

State of Florida



ORIGINAL

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

RECEIVED - FPSC  
06 DEC -5 PM 4:00

COMMISSION  
CLERK

-M-E-M-O-R-A-N-D-U-M-

**DATE:** December 5, 2006

**TO:** Blanca S. Bayó, Commission Clerk and Administrative Services Director

**FROM:** Dale R. Buys, Regulatory Analyst III, Division of Competitive Markets & Enforcement *DRB*

**RE:** Docket No. 060763-TL – Petition for waiver of carrier of last resort obligation for multitenant property in Collier County known as Treviso Bay, by Embarq Florida, Inc.

Please file the attached original documents from V.K. Development Corporation and Treviso Bay Development, LLC, Re: Respondent's Objection to Petitioner's Request for Confidential Classification Under Section 364.183(1), Florida Statutes, and Response to Petitioner for Waiver, dated December 1, 2006, in the above referenced docket file.

DRB/  
Attachments

- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SGA \_\_\_\_\_
- SEC   1
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

11159 DEC-5 g

FPSC-COMMISSION CLERK



# Treviso Bay

N A P L E S

December 1, 2006

**Via Email and Overnight Courier**

Florida Public Service Commission

Attn: Ray Kennedy

2540 Shumard Oak Boulevard

Tallahassee, FL 32399-0850

Re: Respondent's Objection to Petitioner's Request for Confidential Classification Under Section 364.183(1), Florida Statutes, and Response to Petitioner's Petitioner for Waiver  
Docket No. 060763-TL

Dear Mr. Kennedy:

Enclosed please find an original executed copy of the Response to the Petition for Waiver filed by Embarq Florida, Inc. under the above-referenced docket number and Certificate of Service relating to the same. Please note that an original executed copy of the enclosed Response is also being served upon Ms. Susan Masterton of Embarq Florida, Inc. by electronic mail and overnight courier.

Sincerely,

Christopher W. Cramer, Esq.  
Corporate Counsel

cc: Sanjay Kuttemperoor, Esq. via email with enclosures  
Susan Masterton via email and overnight courier with enclosures  
Beth Salak via email with enclosures  
Rick Moses via email with enclosures  
Patrick Wiggins via email with enclosures  
Jason Fudge via email with enclosures  
Dale Buys via email with enclosures

2006 DEC -4 PM 3:22  
DIVISION OF  
COMPETITIVE SERVICES

DOCUMENT NUMBER-DATE

5150 Tamiami Trail N., Suite 207, Naples, FL 34103  
P: 239.649.5300 ♦ F: 239.649.5900  
www.TrevisoBay.com

11159 DEC-5 06

FPSC-COMMISSION CLERK



FLORIDA PUBLIC SERVICE COMMISSION  
FOR A BETTER COMMUNITY

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of RESPONDENT'S OBJECTION TO PETITIONER'S REQUEST FOR CONFIDENTIAL CLASSIFICATION UNDER SECTION 364.183(1), FLORIDA STATUTES, AND RESPONSE TO PETITIONER'S PETITION FOR WAIVER (the "Response") was deposited with a commercial overnight courier for delivery on December 4, 2006, to:

Florida Public Service Commission  
Attn: Ray Kennedy  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Embarq Florida, Inc.  
Susan Masterton  
1313 Blair Stone Road  
Tallahassee, FL 32301

And that a true and correct copy of the Response was served electronically on this 1<sup>st</sup> day of December, 2006, to:

Florida Public Service Commission  
Attn: Ray Kennedy  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Florida Public Service Commission  
Attn: Beth Salak  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Florida Public Service Commission  
Attn: Rick Moses  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

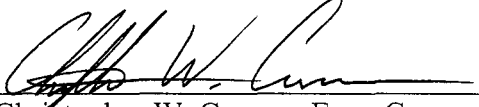
Florida Public Service Commission  
Attn: Patrick Wiggins  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Florida Public Service Commission  
Attn: Jason Fudge  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Florida Public Service Commission  
Attn: Dale Buys  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Embarq Florida, Inc.  
Susan Masterton  
1313 Blair Stone Road  
Tallahassee, FL 32301

Dated this 1<sup>st</sup> day of December, 2006.

  
\_\_\_\_\_  
Christopher W. Cramer, Esq., Corporate  
Counsel for Respondent  
19275 W. Capitol Dr., #100  
Brookfield, WI 53045  
(262) 790-6000  
(262) 790-6010 (fax)  
[ccramer@vkdevelopment.com](mailto:ccramer@vkdevelopment.com)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Response by V.K. Development Corporation and Treviso Bay Development, LLC (collectively "Respondent") as Developers of Treviso Bay to the Petition by Embarq Florida, Inc. ("Petitioner") under Section 364.025(6)(d), Florida Statutes, for relief of Embarq's carrier of last resort obligations	Docket No. 060763-TL
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**RESPONDENT'S OBJECTION TO PETITIONER'S REQUEST FOR CONFIDENTIAL CLASSIFICATION UNDER SECTION 364.183(1), FLORIDA STATUTES, AND RESPONSE TO PETITIONER'S PETITION FOR WAIVER**

Respondent hereby files this objection to the classification of information as confidential information under Section 364.183(1), Florida Statutes and response to Petitioner's Petition under Section 364.025(6)(d), Florida Statutes, for relief from Petitioner's carrier of last resort obligations, Docket No. 060763-TL, filed with the Florida Public Service Commission (the "PSC") on November 20, 2006 (the "Petition").

Respondent was served with a copy of the Petition on November 21, 2006. The copy of the Petition provided to Respondent is a redacted version of the information allegedly filed with the PSC. Such redacted information contains economic feasibility and market penetration information relating to the provision of voice service by Petitioner at the Property. This information that has been redacted is essential to Respondent's ability to properly respond to the Petition. Absent such information being provided to Respondent, Respondent cannot properly respond to the Petition. Therefore, Petitioner should either provide the redacted information to Respondent immediately, or the Petition should be stricken and Petitioner should be required to fulfill its carrier of last resort ("COLR") obligations.

Notwithstanding the redacted information, Respondent is submitting this response based upon the information provided to it to date in the Petition, and reserves the right to supplement this response based upon Respondent's receipt of the redacted information discussed above. Respondent hereby objects to the granting of the Petition and requests that the PSC require Petitioner to provide local phone service at Treviso Bay under Petitioner's COLR obligations. Respondent's objection is based on the following (note that the following sections coincide with the paragraphs of the Petition):

1. through 3. Respondent admits paragraphs 1 through 3 of the Petition.

4. The property (the "Property") subject to the Petition is the subdivision known as Treviso Bay, which Property is more particularly described in the plat for Treviso Bay recorded in Plat Book 45, Pages 14, et seq., Collier County, Florida.

5. The developer for the Property is Treviso Bay Development, LLC, not V.K. Development Corporation. The contact information for Treviso Bay Development, LLC and the address to which all notices and correspondence relating to this matter should be sent is:

Treviso Bay Development, LLC  
Attn: Sanjay Kuttemperoor, Esq.  
19275 W. Capitol Drive, Suite 100  
Brookfield, WI 53045  
[Sanjay@vkdevelopment.com](mailto:Sanjay@vkdevelopment.com)

With copies also being sent to:

Treviso Bay Development, LLC  
Attn: Christopher W. Cramer, Esq.  
19275 W. Capitol Drive, Suite 100  
Brookfield, WI 53045  
[ccramer@vkdevelopment.com](mailto:ccramer@vkdevelopment.com)

6. Respondent acknowledges that Section 364.025(6)(d), Florida Statutes, establishes the process and enables a local exchange telecommunications company ("LETC") that is not otherwise relieved of its COLR obligations to petition for relief of such COLR obligations "for good cause shown under the facts and circumstances." (emphasis added)

Further, it is noted that Chapter 364 of the Florida Statutes specifically excludes broadband services and voice over internet protocol ("VoIP") services from the PSC's jurisdiction. As such, the PSC is limited to reviewing the matters relating solely to the provision of voice phone service by Petitioner to the Property and cannot consider high speed data, VoIP, cable television services, or other such services offered by Petitioner or other provider in considering the Petitioner.

7. Petitioner reiterates Section 364.025(6)(b), Florida Statutes. The Petition has been brought by Petitioner under Section 364.025(6)(d), Florida Statutes. Petitioner therefore, has determined that Petitioner is not automatically relieved of Petitioner's COLR obligations as provided in Section

364.025(6)(b), Florida Statutes. Petitioner must provide telecommunication service to the Property unless Petitioner shows that it should be relieved of such obligations for good cause under the facts and circumstances under Section 364.025(6)(d), Florida Statutes.

8. The waiver petition process set forth in Section 364.025(6)(d), Florida Statutes, is limited in permitting the PSC to grant a waiver to an LETC of its COLR obligations only if the LETC has shown good cause under the facts and circumstances. Petitioner has failed to show good cause as to why the Petition should be granted.

9. through 15. In paragraphs 9 through 15 of the Petition, Petitioner recites "background" information as to the development of Section 364.025(6)(d), Florida Statutes, and the business practices and intent of developers in entering into agreements with internet service providers and cable television providers. Such "background" information is subjective, and no proof is offered by the Petitioner supporting such claims or, more importantly, showing that Respondent is engaging in or has previously engaged in the actions of developers alleged by Petitioner. Therefore, Respondent objects to paragraphs 9 through 15 of the Petitioner, and puts Petitioner to its proof regarding the same.

Further, Petitioner disagrees with Petitioner's statement in paragraph 9 of the Petition implying that the Property is a high cost area. The Property is located in close proximity to Naples. Further, at the completion of the development there will be approximately One Thousand Two Hundred (1,200) residences at the Property to which Petitioner could market and sell its voice phone service. Petitioner provides service to the Trail Acres Subdivision adjacent to the Property and to other surrounding properties.

16. Petitioner is correct that Respondent has entered into a Bulk Cable Television Service and Easement Agreement (the "Bulk Services Agreement") with Time Warner Cable, Inc. ("Time Warner"). Under the terms of the Bulk Services Agreement, Time Warner is the provider for cable television and high speed data service. Local voice phone service otherwise provided by an LETC is not included in the Bulk Services Agreement. Further, satellite television service is not included in the Bulk Services Agreement either. The Bulk Services Agreement does not restrict or prohibit any resident of the Property from obtaining voice telephone services or satellite television services from an LETC or other provider. Each resident is free to choose their voice services and/or satellite

television service provider, if any. Petitioner states that because Time Warner is providing cable television and high speed data that a significant number of residents will not choose to utilize Embarq for voice phone service. Petitioner's statement is purely speculative, and Petitioner fails to provide any substantiation of this claim. Mere speculation by Petitioner that a significant number of residents at the Property may not choose Petitioner as the voice phone service provider because similar products are offered by a competitor is not good cause for granting a waiver of Petitioner's COLR obligations under Section 364.025(6)(d), Florida Statutes.

17. The Bulk Services Agreement was executed between Respondent and Time Warner Cable effective August 8, 2005. Respondent negotiated the Bulk Service Agreement based upon the products being offered or contemplated to be offered by Time Warner Cable at that time and under the assumption that Petitioner would be providing voice phone service at the Property. Subsequent to the execution of the Bulk Services Agreement representatives from Petitioner continued to contact Respondent to discuss Petitioner's desire and intent to provide voice phone service at the Property. Such negotiations continued and culminated in Respondent executing on August 10, 2006, a Communication System Right of Way and Easement Deed for Petitioner's benefit whereby Petitioner was granted an easement at the Property for the construction, maintenance, expansion, replacement, and removal of a communication system that would serve the Property. A copy of the Communication System Right of Way and Easement Deed and cover letter forwarding the same to Mr. William Paul on behalf of Petitioner is attached hereto and incorporated herein by reference as Exhibit A. Petitioner's actions in discussing and negotiating the provision of voice phone service at the Property and the finalization of the Communication System Right of Way and Easement Deed show that Petitioner and Respondent both planned on Petitioner providing voice phone service at the Property. Respondent relied upon Petitioner's plans and intent to provide voice phone service at the Property for the future residents of the Property. Respondent was unaware Petitioner would not be providing voice phone service until it received the Petition. If providing such service at the Property was too costly, then Petitioner would not have continued with such negotiations and would not have needed to request or be granted the easement for the construction of its communication system as provided in the Communication System Right of Way and Easement Deed.

Furthermore, Respondent was dealing with Time Warner Cable when the Bulk Services Agreement was negotiated and executed. Subsequently, Comcast took over Time Warner Cable's territory that includes the Property, and is assuming the Bulk Services Agreement. Petitioner now



implies that because of a business transaction between two parties unrelated to Respondent, Respondent should in effect be penalized and not have the voice service provider, Petitioner, it was relying on to provide voice phone service. Petitioner's reasoning is that Comcast offers digital voice services over their high speed data and cable facilities, and will offer such voice phone service at the Property. Petitioner's argument is an argument against competitive practices throughout the State of Florida, and does not show good cause as to why Petitioner's COLR obligations should be waived. Petitioner is in essence stating that anywhere Comcast provides cable Petitioner cannot provide voice phone service because Comcast could compete with Petitioner. This is not the intent of Chapter 364 of the Florida Statutes.

Section 364.01(3), Florida Statutes, states in pertinent part that:

"The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure."

Further, Section 364.01(4)(b), Florida Statutes, states that the PSC shall exercise its exclusive jurisdiction in order to "encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunication services." (emphasis added).

Petitioner maintains that because there is increased competition at the Property Petitioner should be relieved of its COLR obligations and not be required to provide voice phone service. Such a position is completely contrary to the legislative intent in promoting and fostering competition between companies like Petitioner and Comcast. Furthermore, the PSC is prohibited from granting the Petition in this instance. The PSC is required to encourage competition and ensure that the residents of the Property have the "widest possible range" of choice for voice phone service, and to ensure that the residents actually have voice phone service available at the Property. See Section 364.01(4)(b), Florida Statutes. Granting the Petition will effectively eliminate a choice for consumers, and potentially leave the residential consumers at the Property without any voice phone service solely because the Petitioner does not want to compete with other providers of voice

phone service. If the Petition is granted, Residents at the Property will not have the choice of having voice phone service provided by Petitioner, and very possibly may not have any other provider from which to choose. Their range of choices will be limited or nonexistent. As this is not what the Legislature intended, the Petition must be denied.

18. Petitioner states again in paragraph 18 of the Petition that there is a likelihood that a significant number of residents at the Property will choose a provider other than Petitioner for voice phone service because of the bulk service provided by the Bulk Services Agreement and billed through the homeowners' association dues. The only services billed in bulk through the homeowners' association dues are those relating to cable and high speed data service. Voice phone service whether provided by Petitioner, Comcast, or other provider, is not included in the bulk services at the Property. The customer will be required to sign up for and will be individually billed for such voice phone service from the provider of such resident's choice. In addition, Comcast is not offering its voice phone service at the Property, and may or may not offer the same in the future. Comcast has stated in its letter to Respondent dated December 1, 2006, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, that Comcast does not offer its voice phone product in the market that encompasses the Property and will not for some time, if at all. Comcast also states in Exhibit B, that its voice phone product is only in the testing stages and is available to only a few select customers in Lee and Collier Counties. It is possible that Comcast's voice phone product never is offered in the market or at the Property. In addition, Comcast states in Exhibit B that even if Comcast ultimately does offer voice phone service in the market in which the Property is located, such service will not be available by the time the initial certificates of occupancy are issued for residents at the Property. If the Petition is granted and Petitioner is not required to fulfill its COLR obligations with respect to the Property, the residents of the Property will be left without voice phone service. Such a result is completely contrary to the intent of the COLR requirements, and sets a dangerous precedent for Petitioner and other providers of voice phone service to shirk their statutory obligations to provide voice phone services. Therefore, the Petition must be denied.

Petitioner states that the costs for installing the voice phone service far outweigh the revenues Petitioner will obtain from subscribers at the Property. Petitioner submitted the Affidavit of Kent W. Dickerson as support of its position which relies upon statements made by Mr. Dechellis in his Affidavit also submitted by Petitioner. The copies of Mr. Dickerson's Affidavit and exhibits

and Mr. Dechellis' Affidavit have the cost, financial, and market information redacted so Respondent cannot respond to the actual numbers as they are not available to Respondent. Nonetheless, in reviewing Petitioner's statements and those of Mr. Dickerson and Mr. Dechellis, Respondent noted that:

a. Petitioner states that only a certain percentage of residents at the Property would subscribe to Petitioner's voice phone service. This percentage is based on Mr. Dechellis' Affidavit referenced in the Petition. Again, this determination as to the percentage of resident subscribers to Petitioner's voice phone service is based solely on subjective assumptions of Mr. Dechellis. There are no facts, historical figures, averages, or other statistical data showing how that percentage was determined or otherwise supporting such percentage. Although there seems to be no basis for such determination other than the subjective review of Mr. Dechellis, Petitioner is relying upon such percentage in its cost analysis and is asking that the PSC find "good cause" for its Petition based upon such subjective nature of Petitioner's review. Good cause and the waiver of Petitioner's COLR obligations cannot be based upon one person's subjective viewpoints.

b. Mr. Dickerson's Affidavit further shows a certain cash flow amount, again to which Respondent cannot specifically comment as the same is redacted, based upon the subjective assessment by Mr. Dechellis, and further appears not to adjust future revenue for price increases, technological advance that may reduce costs, new product innovations and offerings relating to voice phone service not included in the Bulk Services Agreement that would increase revenue, customer turn over from other voice providers to Petitioner, and other events and circumstances that might otherwise increase Petitioner's revenue from voice service at the Property.

c. No cost information is provided supporting the actual costs claimed to be associated in Petitioner providing voice phone service at the Property.


19. Petitioner has failed to show good cause for the granting of its Petition. Petitioner's claim rests solely on its claim that because it cannot offer other products it has available, namely high speed internet service, that Petitioner should not be required to offer voice service as the COLR. Chapter 364 of the Florida Statutes requires that Petitioner provide such voice phone service and further requires the PSC to enforce the COLR obligations against Petitioner to further foster

competition and provide the widest choices to the residents at the Property. The granting of the Petition would violate the legislative intent of the Statute.

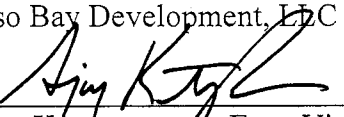
WHEREFORE, Respondent respectfully requests that the PSC deny the Petition and require Petitioner to fulfill its COLR obligations to serve the Property immediately.

Dated this 1<sup>st</sup> day of December, 2006.

V.K. Development Corporation

By:   
Ajay Kuttemperoor, Esq., Vice President  
and on behalf of Sanjay Kuttemperoor,  
Esq., Executive Vice President  
19275 W. Capitol Drive, Suite 100  
Brookfield, WI 53045  
(262) 790-6000  
(239) 649-5300 (Alternate)  
[Sanjay@vkdevelopment.com](mailto:Sanjay@vkdevelopment.com)

Treviso Bay Development, LLC

By:   
Ajay Kuttemperoor, Esq., Vice President  
and on behalf of Sanjay Kuttemperoor,  
Esq., Vice President  
19275 W. Capitol Drive, Suite 100  
Brookfield, WI 53045  
(262) 790-6000  
(239) 649-5300 (Alternate)  
[Sanjay@vkdevelopment.com](mailto:Sanjay@vkdevelopment.com)

**EXHIBIT A**

**SEE ATTACHED LETTER TO MR. WILLIAM PAUL AT EMBARQ FLORIDA,  
INC. AND THE EXECUTED COMMUNICATION SYSTEM RIGHT OF WAY  
AND EASEMENT DEED.**



*Treviso Bay*  
N A P L E S

August 10, 2006

Mr. William Paul  
Contractor-Quadrant Group  
Embarq Florida, Inc. / RETA  
FLNPLR-0101-1056  
3490 Prospect Avenue, Unit 101  
Naples, FL 34104-3725

Re: Treviso Bay - Communication System Right of Way and Easement Deeds

Dear Bill:

Enclosed please find the three (3) separate original executed Communication System Right of Way and Easement Deeds (the "Easement Deeds") relating to Treviso Bay. As discussed, the prepared by and return to information was not included in each Easement Deed. Please type such information on each Easement Deed prior to recording.

If you have any questions, please call me.

Sincerely,



Sanjay Kuttemperoor  
Vice President

**COMMUNICATION SYSTEM RIGHT OF WAY AND EASEMENT DEED ("Easement Deed")**

Grant of Easement Deed by: VK Holdings Treviso Bay, LLC, a Florida limited liability company, and Treviso Bay Development, LLC, a Delaware limited liability company (collectively, "Grantor"), each of which has an address of 19275 West Capital Drive, Suite 100, Brookfield, WI 53045.

For the sum of One Dollar (\$1.00) and other valuable consideration, Grantor grants to EMBARQ FLORIDA, INC., a Florida Corporation, whose address is 6391 Sprint Parkway, M/S KSOPHT0101-Z2040, Overland Park, Kansas, 66251-2040, its successors, assigns, lessees and agents, ("Grantee"), subject to the terms stated below, a right of way and easement ("Easement") to construct, operate, maintain, expand, replace and remove a communication system ("System") that Grantee may, from time to time, require, consisting of but not limited to underground cables, wires, conduits; manholes, drains, splicing boxes, surface location markers, equipment cabinets and associated wooden or concrete pads, and other facilities or structures for similar uses, upon, over, through, under and along a parcel of land as depicted and legally described on Exhibit "A" ("Easement Tract"), said Easement Tract being a portion of the real property legally described in Exhibit "B" ("Property"), both Exhibit A and Exhibit B being attached hereto and incorporated by reference herein. Grantee acknowledges and agrees that the above-ground components of the System shall be no greater than eight (8) feet in height (measured from the finished grade of the Easement Tract).

This grant of Easement also includes:

- (A) the right of ingress and egress over and across the Easement Tract;
- (B) the right to clear and keep cleared all trees, roots, brush and other obstructions from the surface and sub-surface of the Easement Tract during construction and maintenance; and
- (C) the right to use on a non-exclusive basis, for access as is necessary solely for access to the Easement Tract, all of the roadways of the Property as the same are platted on those certain Plats of the Treviso Bay development filed in the office of the County Clerk of Collier County, Florida; and
- (D) the right to permit in the Easement Tracts the attachment of and/or the carry in of the conduit, wires and cables of any other company or person as required by law; and
- (E) the right to place underground electrical service to the Easement Tract for Grantee's use and at Grantee's expense, but only in those areas identified as Public Utility Easements as the same are platted on those certain Plats of the Treviso Bay development filed in the office of the County Clerk of Collier County, Florida.

The grant of Easement hereunder shall be for an initial term that expires upon the earlier of (i) the date which is fifteen (15) years from the date of Grantor's execution of this Easement Deed or (ii) the date upon which Grantee permanently ceases its use of the System to serve the Property ("Initial Term") Notwithstanding the foregoing, the grant of Easement hereunder shall automatically renew for two successive terms of fifteen (15) years (each, a "Renewal Term"), unless Grantor (in its sole discretion) files a termination/vacation of this Easement Deed in the office of the County Clerk of Collier County, Florida, at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term, said termination/vacation to become effective upon the expiration of the Initial Term or relevant Renewal Term.

Grantor will have the right to use and enjoy the Easement Tract in conjunction with Grantee during the initial Term or any Renewal Term, so long as Grantor's use of the Easement Tract does not interfere with the rights conveyed to Grantee hereunder. Grantor will not erect any structure, or plant trees or other vegetation within the Easement Tract. Grantee's use of the Easement Tract shall not unreasonably interfere with Grantor's development and use of the Property or structures existing on the Property as of the date of execution of this Easement Deed. Grantee shall at all times cooperate with

Grantor, public utilities and other authorized parties with respect to any shared use of the Easement Tract.

Grantee shall, at its sole cost and expense, be responsible for the installation, maintenance and operation of the System, and shall install, maintain and operate the System in accordance with generally accepted engineering and construction practices, and in accordance with all applicable laws, rules and regulations. All installation, repairs, maintenance or medications of the System shall be performed only by Grantee or its authorized agents.

If Grantee or its authorized agents damage the Property during the course of its construction, installing, maintaining, operating, expanding, replacing or removing the System, then Grantee shall, at its sole cost and expense, repair any such damage and restore any areas of damage to as nearly the condition which existed prior to the damage, reasonable wear, tear and casualty excepted.

Grantee shall at all times throughout the Initial Term or any Renewal Term of this Easement Deed maintain in full force and effect such licenses, permits, approvals and authorizations from applicable governmental agencies as are necessary or required in connection with the installation, use, operation and maintenance of the System.

Grantor warrants that Grantor is the owner and/or ground lessee of the Property and Easement Tract and will defend title to the Easement Tract against the claims of any and all persons, and that Grantor has full authority to grant the Easement rights hereunder according to its terms and execute this Easement Deed.

Grantor further warrants that to the best of Grantor's knowledge, the Property is free from any form of contamination and contains no hazardous, toxic or dangerous substances.

Grantee shall indemnify and hold Grantor and the Treviso Bay Property Owners Master Association, Inc. ("Master Association") harmless from any loss, claims, liabilities or other damages (collectively, "Loss") incurred by them as a result of any third party's claim arising from Grantee's construction, installation, maintenance, operation, expansion, replacement and removal of the System, except for any such Loss arising from the negligence or intentional misconduct of the Grantor, the Master Association and their respective employees, agents, contractors, licensees and invitees. Grantee shall name the Grantor and the Master Association as additional insured on any liability insurance policies held by Grantee related to Grantee's activities under this Easement Deed.

Executed by Grantor this 10<sup>th</sup> day of August, 2006

GRANTOR:

VK Holdings Treviso Bay, LLC, a Florida limited liability company

By: [Signature]  
Printed Name: SANDRA KUTTERFROOD  
Title: VICE PRESIDENT

WITNESSES:

Witness #1: [Signature]  
Printed Name: DIANE A. McCARTHY

Witness #2: [Signature]  
Printed Name: CHRISTINE F. FISHER



ACKNOWLEDGEMENT

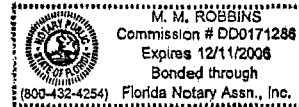
STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on this 10<sup>th</sup> day of AUGUST, 2006 by SANDRA KUTTENBERGER VICE PRESIDENT of VK Holdings Treviso Bay, LLC, known to me to be the identical person who executed this foregoing instrument as a free and voluntary act and deed, for and on behalf of said limited liability company.

*[Signature]*  
Notary Public

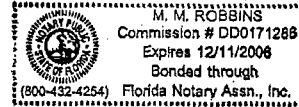
Treviso Bay Development, LLC, a Delaware limited liability company

By: *[Signature]*  
Printed Name: SANDRA KUTTENBERGER  
Title: VICE PRESIDENT



WITNESSES:

Witness #1: *[Signature]*  
Printed Name: TERESA MCCARTHY  
Witness #2: *[Signature]*  
Printed Name: BRADICE ATKINSON

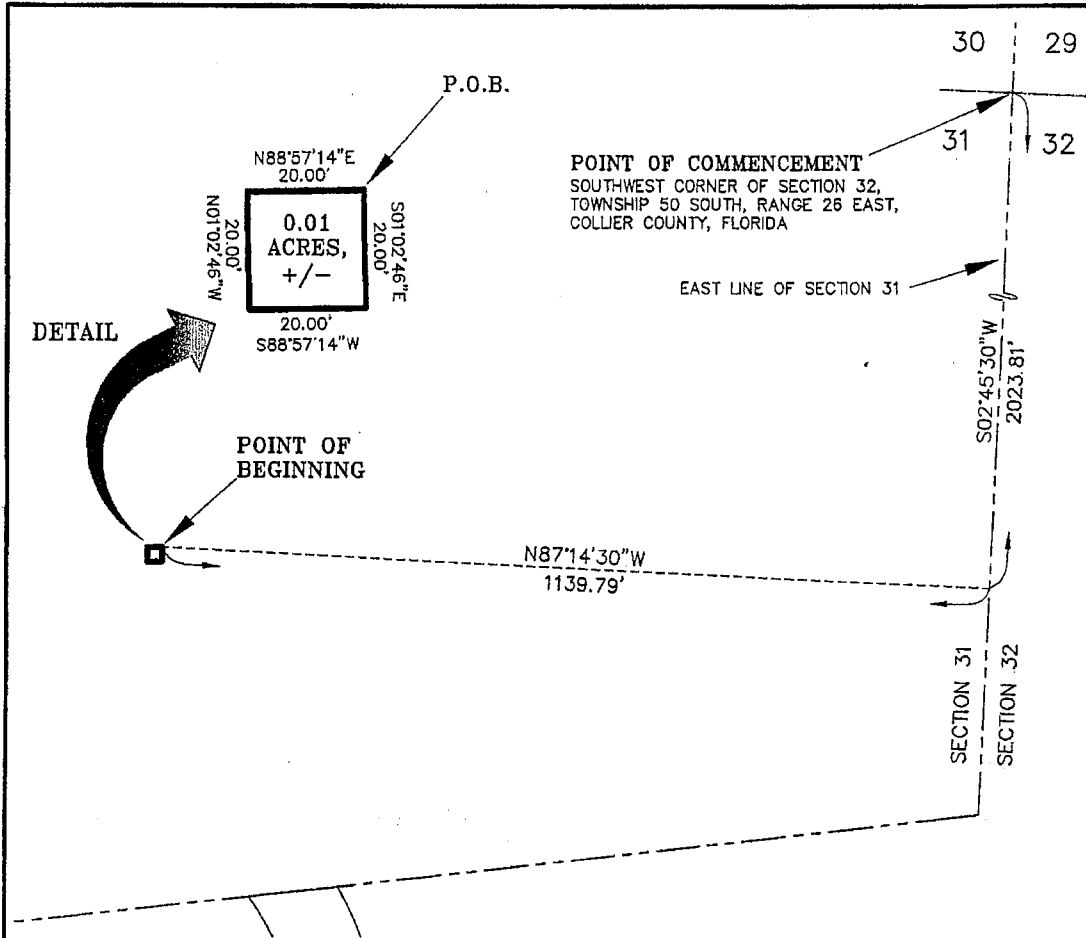


ACKNOWLEDGEMENT

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on this 10<sup>th</sup> day of AUGUST, 2006 by SANDRA KUTTENBERGER VICE PRESIDENT of Treviso Bay Development, LLC, known to me to be the identical person who executed this foregoing instrument as a free and voluntary act and deed, for and on behalf of said limited liability company.

*[Signature]*  
Notary Public



**DESCRIPTION:**

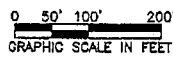
A PARCEL OF LAND SITUATED IN SECTION 31, TOWNSHIP 50 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 31, TOWNSHIP 50 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND RUN SOUTH 02°45'30" WEST ALONG THE EAST LINE OF SAID SECTION 31, A DISTANCE OF 2023.81 FEET; THENCE RUN NORTH 87°14'30" WEST, A DISTANCE OF 1139.79 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 01°02'46" EAST, A DISTANCE OF 20.00 FEET; THENCE RUN SOUTH 88°57'14" WEST, A DISTANCE OF 20.00 FEET; THENCE RUN NORTH 01°02'46" WEST, A DISTANCE OF 20.00 FEET; THENCE RUN NORTH 88°57'14" EAST, A DISTANCE OF 20.00 FEET TO THE SAID POINT OF BEGINNING.

CONTAINING 400.00 SQUARE FEET OR 0.01 ACRES OF LAND, MORE OR LESS.

**LEGEND:**

P.O.B. = POINT OF BEGINNING



**NOTES:**

1. THIS IS NOT A SURVEY.
2. BEARINGS ARE BASED ON THE SOUTH LINE OF SECTION 31, BEING NORTH 89°41'53" WEST.
3. SUBJECT TO EASEMENTS, RESERVATIONS AND RESTRICTIONS OF RECORD.

**SURVEYOR'S CERTIFICATION:**

*Barry E. Syren*  
 Barry E. Syren (For the Firm LB#642)  
 Professional Land Surveyor  
 Florida Certificate No. 5365

Date Signed: 8/2/2006  
 Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.



2350 STANFORD COURT  
 NAPLES, FLORIDA 34112  
 PHONE (239) 434-0333  
 FAX (239) 434-9320  
 E.B. #642 & L.B. #642

**SKETCH AND DESCRIPTION  
 SECTION 31-50-26**

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
8/2006	20023436-06	31-50-26	1" = 200'	1 OF 1

S:\20023436-06\SPRINTSDAR.dwg (8X14F) tmh Aug 01, 2006 - 1:57pm

**EXHIBIT B**

The "Property" is defined as those lands described in the Plat of Treviso Bay recorded in the Office of the Recorder of Collier County, Florida, in Plat Book 45, Pages 14 through 24, inclusive.

**EXHIBIT B**

**SEE ATTACHED LETTER DATED DECEMBER 1, 2006, FROM NIKKI MELLO  
AT COMCAST CABLE**

Nikki Mello  
Commercial Development

239-455-2363  
Extension 1379861



December 1, 2006

Sanjay Kuttemperoor  
VK Development  
19275 W. Capitol Dr.  
Brookfield, WI 53045

Dear Sanjay:

In response to your request for a bulk phone product I am sorry to inform you that Comcast does not currently offer a bulk phone option in this market. We only just recently launched our Comcast Digital Voice product to some of our Lee and Collier County customers and are still in the testing stages to some others.

We're very excited to have this new product to share with our customers and offer on an individually billed basis to your future residents should they choose to subscribe to it along with the video and High-Speed Internet service we will already be providing to them through our Bulk Agreement. As we build our cable infrastructure within Treviso Bay we hope that all of our newest products and services will be made available to your residents but since our Agreement does not include phone service and this product is still so new in our market I cannot guarantee that it will be available immediately to your residents as their homes receive their Certificate of Occupancies.

If you have any other questions or concerns please feel free to call me anytime. We look forward to a long and mutually beneficial partnership with Treviso Bay and VK Development. Thank you for doing business with Comcast Cable.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikki Mello".

Nikki Mello  
Comcast Cable