

ORIGINAL

060763-TL



Voice | Data | Internet | Wireless | Entertainment

**EMBARQ™**

Embarq Corporation  
Mailstop: FTLHO0102  
1313 Blair Stone Rd.  
Tallahassee, FL 32301  
EMBARQ.com

November 20, 2006

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

RECEIVED 0100  
06 NOV 20 PM 4:54  
COMMISSION  
CLERK

RE: Embarq Florida, Inc.'s Petition for Waiver

Dear Ms. Bayó:

Enclosed for filing on behalf of Embarq Florida, Inc., are the original and fifteen (15) copies of:

- Embarq's Petition for Waiver
- Redacted- Affidavit of Michael L. DeChellis and Exhibits
- Redacted- Affidavit of Kent Dickerson and Exhibits
- Request for Confidential Classification

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850/599-1560.

Sincerely,

Susan S. Masterton

Enclosure

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Susan S. Masterton  
COUNSEL  
LAW AND EXTERNAL AFFAIRS- REGULATORY  
Voice: (850) 599-1560  
Fax: (850) 878-0777  
DOCUMENT NUMBER-DATE

10656 NOV 20 06

FPSC-COMMISSION CLERK

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically and Overnight Mail (\*) or hand delivery (\*\*) this 20<sup>th</sup> day of November, 2006 to the following:

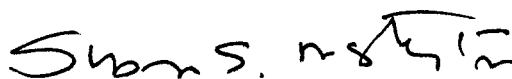
Florida Public Service Commission  
Beth Salak (\*\*)  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Florida Public Service Commission  
Patrick Wiggins (\*\*)  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Florida Public Service Commission  
Rick Moses (\*\*)  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Sanjay Kuttemperoor, Esquire (\*)  
c/o Treviso Bay Development, LLC  
5150 Tamiami Trail North, Unit 207  
Naples, FL 34103-2818

V. K. Development Corporation (\*)  
19275 W. Capitol Drive, Suite 100  
Brookfield, WI 53045



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Susan S. Masterton

# ORIGINAL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by Embarq Florida, Inc. under section 364.025(6)(d), Florida Statutes, for relief from its carrier of last resort obligations	Docket No. <i>060763-TL</i> Filed: November 20, 2006
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### EMBARQ FLORIDA, INC.'S PETITION FOR WAIVER

Embarq Florida, Inc. ("Embarq"), in accordance with section 364.025(6)(d), Florida Statutes, files this petition for relief from its carrier of last resort obligations for the multitenant property known as Treviso Bay in Collier County Florida. In support of this Petition, Embarq states as follows:

#### Parties

1. Embarq is a certificated, price-regulated incumbent local exchange company regulated by the Commission under chapter 364, Florida Statutes.
2. As an incumbent local exchange company, Embarq is subject to carrier of last resort (COLR) obligations under section 364.025, Florida Statutes.
3. Embarq's principal place of business in Florida is 555 Lake Border Drive, Apopka, Florida. Pleadings and processes should be served on:

Susan S. Masterton  
Embarq  
1313 Blair Stone Road  
Tallahassee, FL 32301  
(850) 599-1560 (phone)  
(850) 878-0777 (fax)  
[susan.masterton@embarq.com](mailto:susan.masterton@embarq.com)

4. The property for which Embarq seeks COLR relief is known as Treviso Bay and is located on the southwest side of the Tamiami Trail approximately three miles

northwest of the intersection with Collier Boulevard (a/k/a Isles of Capri Road), Sections 29, 30, 31 and 32, Township 50 South, Range 26 East, Collier County, Florida.

5. The developer for Treviso Bay is V. K. Development Corporation. To the best of Embarq's knowledge, the contact information for the developer is:

V. K. Development Corporation  
19275 W. Capitol Drive, Suite 100  
Brookfield, WI 53045

Sanjay Kuttemperoor, Esquire  
c/o Treviso Bay Development, LLC  
5150 Tamiami Trail North, Unit 207  
Naples, FL 34103-2818  
[sanjay@vkdevelopment.com](mailto:sanjay@vkdevelopment.com)

As reflected in the Certificate of Service, Embarq is providing the developer a copy of this Petition, as well as a copy of section 364.025, F.S., (Attachment No. 3 to this Petition) by electronic and overnight mail.

#### Jurisdiction

6. The Commission has jurisdiction to grant the relief requested in this Petition under section 364.025(6)(d), Florida Statutes. Specifically, section 364.025(6)(d) allows an ILEC to seek a waiver of its COLR obligations for "good cause shown based on the facts and circumstances of provision of service to the multitenant business or residential property."<sup>1</sup> Under the statute, the ILEC is to file a petition with the Commission to initiate its request for COLR relief. The Commission must act on a petition within 90 days of its filing.

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<sup>1</sup> Under section 364.025(6)(b) a multitenant business or residential property includes, but is not limited to, "apartments, condominiums, subdivisions, office buildings, or office parks."

7. Section 364.025(6)(b) sets forth four circumstances that entitle an ILEC to automatic relief from its carrier of last resort obligations, where the developer, relative to a specific development:

1. Permits only one communications service provider to install its communications service-related facilities or equipment, to the exclusion of the local exchange telecommunications company, during the construction phase of the property;

2. Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the local exchange telecommunications company;

3. Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the local exchange telecommunications company, to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or dues; or

4. Enters into an agreement with the communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the local exchange telecommunications company's access to the property.

“Communications service” is defined in subsection 364.025(6)(a)3. to mean “voice service or voice replacement service through the use of any technology.”

8. The waiver petition process set forth in paragraph (d) of subsection 364.025(6) clearly contemplates that additional circumstances beyond those enumerated in paragraph (b) may justify relieving an ILEC of its COLR obligations.

#### Background

9. COLR obligations originally were established when ILECs were the monopoly providers of local telecommunications service in their service territory. The COLR

obligations made sense in a monopoly environment where rates were regulated and where customers received local service from one provider or not at all. In that environment the costs of providing service in high cost areas could be distributed over an ILEC's customers throughout its service territory and among all of the monopoly services the ILEC provided, keeping the ILEC's rates low and ensuring a fair profit.

10. Amid the competitive pressures now bearing on the traditional telecommunications service model, some property owners and developers have seized on an opportunity to take advantage of competition to increase their revenues by soliciting exclusive arrangements for the provision of telecommunications, broadband and video services to the multitenant units or homes in a specific multitenant property, contingent upon the chosen provider entering into some sort of "profit-sharing" arrangement with the owner or developer. These "profit-sharing" arrangements generally take the form of door fees or a percentage of the monthly recurring revenues charged to the captive residents of the multitenant property.

11. Some developers want to have their cake and eat it too. That is, some are cutting exclusive deals with broadband and video service providers to increase their profits by locking out competition for these services from other service providers without regard to the choices the end user occupants may actually desire. Further, as they have nothing to lose, they want to force the ILEC to construct facilities under their legally-mandated COLR obligation to provide voice service for that limited number of customers--no matter how small that number is or where in the development they might be scattered--who would subscribe to ILEC landline voice service.

12. Particularly, some owners and developers have seen opportunities to enter into exclusive profit-sharing arrangements with alternative providers for bulk provisioning of broadband and video services, while seeking to exploit the ILEC's carrier of last resort obligation to provide only voice services within the development merely as a backup to their profit-driven choice of alternative communications-platform provider. Where such situations exist, ILECs may still desire to serve such developments apart from a mandated COLR obligation, when they have a reasonable expectation of recovering their costs. This is especially true where the developer-chosen broadband provider also offers a VoIP product. However, where the ILECs are limited to marketing only voice services, in most instances it will be virtually impossible for the ILEC to recover its costs because of the widely available access to VoIP services via their broadband internet access and, also the availability of multiple wireless services providers.

13. Such situations have multiple negative potential outcomes for everyone but the developer. Occupants are effectively limited to no choice for broadband and video service providers (unless they irrationally are willing to pay twice when they are already paying for those services in their homeowner's association dues or rent). ILECs forced to make wasteful legally-mandated investments in their facilities would be forced over time to pass these costs on in some manner in order to recover their costs. The COLR obligation was never contemplated to be used as leverage to benefit property owners or others who control access to property in a competitive telecommunications environment

14. The competitive environment and the actions by owners and developers to profit from their control over access to their property by entering into exclusive arrangements with alternative providers formed the backdrop for the 2006 amendments to section

364.025, Florida Statutes, that automatically relieve ILECs of their carrier of last resort obligations under certain circumstances and otherwise allow ILECs to petition for relief when “good cause” is found by the Commission to exist. Clearly, it is exactly for the types of situations and reasons described above that the Florida Legislature included the opportunity for ILECs to be relieved automatically of the outmoded COLR obligation or to seek a waiver as Embarq is doing in this Petition.

15. Embarq is filing this Petition for relief from its carrier of last resort obligations for the Treviso Bay multitenant property because the facts and circumstances surrounding Embarq’s provision of service to the Treviso Bay constitute “good cause” as contemplated in section 364.025(6)(d).

Facts and circumstances justifying relief

16. In Treviso Bay, the developer has entered into bulk arrangements for the provision of data and video services to the development that effectively will exclude Embarq from marketing its data services to residents of the development. Conversely, the developer has not entered into an exclusive arrangement with Embarq or any other provider for voice services. Because residents will receive their data and video services exclusively from a single provider and are free to choose any provider for voice, including the provider that provides their data or video service, it is extremely likely that Embarq will not be the voice provider of choice for a significant number of the residents of the Treviso Bay development.

17. Specifically, the developer has informed Embarq that it executed a bulk agreement with Time Warner for data and video services. The bulk agreement with Time Warner consists of a base offering of high speed data and video services for the Treviso



Bay Community, with the fees for these services included in the homeowners' association dues of the residents. In subsequent communications, the developer confirmed that this agreement would be assumed by Comcast, who will be the cable service provider in the area after a recent territory trade with Time Warner. Comcast has an alternative product allowing it to provide digital voice services over its high speed data or video facilities and actively markets this product in Southwest Florida, including Collier County. The affidavit of Michael J. Dechellis, included with this Petition as Attachment No. 1, further details the discussions Embarq has had with Treviso Bay Development LLC, the arrangements the developer has made with other providers as they have been communicated to Embarq, the limited nature of the services the developer is seeking from Embarq, and the availability of alternative voice service providers to serve the development.

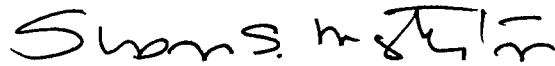
18. Given the bulk agreement with an alternative provider for the provision bulk and data services to Treviso Bay residents billed through homeowners' association dues, the likelihood that a significant number of Treviso Bay residents will choose a provider other than Embarq for their voice services will prevent Embarq from recovering its costs for placing facilities to serve the development as the carrier of last resort. The affidavit of Kent W. Dickerson, included with this petition as Attachment No. 2, describes the facilities it would be necessary to construct under Embarq's COLR obligation and the financial impact on Embarq if it is required to act as the COLR to Treviso Bay.

19. The existence of the exclusive data and video arrangements and the availability of an alternative voice product from the exclusive data and video provider, which reduce the likelihood that Embarq will be able to obtain a sufficient number of voice customers to

recoup the investment costs that it would incur to place the facilities necessary to serve Treviso Bay, constitute "good cause" to relieve Embarq of its carrier of last resort obligations for the development under section 364.025(6)(d).

WHEREFORE Embarq requests that the Commission grant Embarq's Petition to be relieved of its carrier of last resort obligations to serve Treviso Bay, effective immediately upon issuance of the Commission's order.

Respectfully submitted this 20th day of November 2006.



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Susan S. Masterton  
Embarq Florida, Inc.  
1313 Blair Stone Road  
Tallahassee, FL 32301  
(850) 599-1560 (phone)  
(850) 878-0777 (fax)  
[susan.masterton@embarq.com](mailto:susan.masterton@embarq.com)



September 1, 2006

Exhibit No. MJD - 2

Treviso Bay Development, LLC  
Attn: Sanjay Kutemperoor, Esq.  
19275 W. Capitol Drive  
Brookfield, WI 53045

RE: Treviso Bay

Dear Mr. Kutemperoor:

As a follow-up to discussions regarding Embarq's provisioning of service to Treviso Bay, following is information on the steps that need to be completed before we can begin construction. We thank you for considering Embarq and look forward to working with your team.

First, before Embarq incurs costs to prepare the property for Embarq services, an authorized representative of the developer or affiliated property owner must provide approval for Embarq to construct facilities to serve the development and agreeing to the below terms and conditions by signing and returning this agreement. Once we receive the signed letter authorizing Embarq to provide services to the development, Embarq will begin the planning and engineering activities necessary to serve the property.

**Terms and Conditions:**

- Treviso Bay, any affiliated property owner or other affiliated party, and any homeowner or condominium association will not restrict Embarq in any way from providing any service over its facilities that it elects to offer at the property.
- Treviso Bay, any affiliated property owner or other affiliated party, and any homeowner 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 any voice or data service.
- Treviso Bay agrees to promptly inform Embarq if the requirements herein are not met or if any limiting conditions have been imposed on Embarq's provisioning of services to the development.

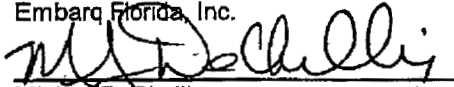
- If Embarq proceeds with engineering and construction work and is prevented from providing service to residents or such facilities are underutilized or terminated as a result of a violation of the above terms, Treviso Bay will be responsible for reimbursing Embarq for its engineering and construction costs in accordance with Embarq's tariffs.

Please sign below indicating concurrence in the terms and conditions and return an original signed copy to me at the above address. The person signing below must be a representative who is authorized to sign for the company and by signing below represents that he or she has that authority.

Again, thank you for considering Embarq. If you have any questions, please do not hesitate to contact me at 407-889-6465.

Sincerely,

Embarq Florida, Inc.

  
Mickey DeChellis

Accepted and Agreed by:

Treviso Bay Development, LLC

By: \_\_\_\_\_  
(Authorized Representative)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Mickey DeChellis  
DIRECTOR  
FIELD SALES AND INDIRECT CHANNELS  
Voice: (407) 889-6465  
Wireless: (407) 310-7765  
Fax: (407) 889-1211

Savings and Services at My Address - Microsoft Internet Explorer provided by Sprint Nextel

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address <http://www.comcast.com/Localization/Localize.aspx?Referer=/shop/buyflow/default.aspx> Go Links

Comcast

Your location: 34114 | Reset

Home Shop Customers About Search Go

# Hello

So we can provide you with the most accurate product availability and pricing info possible, please enter your street address and ZIP code in the fields below.

:

Remember My Information!

Thanks! On you go :

Done Internet

Start 6 D... M... M... 2 3:19 PM

Comcast Home - Microsoft Internet Explorer provided by Sprint Nextel

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.comcast.com/?CMP=KNC-1T01Q1BRAND01

Comcast

Explore Shop Customers About Search Go

### Explore

Get smart about Digital Cable with ON DEMAND, High-Speed Internet, or Comcast Digital Voice! Dive right in.

### Shop

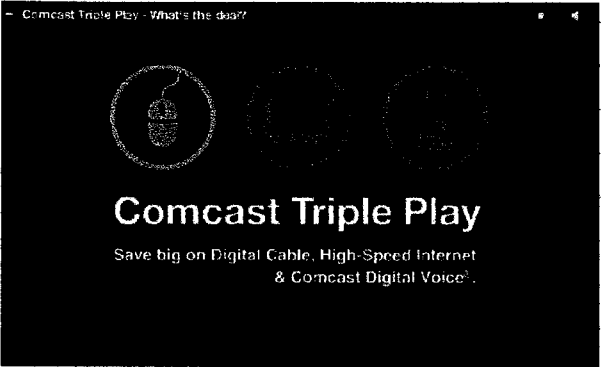
Find the right Digital Cable with ON DEMAND, High-Speed Internet, and Comcast Digital Voice® package for you. Or save with Comcast Bundles.

### Customers

See demos & tutorials. Ask Comcast. Create an account to view and pay your bill online. Already enrolled? Jump right in.

User Name Password GO

Comcast Triple Play - What's the deal?



## Comcast Triple Play

Save big on Digital Cable, High-Speed Internet & Comcast Digital Voice®.

- + Comcast High-Speed Internet with PowerBooT. It's faster than fast.
- + See and hear music like never before with Musicfest ON DEMAND.
- + Add Comcast Digital Voice and save big compared to your local phone company.

Hop to it Stay in the loop

Done Internet

#Start 6 D... M... M... C... 3:14 PM

The screenshot shows a Microsoft Internet Explorer browser window. The title bar reads "Savings and Services at My Address - Microsoft Internet Explorer provided by Sprint Nextel". The address bar contains the URL: "http://www.comcast.com/Localization/Localize.aspx?StreetName=6666+ISLE+OF+CAPRI+ROAD&ApNumber=8&Zip". The page content includes the Comcast logo, a navigation menu with "Shop", "Customers", and "About", and a search box. The main heading is "Hello Again". Below it, a message states: "At this time, your address is not returning an exact match in our online system. You can either change the address you have entered, or continue shopping by selecting the area below that is closest to where you live." The page lists "Locations for 6666 ISLE OF CAPRI ROAD, 34114:" and shows a list for "Naples/Fort Myers" with three radio button options: "Everglades Vachity (Chokoloskee)", "Marco Island", and "Unincorporated Collier", which is selected. The message "Thanks! On you go :)" is displayed at the bottom of the content area. The Windows taskbar at the bottom shows the Start button, several open application windows, and the system tray with the time "3:17 PM".

Savings and Services at My Address - Microsoft Internet Explorer provided by Sprint Nextel

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites Home

Address http://www.comcast.com/Localization/Localize.aspx?StreetName=6666+ISLE+OF+CAPRI+ROAD&ApNumber=8&Zip Go Links

Comcast

Shop Customers About Search Go

# Hello Again

At this time, your address is not returning an exact match in our online system. You can either change the address you have entered, or continue shopping by selecting the area below that is closest to where you live.

Locations for 6666 ISLE OF CAPRI ROAD, 34114:

**Naples/Fort Myers**

- Everglades Vachity (Chokoloskee)
- Marco Island
- Unincorporated Collier

Thanks! On you go :)

Done Internet

Start 6 D... M... M... 2 3:17 PM

Select a Package - Microsoft Internet Explorer provided by Sprint Nextel

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites Home

Address http://www.comcast.com/shop/buyflow/default.aspx Links

Offers & Plans	Features Summary	Monthly Price	Select
<p>Special Offer ●● ●●●</p> <p><b>Comcast Triple Play Offer</b></p>	<p>One company. One full year of discounted service. One great price. One bill. One call. Subscribe to all three Comcast services today and save big - up to \$400!*</p> <p><b>Comcast Enhanced Cable</b> Get the best in entertainment with 100% Digital quality picture and sound, over 100 channels, plus, an interactive on-screen guide, commercial-free digital music and a library of hundreds of programs you can access on your schedule with ON DEMAND.</p> <p><b>Comcast High-Speed Internet</b> Do more online in less time with download speeds up to 8Mbps - that's up to 7 times faster than 768Kbps DSL, and 100 times faster than 56Kbps dial-up! Plus, get Comcast Security powered by McAfee® with virus, spam and firewall protection - FREE to PC users.</p> <p><b>Comcast Digital Voice</b>® Enjoy unlimited local and nationwide long distance and Voice Mail with web access. Plus, 12 popular calling features like Caller ID, 3-Way Calling and Anonymous Call Blocking. Online account summary and call detail. Keep your number or change it - you decide.</p> <p>Three great products, one great price! For a limited time only, enjoy all three products - Comcast Enhanced Cable, High-Speed Internet and Digital Voice for \$99.00/month for 12 months (\$33.00/month each when you subscribe to all 3 services)!</p> <p>Promotional Rate Starting At \$99.00/month for 3 month(s), ongoing price is \$145.35/month</p>	<p>\$99.00</p>	<p>Select</p>

Shopping Cart

Monthly Fees

**Monthly Fees Total** \$0.00

One-time Fees

**One-time Fees Total** \$0.00

[Proceed >](#)

Done Internet

Start 6 D... M... M... 2 - 3:18 PM



**STATE OF FLORIDA**

**COUNTY OF ORANGE**

**AFFIDAVIT OF MICHAEL J. DECHELLIS**

Before me, the undersigned authority, personally appeared Michael J. DeChellis, who being duly sworn, states as follows:

My name is Michael J. DeChellis and I am employed by Embarq Corporation in the capacity of Director – Field Sales and Indirect Channels. My business address is 555 Lake Border Drive, Apopka, FL 32703. In that capacity I am responsible for directing Embarq's activities relating to the promotion of Embarq products to customers through third party sales partners. The Field Sales team, located across Embarq's 18 state territory, meets with developers, builders, property managers, etc. to discuss plans for their communities and describe how Embarq's products and services can meet the communities' needs.

My current position is Director – Field Sales and Indirect Channels for Embarq. I have 21 years of experience with Embarq and its predecessor, Sprint's local telephone division, including positions in Ohio, Kansas City and Florida. Prior to my current position, my tenure with the company included positions in call center management, product management/development and business outside sales. I also have experience in the regulatory and network planning areas. I have a Bachelor's Degree in Applied Statistics from Bowling Green State University and a Master's Degree in Economics from The University of Akron.

The purpose of my affidavit is to support Embarq's petition requesting a waiver of its carrier-of-last-resort obligations in the Treviso Bay development under the

provisions of section 364.025(6)(d), Florida Statutes. More specifically, my affidavit provides:

1. An overview of Embarq's understanding of the planned development.
2. A summary of Embarq's interactions with the developer of the property including representations made to Embarq by the developer concerning arrangements entered into with a competitive service provider other than Embarq to provide services to the property.
3. Analysis and documentation that supports the conclusion that the competitive service provider will be offering voice telephone service to customers in this development.
4. A description of the impacts on Embarq as a result of the developer's arrangement with a competitive service provider.

### **Overview of the Development**

Treviso Bay is a proposed new subdivision located on the southwest side of Tamiami Trail East, approximately 3 miles northwest of the intersection of Collier Boulevard (aka Isle of Capri Road), Sections 29, 30, 31 and 32, Township 50 South, Range 26 East, Collier County, Florida. According to information provided by the developer, the subdivision will encompass approximately 1,200 residential units by the time it is complete, currently scheduled for 2012. The development is located in the geographic area served by Embarq's Naples Southeast central office.

### **Embarq's Interactions with the Developer**

A representative of Embarq's Developer Markets organization made initial contact with Chris Gray, a representative of the developer Treviso Bay Development LLC, in June 2005 to discuss the developer's vision for the community. The developer's representative indicated they were in discussions with the cable company to provide services to the development, but had not yet made a commitment to anyone at that time. On August 29, 2005, the developer's representative advised Embarq's account consultant via email that the developer had indeed entered into a bulk agreement with Time Warner Cable for video and high speed data.

Embarq continued discussions with the developer through December 2005 regarding the potential for a marketing relationship for local voice, features and long distance services. The developer did not formally respond to Embarq's overtures to discuss a marketing relationship to provide voice services to the development. As a result, in July 2006, Embarq informed the developer that it was not interested in pursuing such a relationship. The developer confirmed via email (see Exhibit MJD-1) that they had signed an agreement with Time Warner Cable to provide video and high-speed data services. The developer also indicated they were still interested in Embarq providing "telephone" services to Treviso Bay. On September 1, 2006, Embarq sent a letter (see Exhibit MJD-2) to the developer outlining the terms and conditions under which it would be willing to proceed with the provision of its facilities to the development. Chris Gray, a representative of the developer, contacted me in response to this letter on or around September 14. A subsequent conversation with Mr. Gray on this issue occurred on

October 5. Mr. Gray informed me during these conversations that the developer had signed a bulk data and video agreement with the incumbent cable company, Time Warner (which will transition to Comcast by virtue of their trade of certain properties). Embarq's understanding is that the bulk agreement consists of a bulk offering of high speed data and video services with the recurring service fees included in the homeowners' dues.

**Availability of Voice Telephone Service from Competitive Supplier**

Representations made by the developer are that the agreement with Comcast provides for provision of video and high-speed data services to all residents of the development through their homeowner's dues. In addition, Comcast will have the ability to offer voice telephone services to the residents of this development via the same facilities used to provide video and data services. Comcast is actively marketing its "Triple Play" of digital cable video, high-speed Internet and digital voice services (see Exhibit MJD-3) throughout Collier County where this development is located. Querying the Comcast website utilizing an address in very close proximity to the Treviso Bay development confirms that Comcast offers voice telephone services in the immediate vicinity (see Exhibits MJD-4 through MJD-6). With the certainty of providing 100% of the video and high speed data services to the Treviso Bay residents via inclusion of the fees in their homeowners association dues, coupled with evidence that Comcast is providing voice services to other customers in the immediate vicinity, Comcast will have the capability to provide voice services to all of the residents of Treviso Bay. Not only will the residents have a triple-play opportunity from Comcast, but they will also have the option to use other voice service providers such as Vonage, Skype and more.

**Impacts on Embarq from Developer's Agreement with Comcast**

With a 100 percent penetration of its video and data services to residents of Treviso Bay via its bulk agreement with the developer, and its ability to offer voice telephone services as an add-on, Comcast is in a strong position to garner a vast majority of the Treviso Bay residents' voice telephone services as well. Based on this scenario, if Embarq were required to place its facilities to provide service to this development, its potential revenues would be limited to only voice telephone services since Comcast has 100 percent penetration of video and data services through its bulk billing of these services, ultimately paid by the residents through their homeowners' dues. Embarq's voice telephone revenues would be further limited to those derived from a small percentage of customers who might choose not to subscribe to the voice services offered by Comcast as an add-on to their video and data services.

Based on these factors, Embarq expects at most only ■ percent of the residents of Treviso Bay would choose to subscribe to services from Embarq if it were required to place facilities to serve this development. Further, Embarq's revenues from this group of customers would be limited to only voice services. The affidavit of Kent Dickerson of Embarq utilizes these assumptions, and others related to costs and investments, to estimate the negative financial consequences to Embarq if it were required to place facilities to serve the Treviso Bay development.

Further Affiant sayeth naught.

Michael J. DeChellis  
Michael J. DeChellis

SWORN TO AND SUBSCRIBED BEFORE ME on this 3<sup>rd</sup> day of  
November, 2006 by Michael J. DeChellis, who is personally known to me.

Carol A. Stone  
(Notary Signature)

Carol A. Stone  
(Notary Name Printed)  
NOTARY PUBLIC  
Commission No. DD197593

(NOTARY SEAL)

CAROL A. STONE  
Notary Public-State of Florida  
My Commission Expires Apr. 25, 2007  
Commission #DD197593

-----Original Message-----

**From:** Sanjay Kuttemperoor [mailto:sanjay@vkdevelopment.com]  
**Sent:** Monday, July 31, 2006 8:03 AM  
**To:** Cartwright, Harriet S [LTD]  
**Subject:** RE: Marketing Agreement for Treviso Bay - Naples, Florida

Harriet:

We have signed an agreement with Time Warner regarding cable and high-speed data. That agreement was signed long before any meeting with both Bob and Kristen – or at least well before I was informed that Sprint would provide those services as well. We are interested in reviewing the terms of a relationship for telephone services with Embarq for Treviso Bay. We had not previously focused on it due to the timing of the end user units. However, if you are still interested, we are willing to address the issue at that point. Thanks.

Sanjay Kuttemperoor, Esq.  
19275 W. Capitol Dr.  
Brookfield, WI 53045  
(262) 790-6000  
(262) 790-6010 (fax)

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**From:** Cartwright, Harriet S [LTD] [mailto:Harriet.Cartwright@embarq.com]  
**Sent:** Thursday, July 27, 2006 2:33 PM  
**To:** Sanjay Kuttemperoor  
**Cc:** Chris Gray; Amico, Ray T [LTD]; Wareham, Ken J [LTD]; Misener, Robert E [LTD]  
**Subject:** Marketing Agreement for Treviso Bay - Naples, Florida  
**Importance:** High

Dear Sanjay and Chris,

I hope this finds you well. As you may know, your most recent Embarq representative, Kristen Pate, has moved to Washington, D.C. Her husband received a substantial promotion which will stand them both well over time. I was her manager during the time she spent with you and continue to be responsible for our Developer Markets activities throughout the State of Florida. I am reviewing all of her accounts to ensure everything stays on track and wanted to contact you regarding Treviso Bay and her submission of a draft Marketing Agreement in December, 2005.

Both she and Bob Misener, her predecessor, had kept me apprised of their discussions with the VK Development team regarding Treviso beginning in June, 2005. We had hoped to foster a strong alliance within the community, based upon Voice, Internet, Video and associated services. Unfortunately, we came to understand that your team was already in serious discussion with the local cable incumbent ultimately resulting in an executed agreement for bulk-billed Internet and Video services. We certainly respect your decision regarding that agreement and look forward to a future opportunity where we may align our brands and provide compelling services to your residents.

Now that our company has split from Sprint and we've launched as Embarq within our 18-state territories, we are reevaluating where we believe it makes sense to enter into these types of agreements. With the competitive landscape as it exists today and the time that has lapsed since our discussions began about a marketing opportunity together, we believe it makes sense to

withdraw the potential marketing relationship at Treviso and look towards future discussions regarding the next VK Development project within our service territory.



**STATE OF KANSAS**

**COUNTY OF JOHNSON**

**AFFIDAVIT OF KENT W. DICKERSON**

Before me, the undersigned authority, personally appeared Kent W. Dickerson, who being duly sworn, states as follows:

My name is Kent W. Dickerson and I am employed by Embarq Corporation in the capacity of Director – Cost Support. My business address is 5454 W. 110<sup>th</sup> Street, Overland Park, KS 66211. In that capacity I am responsible for directing Embarq's activities relating to developing and implementing economic cost study methods and practices designed to provide information useful in analyzing the costs of network components, and retail and wholesale services.

I have 21 years of experience with Embarq and its predecessor, Sprint's Local Telephone Division, having joined United Telephone Midwest Group (ultimately an Embarq subsidiary) in September, 1985 as a Staff Accountant in the Carrier Access Billing area. Thereafter, I moved through a progression of positions and responsibilities within the Finance and Regulatory departments.

Since 1994, I have managed a work group which performs economic cost of service studies for retail and wholesale services, Unbundled Network Elements (UNEs) and specialized cost recovery programs (e.g. Federal number portability, Federal and State High Cost Assistance Programs). I received a Bachelor of Science degree from the University of Missouri – Kansas City in 1981 with a major in Accounting. I am a Certified Public Accountant in the State

of Missouri. Prior to joining Embarq, I was employed as a Corporate Income Tax Auditor II for the Missouri Department of Revenue and also worked for Kansas Power and Light (now Western Resources) in the Tax and Internal Audit areas.

. The purpose of my affidavit is to support Embarq's position requesting a waiver of its carrier-of-last-resort obligations in the Treviso Bay development under the provisions of section 364.025(6)(d) of the Florida Statutes. My affidavit provides the following:

1. An explanation of the physical layout and engineered construction of telephone plant that would be required in order for Embarq to offer voice telephone service to the various customer and building locations within the Treviso Bay development where no Embarq facilities currently exist.
2. A financial analysis which demonstrates the negative and unworkable financial results which Embarq will predictably incur, unless it is granted the requested waiver of its carrier-of-last-resort obligations in the Treviso Bay development under the provisions of section 364.025(6)(d) of the Florida Statutes.

**Telephone Plant Construction Required for Embarq to offer Voice Telephone Service within Treviso Bay**

To assist in explaining the construction of new telephone plant required unless Embarq's waiver is granted, I have prepared an aerial map exhibit (Exhibit

KWD-1) attached to this affidavit and will reference it in my description. Under the COLR obligations, Embarq would be required to place enough facilities within Treviso Bay to provide service to every subscriber regardless of what the realistic expected penetration rates are for Embarq's services. Were Embarq to be required to construct facilities to offer voice service within the Treviso Bay development the Central Office switch used would be Embarq's existing central office 5ESS switch located at [REDACTED] (CLLI NPLSFLXCDS0). As depicted by the yellow line on the aerial map exhibit, individual fibers within an existing fiber cable, which routes 12,000 feet from the central office switch to the entrance of Treviso Bay, would be used. From this point, Embarq would have to construct a new fiber cable for approximately an additional 6,000 feet in order to complete a fiber cable connection between the switch and a newly placed Digital Loop Carrier device.

As just mentioned a new Digital Loop Carrier device would be required in accordance with the 12,000 feet Carrier Serving Area industry engineering standards. Embarq would then need to construct copper cable connections from the centrally located DLC device to each of the distribution areas indicated on the aerial map. Finally, Embarq would be required to construct drop wire and NIDs at each customer location and connect the drop to a pair of copper distribution cable wires to complete a voice path between the central office switch and each customer location.

**Construction of Voice Telephone plant within Treviso Bay is wholly uneconomic**

In order to understand the financial viability of being required to construct the necessary voice telephone network just described, I have prepared the attached exhibit KWD-2. This exhibit provides a standard financial analysis of the Net Present Value (NPV) of cash flows over a 20-year period, thereby demonstrating the grossly unworkable finances (i.e. negative cumulative cash flows of \$██████) were the Commission to deny the relief requested by Embarq. The NPV of cash flow analysis reflects incremental capital construction of \$██████ over the first 6 years reflective of the developer's plans to construct 1200 customer locations during this same period. Additionally, the analysis reflects the consumption of \$██████ existing capital in the form of existing fiber cable, switch termination equipment and interoffice transport network bandwidth consumption for carrying voice traffic. Key to the analysis is the expected █████% voice service penetration discussed in the Affidavit of Mr. DeChellis. The revenue assumed in my analysis is likely optimistic at best in that it assumes this █████% of customers who purchase Embarq's services will purchase higher end bundles of voice services at the average Embarq penetration experience for the overall Naples market. Similarly, both the revenue per customer buying stand alone residential service and an average amount of a la carte features, as well as the revenue per customer purchasing a bundle, were set based on the actual average experience for each from the Naples market. The retail costs of serving these customers was set based on Embarq Florida specific experience and data, as was the maintenance

costs of the telephone plant. Despite these generous assumptions, the revenue generated from the expected █% customer penetration is, predictably, grossly insufficient for Embarq to recover its capital costs and incremental operating expenses and instead yields negative NPV cash flows for each year, twenty years into the future.

I would note the analysis does not include additional, predictable negative cash flow impacts from such realities as customer churn and future price declines in voice services. Thus, given the ease and magnitude with which these unworkable negative financial results (i.e. negative NPV of cumulative cash flows of \$█K), are conservatively demonstrated, it is inconceivable that Embarq will ever realize the financial paybacks necessary to justify the incremental invested capital of \$█ and associated operating expenses.

Further Affiant sayeth naught.

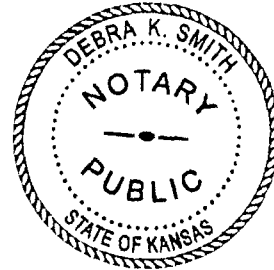
Kent W. Dickerson  
Kent W. Dickerson

SWORN TO AND SUBSCRIBED BEFORE ME on this 20<sup>th</sup> day of  
November, 2006 by Kent W. Dickerson, who is personally known to me.

Debra K Smith  
(Notary Signature)

Debra K Smith  
(Notary Name Printed)  
NOTARY PUBLIC  
Commission No. 983714

(NOTARY SEAL)



# Treviso Bay - Voice Network Construction

Exhibit KWD-1

**REDACTED**

Embarq - Florida  
Treviso Bay NPV Cash Flow Analysis

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
<b>Key Assumptions:</b>																				
1 New Capital (shown Yrs 1-6)	[Redacted]																			
2 Consumed Capital (shown Yr 1)	[Redacted]																			
3 Total Capital	[Redacted]																			
4 Reinvested Capital (new DLC Yr 11)	[Redacted]																			
5 Penetration	[Redacted]																			
6 Subscribers	[Redacted]																			
7 Revenue - Ala Carte Sub	[Redacted]																			
8 Revenue - Bundle Sub	[Redacted]																			
9 Percent Buying Bundle	[Redacted]																			
10 Revenue Per Sub - Avg	[Redacted]																			
11 Maintenance	[Redacted]																			
12 Capital Cost	[Redacted]																			
13 Demand Units - Year End	[Redacted]																			
14 Demand Units - Mid-Year	[Redacted]																			
15 Capital Expenditures	[Redacted]																			
16 Revenue	[Redacted]																			
17 Cash Expenses	[Redacted]																			
18 Income Tax	[Redacted]																			
19 Cash Flow - In(Out)	[Redacted]																			
20 Cumulative Cash Flow - In(Out)	[Redacted]																			
21 Discount Rate @ 8.12%	[Redacted]																			
22 NPV By Year	[Redacted]																			
23 Cumulative NPV	[Redacted]																			



Select Year:  

## The 2006 Florida Statutes

<a href="#">Title XXVII</a>	<a href="#">Chapter 364</a>	<a href="#">View Entire Chapter</a>
RAILROADS AND OTHER REGULATED UTILITIES	TELECOMMUNICATIONS COMPANIES	

### 364.025 Universal service.--

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

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

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

residential as business customers. The commission shall act on any such petition within 120 days.

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

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

(c) In determining the cost of providing basic local telecommunications service for small local exchange telecommunications companies, which serve less than 100,000 access lines, the commission shall not be required to use the cost proxy model selected pursuant to paragraph (b) until a mechanism is implemented by the Federal Government for small companies, but no sooner than January 1, 2001. The commission shall calculate a small local exchange telecommunications company's cost of providing basic local telecommunications services based on one of the following options:

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

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

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

1. "Owner or developer" means the owner or developer of a multitenant business or residential

property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.

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

3. "Communications service" means voice service or voice replacement service through the use of any technology.

(b) A local exchange telecommunications company obligated by this section to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to any customers in a multitenant business or residential property, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, when the owner or developer thereof:

1. Permits only one communications service provider to install its communications service-related facilities or equipment, to the exclusion of the local exchange telecommunications company, during the construction phase of the property;

2. Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the local exchange telecommunications company;

3. Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the local exchange telecommunications company, to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or dues; or

4. Enters into an agreement with the communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the local exchange telecommunications company's access to the property.

(c) The local exchange telecommunications company relieved of its carrier-of-last-resort obligation to provide basic local telecommunications service to the occupants or residents of a multitenant business or residential property pursuant to paragraph (b) shall notify the commission of that fact in a timely manner.

(d) A local exchange telecommunications company that is not automatically relieved of its carrier-of-last-resort obligation pursuant to subparagraphs (b)1.-4. may seek a waiver of its carrier-of-last-resort obligation from the commission for good cause shown based on the facts and circumstances of provision of service to the multitenant business or residential property. Upon petition for such relief, notice shall be given by the company at the same time to the relevant building owner or developer. The commission shall have 90 days to act on the petition. The commission shall implement this paragraph through

rulemaking.

(e) If all conditions described in subparagraphs (b)1.-4. cease to exist at a property, the owner or developer requests in writing that the local exchange telecommunications company make service available to customers at the property and confirms in writing that all conditions described in subparagraphs (b)1.-4. have ceased to exist at the property, and the owner or developer has not arranged and does not intend to arrange with another communications service provider to make communications service available to customers at the property, the carrier-of-last-resort obligation under this section shall again apply to the local exchange telecommunications company at the property; however, the local exchange telecommunications company may require that the owner or developer pay to the company in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the property initially, and the company shall have a reasonable period of time following the request from the owner or developer to make arrangements for service availability. If any conditions described in subparagraphs (b)1.-4. again exist at the property, paragraph (b) shall again apply.

(f) This subsection does not affect the limitations on the jurisdiction of the commission imposed by s. [364.011](#) or s. [364.013](#).

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

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