes will be responsible to BellSouth for the then unrecovered costs associated with the engineering and installation of the initial facilities.

Please sign where indicated below and return the signed letter to Dave Brunisifski by 10/03/2006. By signing this letter, you agree that, if BellSouth proceeds with engineering and construction work and ultimately does not provide service to residents due to any of the conditions above not being met, or other conditions that limit BellSouth's ability to provide service, then you will reimburse BellSouth for the costs of such work. This cost recovery would be in addition to any other remedies available to BellSouth. You will promptly inform BellSouth if the conditions are not met or of any limiting conditions.

The person signing below must be a representative who is authorized to sign for your company and by signing below represents that he or she has that authority.

Thank you for choosing BellSouth. If you have any questions, please contact the engineer Dave Brunisifski at 772 460-4452.

Sincerely,

BellSouth Telecommunications, Inc.

Mark Alletichio

For Barbara J. Ball
Director - Planning and Provisioning

Accepted and Agreed By:

By: _____
(Authorized Representative)

Name: _____

Title: _____

Date: _____

HB 817

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A bill to be entitled
 An act relating to telecommunications carriers of last resort; amending s. 364.025, F.S.; providing definitions; providing that a telecommunications company obligated to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to customers in a multitenant business or residential property under certain circumstances; requiring the telecommunications carrier to notify the commission when it is relieved of the obligation to provide service; providing an effective date.

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

Section 1. Subsection (6) is added to section 364.025, Florida Statutes, to read:

364.025 Universal service.--

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

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

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

29 providers for a property owner or developer.

30 3. "Communications service" means those services or
 31 combinations of services provided to customers in a multitenant
 32 business or residential property, including, but not limited to,
 33 voice telecommunications service or voice replacement service,
 34 VoIP, broadband service, data service, information service, and
 35 cable service.

36 (b) A telecommunications company that is designated as an
 37 eligible telecommunications carrier by the commission pursuant
 38 to 47 C.F.R. s. 54.201 and is otherwise obligated by this
 39 section to serve as the carrier of last resort is not obligated
 40 to provide basic local telecommunications service to any
 41 customers in a multitenant business or residential property,
 42 including, but not limited to, apartments, condominiums,
 43 subdivisions, office buildings, or office parks, when the owner
 44 or developer thereof:

45 1. Permits only one communications service provider to
 46 install its communications service-related facilities or
 47 equipment, to the exclusion of an eligible telecommunications
 48 carrier, during the construction phase of the property;

49 2. Accepts or agrees to accept incentives or rewards from
 50 a communications service provider that are contingent upon the
 51 provision of any or all communications services by one or more
 52 communications service providers to the exclusion of the
 53 eligible telecommunications carrier;

54 3. Collects from the occupants or residents of the
 55 property charges for the provision of any communications
 56 service, provided by a communications service provider other

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57 than the eligible telecommunications carrier, to the occupants
 58 or residents in any manner, including, but not limited to,
 59 collection through rent, fees, or dues;

60 4. Restricts or limits an eligible telecommunications
 61 carrier's access to the property or enters into an agreement
 62 with a communications service provider that restricts or limits
 63 an eligible telecommunications carrier's access to the property
 64 or that grants incentives or rewards to such owner or developer
 65 contingent upon such restriction or limitation; or

66 5. Restricts or limits the types of services that may be
 67 provided by an eligible telecommunications carrier or enters
 68 into an agreement with a communications service provider which
 69 restricts or limits the types of services that may be provided
 70 by an eligible telecommunications carrier.

71 (c) If an eligible telecommunications carrier is relieved
 72 of its carrier of last resort obligation to provide basic local
 73 telecommunications service to the occupants or residents of a
 74 multitenant business or residential property pursuant to
 75 paragraph (a), the eligible telecommunications carrier shall
 76 notify the commission of that fact in a timely manner.

77 (d) Nothing in this subsection affects the limitations on
 78 commission jurisdiction imposed by s. 364.011 or s. 364.013.

79 Section 2. This act shall take effect July 1, 2006.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Government Efficiency Appropriations Committee

BILL: CS/CS/SB 142

INTRODUCER: Government Efficiency Appropriations Committee, Communications & Public Utilities Committee and Senators Fasano & Argenziano

SUBJECT: Telecommunication Rates

DATE: April 18, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Fav/CS
2.	Fournier	Johansen	GE	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute:

- Deletes the provision that allows an incumbent telecommunications company to elect to have its basic services treated as nonbasic.
- Requires a company to request from the Public Service Commission (PSC or commission) that its service quality requirements be treated the same as competitive local exchange companies.
- Allows the company to petition the commission, after parity is reached, for minimal regulatory treatment of its retail services, at a level no greater than that currently imposed on competitive local exchange telecommunications providers. In its petition, it must show and the commission must find that:
 - the change would be in the public interest;
 - the level of competition has been demonstrated to be sufficient and sustainable to allow the commission's regulation to be supplanted by competitive forces; and
 - the company has reduced its intrastate switched network access rates to its local reciprocal interconnection rate upon grant of the petition.
- Allows the incumbent telecommunications companies to change the prices for its nonbasic services on only one day's notice and to publicly publish price lists rather than file tariffs.
- Provides for definitions and creates an automatic waiver of the carrier-of-last-resort (COLR) obligation for a local exchange telecommunications company (LEC) under certain circumstances. Notice to the Public Service Commission (PSC or commission) in a timely manner is required for automatic waivers. The bill also allows a LEC to petition for waiver for good cause shown based upon the facts and circumstances. Notice to the building owner or developer is required.

- o Requires the commission to initiate rulemaking to implement this provision and maintains the commission's limitations of jurisdiction under ss. 364.011 and 364.013, F.S.

This bill amends sections 364.051 and 364.025 of the Florida Statutes.

II. Present Situation:

Section 364.051, F. S., provides for price regulation of telecommunications services. Subsection (5), relating to nonbasic services, provides that each company must maintain tariffs with the commission containing the terms, conditions, and rates for each of its nonbasic services, and may set or change, on 15 days' notice, the rate for each of its nonbasic services, except that a price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area. After another provider offers service in the exchange area, the price for any nonbasic service category may be increase in an amount not to exceed 20 percent within a 12-month period, and the rate shall be presumptively valid.

Subsection (6) provides that when an incumbent local exchange telecommunications company (ILEC) with more than one million access lines has achieved parity¹, as defined in s. 364.164(5), F.S., the ILEC's basic local telecommunications services may, at the company's election, thereafter be subject to the same regulatory treatment as its non-basic services. The company's retail quality of service requirements will thereafter be no greater than those applicable to competitive local exchange telecommunications companies (CLECs). However, the Florida Public Service Commission may, within 120 days of election by the ILEC, find that such relaxation of service quality standards is not warranted in some or all markets served by the ILEC. The commission is authorized to allow some relaxation of quality standards in some or all markets. The PSC may impose no service quality requirements for competitive local exchange telecommunications companies greater than those in effect as of January 1, 2003.

Subsection (7) provides that when an ILEC has met the condition of parity and has elected to have its basic services treated as non-basic, it may, at that time or thereafter, petition the commission for regulatory treatment of its retail services at a level no greater than that currently imposed on CLECs. The ILEC is required to show that granting the petition is in the public interest and it must further reduce its switched network access charges to a level equal to that of its intercarrier compensation rates. The commission must act on the petition within nine months and in its consideration of the petition must determine the extent to which the level of competition faced by the ILEC permits, and will continue to permit, the regulatory treatment of ILEC retail service regulated on the same basis as those of CLECs. The commission is prohibited from increasing the level of regulation on CLEC retail services beyond that which is in effect on the date of the ILEC petition.

Section 364.025, F.S., provides for universal telecommunications service. The term "universal" service" is defined as an evolving level of access to telecommunications services that, taking into

¹Section 364.164 (5), F.S., says that the term "parity" means that the local exchange telecommunications company's intrastate switched network access rate is equal to its interstate switched network access rate in effect on January 1, 2003, if the company has more than 1 million access lines in service. If the company has 1 million or fewer access lines in service, the term "parity" means that the company's intrastate switched network access rate is equal to 8 cents per minute.

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. Subsection (1) provides Legislative intent that universal service objectives be maintained after the local exchange market is opened to competitively provided services. Each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable period to any person requesting such service within the company's service territory until January 1, 2009. This provision is generally referred to as the "carrier-of-last-resort" (COLR) obligation.

In Interim Project Report 2006-106², committee staff reviewed the broad question of access by communications companies to customers in multitenant environments, which was argued impeded competition. The report addressed the broad issues of property, carrier-of-last-resort, and customer protection. The COLR obligation becomes an issue when a tenant may request service from the LEC who is obligated to provide the service but cannot gain physical access to rights-of-way or closets. The LEC must deny the customer service. The report suggested a course of action to remedy the conundrum by seeking recourse with the commission. On December 16, 2005, BellSouth filed a Petition for Waiver of Rules 25-4.066 and 25-4.067, Florida Administrative Code and to Initiate Rulemaking.³ The most recent action has been to waive the time the commission has to make its determination. Current law does not provide for waiver of the carrier-of-last-resort obligations. However, s. 364.01(4)(f), F.S., provides the commission with authority to eliminate rules and regulations that delay or impair the transition to competition.

III. Effect of Proposed Changes:

Section 1 amends subsections (5),(6), (7), and (8) of s. 364.051, F.S., relating to nonbasic services and price regulation. The bill allows an ILEC at its option to publicly publish the terms, conditions, and rates for each of its nonbasic services rather than file tariffs and to change those terms, conditions, and rates on 1 day's notice. The Public Service Commission may establish guidelines for what is to be included when a company elects to publicly publish its terms, conditions, and rates for nonbasic services.

Subsection (6) is amended to remove the ILEC's ability to elect that its basic local telecommunications service be subject to the same regulatory treatment as its nonbasic services. The bill further requires that a company that wants to reduce its service quality requirements must file a request with the commission that its retail service quality requirements be equal to those requirements that are imposed on CLECs unless the commission determines otherwise within 120 days.

Subsection (7) is amended to allow an ILEC that has reached parity under s. 364.164(5), F.S., to petition the commission for regulatory treatment of its retail service at a level no greater than the regulatory treatment imposed upon CLECs. Section 364.337, F.S., provides for the regulation of CLECs, requiring certification by the commission and providing for basic local

² Report 2006-106, *Review of Access by Communications Companies to Customers in Multitenant Environments*, Committee on Communications and Public Utilities, September 2005.

³ Public Service Commission Docket No. 050922-TL.

telecommunications standards. In addition to showing that granting the petition is in the public interest and reducing its intrastate switched network access rates to its local reciprocal interconnection rate upon grant of the commission, the company must demonstrate that the competition faced by the company is sufficient and sustainable to allow such competition to supplant regulation by the commission. The provision that the commission shall determine the extent to which the level of competition faced by the ILEC permits and will continue to permit the company to have its retail services regulated no differently than the CLECs are being regulated is deleted.

Section 2 creates a new subsection (6) of s. 364.025, F.S., to provide definitions of the terms "owner or developer," "communications service provider," and "communications service" to be used in the subsection. A local exchange telecommunications company (LEC) having the COLR obligation is not obligated to provide basic local telecommunications service to any customers in a multitenant business or residential property, including apartments, condominiums, subdivisions, office buildings or office parks, when the owner or developer:

- Permits only one communications service provider to install its communications service related facilities or equipment to the exclusion of the LEC during the construction phase of the property;
- 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 LEC;
- 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 LEC, to the occupants or residents in any manner, including collection through rent, fees or dues; or
- 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 LEC's access to the property.

The LEC relieved of its COLR obligation under the provision stated above must notify the commission of that fact in a timely manner.

A LEC may seek a waiver of its COLR obligation if the commission finds good cause shown based on the facts and circumstances of provision of service to multitenant business and residential property when it is not automatically relieved. Notice must be given by the company to the relevant building owner or developer. The commission has 90 days to act on the petition. The commission is to initiate rulemaking to implement the provision.

1) If the conditions for automatic waiver cease to exist, 2) the owner or developer requests in writing that the LEC make service available to customers at the property and confirms in writing the conditions no longer exist at the property, and 3) no other arrangements have been or plan to be arranged for service, then the COLR obligation again applies to the LEC. The LEC may require 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. The LEC is allowed a reasonable time following the request from the owner or developer to make arrangement for service availability. If any conditions for automatic waiver again exist on the property, the waiver again applies.

The commission's limitations of jurisdiction under ss. 364.011 (long distance broadband, VoIP, and wireless) and 364.013 (broadband and VoIP), F.S., remain effective.

Section 3 provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

BellSouth Telecommunications, Inc.
Museum Tower Building
150 West Flagler Street
Suite 1910
Miami, FL 33130

sharon.liebman@bellsouth.com

Sharon R. Liebman
Senior Attorney

305 347 5570
Fax 305 375 0209

August 3, 2006

VIA E-MAIL, FACSIMILE AND U.S. MAIL
415.732.1703

James Tobin
Law Office of James M. Tobin
Two Embarcadero Center, Suite 1800
San Francisco, CA 94111

Re: Lennar – 360 Condominium

Dear Jim:


Thank you for your July 25 letter, which states that the homeowner's associations have entered into "bulk service agreements covering only CATV services, and certain marketing arrangements related thereto." However, your July 25th letter does not fully address several matters that are important to BellSouth's provisioning decisions. Accordingly, we ask for a prompt and detailed written response from Lennar for each of the following questions:

- Please specifically confirm that the "bulk" agreements (for services to be provided and paid for via the association and association fees) entered into with Hotwire or any other provider do not include data service. Hotwire previously informed BellSouth in writing that it has "bulk cable and Internet" arrangements at 360 Condominium, so we would like specific confirmation from Lennar on this point.
- Please provide specific information about the nature of the marketing agreement(s). Are they exclusive marketing agreement(s)? What services do they cover (cable, data and/or voice)? What type of marketing will be done on Hotwire's behalf? How will the agreement(s) affect/limit BellSouth's ability to market its services on site to customers (if at all)?

As referenced above, BellSouth needs the requested information to make provisioning decisions for 360 Condominium.

We look forward to your prompt response.

Sincerely,


Sharon Liebman

cc: Beth Keating (via e-mail – beth.keating@akerman.com)

EXHIBIT 4

BellSouth Telecommunications, Inc.
Museum Tower Building
150 West Flagler Street
Suite 1910
Miami, FL 33130

sharon.liebman@bellsouth.com

Sharon R. Liebman
Senior Attorney

305 347 5570
Fax 305 375 0209

September 8, 2006

VIA E-MAIL, FACSIMILE AND U.S. MAIL
415.732.1703

James Tobin
Law Office of James M. Tobin
Two Embarcadero Center, Suite 1800
San Francisco, CA 94111

Re: Lennar - 360 Condominium

Dear Jim:

In follow-up to our September 1 conversation, this letter responds to your September 1 e-mail to me regarding our respective clients' September 1 meeting. Contrary to the statement in your e-mail, we do not believe that positions taken by BellSouth at the meeting contradict our August 14 letter stating that BellSouth plans to place facilities to meet the anticipated demand for voice services from residents at 360 Condominiums.

To clear up any confusion, Harold Elosegui called Mr. Grossman on September 5 to discuss his questions about the meeting. Outlined below are responses to the questions in Mr. Grossman's September 1 e-mail to you as well as comments regarding subsequent conversations between Mr. Grossman and Mr. Elosegui.

- (1) At the meeting, Mr. Grossman explained that the agreement with Hotwire is for cable tv service only. However, you previously informed us that, while the "bulk" agreement with Hotwire covers cable tv only, certain marketing agreements with Hotwire also exist.
- (2) BellSouth is not planning to offer DSL at 360 Condominiums. BellSouth has no obligation to do so, and we did not indicate in our August 14 letter that we would do so. As discussed, if Lennar wishes to provide any additional relevant information to us that may impact this decision, please let us know.
- (3) Mr. Elosegui spoke to Mr. Grossman about the availability of pathways for BellSouth's riser cable and network terminating wire (NTW), which will run between the riser closets and the living units. Mr. Grossman suggested a site visit including Mr. Grondin and BellSouth representatives, which took place on September 6. Although Mr. Grossman indicated that conduit for BellSouth's NTW was available, the site visit confirmed that the conduit is already full. If conduit will not be made available for BellSouth's use, the only other option seems to be BellSouth's use of the NTW that has already been placed in the conduit, whether on agreeable terms or via transfer of ownership. If conduit is not provided or BellSouth cannot use the existing NTW, for reasons outside of BellSouth's control, BellSouth will have no means to provide service extending to the living units. Mr. Elosegui spoke to Mr. Grossman on September 6 about the NTW issue, and Mr. Grossman

EXHIBIT 7

advised that he would respond to Mr. Elosegui soon about how Lennar proposes to address this issue. We need a response on this issue as soon as possible, as BellSouth cannot move forward to place facilities until the issue is resolved.

- (4) The September 6 site visit showed that empty pathways for riser cable exist. Based upon Mr. Elosegui's conversation with Mr. Grossman on September 6, we assume that BellSouth can use the pathways for its riser cable. If this is incorrect, let us know.
- (5) Regarding service to the east tower and 2 townhouse buildings, BellSouth did not indicate at the meeting that BellSouth has no plans to place facilities to meet anticipated customer demand for voice service at those buildings. The message delivered at the meeting was simply that BellSouth had not devised plans for placement of facilities to those buildings yet. The BellSouth representative responsible for preparing those plans (Mr. Elosegui) was not at the meeting, which had been scheduled to discuss a different issue – the location of the service point at the property line. Mr. Elosegui requires further information about the infrastructure at/to the buildings to prepare those plans. Mr. Elosegui had left messages for Mr. Grondin to discuss this issue but had not yet heard back. Mr. Elosegui re-called him on September 6, and Mr. Grondin suggested a meeting next week to discuss the infrastructure.
- (6) We understand that the west tower and west townhouse buildings are expecting first residents in late (December) 2006, and that the east tower and east townhouse buildings are expecting first residents in/about the 2nd quarter of 2007. If this is incorrect, please let us know.

We hope that the above information clears up any mistaken impressions from the September 1 meeting. If you have any questions, please let me know.

Sincerely,



Sharon Liebman



David J. Keefe
Chief Executive Officer
One Batterymarch Park, Suite 405
Quincy, MA 02169
Office (617) 786 8800 x100
Fax (617) 786 8803
dkeefe@atlanticbb.com

October 20, 2006

The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein
Commissioners
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

*Re: Application for Consent to Transfer of Control Filed By AT&T Inc. and
BellSouth Corporation WC Docket No. 06-74*

Dear Commissioners Copps and Adelstein:

I am writing to thank you for your leadership at the Federal Communications Commission and for your efforts to ensure a full and fair public process with respect to the Commission's review of the pending application for transfer of control filed by AT&T and BellSouth.

Atlantic Broadband is a relatively small cable company serving approximately 260,000 customers in the United States, including approximately 85,000 customers in Southern Florida communities where BellSouth is the incumbent LEC. Despite the substantial differences in size and resources, we compete vigorously and successfully against BellSouth. We are successful in this market because we continually upgrade and improve our suite of broadband products, which now includes video, residential Internet with speeds up to 5 mbps, video on demand, Hi Def video services and, most recently, VoIP phone service. We win customers, including multiple dwelling units, in this fiercely competitive market because we offer better products and value than the competition.


BellSouth, by contrast, uses its power in the phone market to force broadband services on customers. 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 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. We anticipate that the new and even larger AT&T will disregard fair play in the market to an even greater degree.

We rely on our federal regulators to provide an open and fair review of major transactions affecting our industry. We commend you for taking a stand and insisting

EXHIBIT 8

that the Commission open to public scrutiny the eleventh hour deal proposed by AT&T. As you review this proposed transaction, we request that you as a condition of your approval that the new company not tie the provision of telephone service to the purchase of other services.

Sincerely,


David J. Keefe
Chief Executive Officer
dkeefe@atlanticbb.com



BellSouth Telecommunications, Inc.
600 N.W. 79 Avenue
Room 336
Miami, FL 33126

305 260 8250
Fax 305 262 4978

June 6, 2006

VIA FACSIMILE AND U.S. MAIL

[Name and Address]

Re: [Building Location]

Dear [Name]:

We understand that [Building] is a condominium development under construction by [Company] at the above address. We also understand that the development will include [#] units and that first residents are anticipated in the third quarter of 2006.

In late April 2006, you informed us that [Company] and/or the condominium association has entered into arrangements with [Cable Company] for the provision of service to residents at [Building]. BellSouth was informed that the agreement with [Cable Company] is a "bulk" agreement for data and video service. As we understand it, under the bulk agreement, the developer or the condominium association contracts with [Cable Company] for the services, and the developer or association will pay [Cable Company] for the services and then collect payment for the services from residents through fees. So, all residents will receive these services from [Cable Company].

We were surprised to receive this information, as, in our many communications about this development since 2004, [Company] never provided information about anticipated or signed agreements with other communications providers to BellSouth. As this information may have affected BellSouth's provisioning plans, BellSouth believes that non-provision of the information during those conversations materially misrepresented the circumstances.

Nevertheless, in light of the provisioning work BellSouth has done for [Building] and the quickly approaching first move-in dates for residents, BellSouth will pursue plans to provide voice service to the condominium. However, BellSouth reserves all of its rights related to the failure of developer representatives to disclose to BellSouth in advance of such work that such agreements were or would be entered into. Also, for future developments, please be aware that the presence of these types of arrangements with alternate communications providers or infrastructure providers may affect BellSouth's provision of service to the developments. [Company] must provide information about such arrangements early-on, during advance conversations with BellSouth regarding provisioning, and, in considering whether to enter into such arrangements, should consider that they may affect provisioning by BellSouth. If you have any questions, please let me know.

Yours truly,

A handwritten signature in black ink that reads 'F. M. Valdez'.

Frank M. Valdez
Building Industry Consultant



COPIY

October 12, 2006

Mr. Lance Mills
Specialist – Outside Plant Engineering
BellSouth Telecommunications, Inc.
3300 Okeechobee Blvd. – Room 237
Fort Pierce, FL 34947

Dear Mr. Mills:

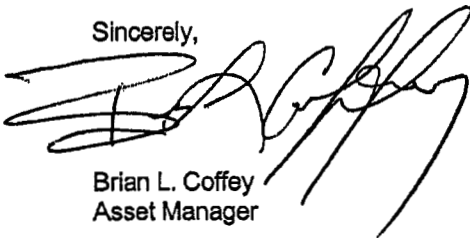
I am writing this letter in reference to the Bent Creek Development in Ft. Pierce, FL. Phone service for this development was supposed to be provided by August 15th, 2006. Service is not yet available at the time of this letter.

It was discovered in July that new lines would need to be laid down Hartman and across Peterson. I was assured, at the time, there would be no delay in the providing of service. In later discussions with James Farless, I was made aware that service would not be able to be provided by the August 15th date due to delays in garnering a permit from St. Lucie County. I continued to have discussions with Mr. Farless over the next two months trying to formulate a date for service. In a conversation with Mr. Farless on September 28th, 2006, I was told that the final work would be completed by October 10th, 2006. After realizing that I was upset that BellSouth would now be 2 months late with providing service, Mr. Farless told me it was not a problem yet as "no one had requested service."

Several new homeowners at our Bent Creek development requested service on October 11, 2006 and were told no service was available. This is unacceptable. Not only is BellSouth 2 months late with providing service, now there are irate homeowners who cannot get phone service when they need it. This can result in legal action as promises of service were made and not provided. Please expedite any and all resources to provide service immediately in order to avoid these legal issues that will result in assessments filed against BellSouth.

With greater frequency, Lennar is seeing municipalities requiring all development to be completed before building permits are issued. In order to complete development, all dry utilities will need to be set and ready whether homeowners have moved in or not. If BellSouth is not able to provide the proper service, perhaps Lennar will need to look at providers who will.

Sincerely,



Brian L. Coffey
Asset Manager

Cc: Allan Gill, Lennar Homes, Inc.
Kevin Grossman, Lennar Communication Ventures

EXHIBIT 9





Lance Mills
Outside Plant Manager
BellSouth Telecommunications, Inc.
Planning and Provisioning
2021 So. Military Trail, Room 107
West Palm Beach, FL 33418

October 26, 2006

Re: Copper Creek Subdivision

Dear Mr. Mills

I am sending you this letter in response to your email dated October 18, 2006. With the exception of a few minor changes, Lennar does not have a problem with the letter in question and will execute once revisions are complete. Please find comments to the letter below:

- " The developer or its affiliated property owner will grant to BellSouth, at no cost, easements for the placement of its cables and equipment within the property at mutually agreeable locations. To meet the estimated service dates of this project, easements must be granted and recorded by 11-1-06". **To date, Lennar has not received the desired easement locations by BellSouth. Lennar should have received the desired locations prior to the plat recordation. As a result, all additional easements will now be an additional Lennar expense to process. BellSouth shall reimburse these cost, but Lennar will not consider a third party to prepare and process additional easements other than Lennar's consultant.**
- "BellSouth has been provided with site plans and valid addresses for the project as soon as they were available. The plans include lot lines and measurements".
- "the developer or its affiliated property owner will provide *support structures*??? necessary for the installation of BellSouth's facilities" - please clarify support structures.
- "BellSouth will not be restricted by the developer from providing service that it desires to offer at the property.
- Omit the last bullet point paragraph and the following paragraph. These two paragraphs are not needed in order for BellSouth to meet its planning and construction efforts.

We have been informed that the letter and other related action by BellSouth is being challenged at the state's Public Service Commission. Please be advised Lennar is prepared to sign the letter but respectfully request it be re-drafted with the changes I have noted above. BellSouth's refusal to go forward with planning and construction of facilities to serve Copper Creek threatens the economics and has the potential for damage to Lennar's project. We require your response no later than **Wednesday, November 1st, 2006**. Failure to respond will serve as indication that BellSouth does not intend to meet its obligation to provide service to the Copper Creek subdivision. Please let me know if you have any questions.

Daniel Wilkinson
Lennar Homes Inc.
South Florida Land Division
8136 Okeechobee Blvd.
West Palm Beach, FL 33411

EXHIBIT 10



BellSouth Telecommunications, Inc.
Planning and Provisioning
3300 Okeechobee Road
Fort Pierce, FL 34947

Office: 772 460-4511
Fax: 772 468-3501

November 1, 2006

VIA FACSIMILE AND U.S. MAIL,
CERTIFIED - RETURN RECEIPT
561-333-2474

Daniel Wilkinson
Lennar Homes, Inc.
South Florida Land Division
8136 Okeechobee Blvd.
West Palm Beach, FL 33441

Re: Copper Creek Subdivision

Dear Mr. Wilkinson:

Thank you for your October 26, 2006 letter, which provides comments to the September 7, 2006 letter BellSouth sent to you for Lennar's signature regarding Copper Creek subdivision. Your comments are addressed below:

- (1) There appears to be a misunderstanding about the information provided by BellSouth in advance of the recording of the plat. On 6/16/2006, Mr. Farless of BellSouth provided to Brian Coffey, the Lennar project manager for this subdivision at that time, a marked-up copy of the 5/9/2006 site plan that Mr. Coffey previously provided to him. The markings show the locations for BellSouth-requested conduit road crossings and the proposed location for an easement for the BellSouth cabinet (next to the Community Center, and marked "Proposed Telco Easement" on the marked-up plan). Mr. Farless also provided a second copy of the marked-up plan directly to you on 7/27/06 at your request. Our review of public records shows that the plat was recorded on 7/3/2006, but it does not appear to include the easement for the cabinet. As suggested by your letter, the easement for the cabinet will, if not granted via the plat, need to be granted to BellSouth by separate instrument. BellSouth has a standard form of easement that it will propose to you for this purpose. As we understand part 1 of your letter, Lennar is asking that BellSouth change the September 7 letter to include an agreement by BellSouth to pay Lennar's costs related to granting the easement for the cabinet. We believe your request is based upon the misperception that BellSouth did not provide location information to Lennar prior to plat recording, do not believe that change is appropriate, and we will not agree to pay Lennar's expenses associated with granting the easement.

EXHIBIT //

- (2) Lennar proposes a change to the letter to reflect that BellSouth has been provided with site plans and valid addresses for the project. We did receive the 5/9/2006 site plan from Mr. Coffey, so we can make the change as it relates to the site plan. But, we have not yet received the addresses for the project from Lennar, so we cannot make the change requested as it relates to the addresses until the information is provided to us.
- (3) For purposes of this subdivision, the term "support structures" means conduit crossings under paved roads. We agree to change the letter to refer to "conduit crossings."
- (4) We agree to change the letter to say: BellSouth will not be restricted by *the developer, its affiliated property owner or any developer-controlled homeowners' association* from providing service that it desires to offer at the property.
- (5) We do not agree to remove the last bullet point and the following paragraph from the letter. Without additional information in support of this request, BellSouth assumes the reason for Lennar's proposed removal of this language from the letter may be that Lennar has entered into or plans to enter into the referenced type of arrangements with other providers. If that is the case, we certainly understand Lennar's indication that it will not sign the letter including the language. But, we need information from Lennar regarding the types of arrangements that it or the association has entered into or plans to enter into with alternate providers to assess how those arrangements may impact BellSouth's provision of service. We are not asking for confidential information about the terms of any agreements with alternate providers. Rather, we are asking for general information about the nature of any such arrangements, for example, are they bulk agreements, exclusive service agreements or exclusive marketing agreements for voice, cable and/or data services?

We are responding by the November 1, 2006 response date specified in your letter. However, had BellSouth failed to respond by this unilaterally created "deadline," it would not have constituted evidence (as suggested in your letter) that BellSouth did not intend to meet any obligation that may exist to provide service at the subdivision.

We appreciate your response to the above items as soon as possible so that we may proceed accordingly. If you have any questions, please feel free to contact Lance Mills to discuss them (772.460.4511).

Sincerely,

Mark Ablaticchio

Cc: Lance Mills