

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

Petition for waiver of carrier of last resort obligations for multitenant property in Collier County known as Treviso Bay by Embarq Florida, Inc.	Docket No. 060763-TL  Filed: December 13, 2006
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**MOTION FOR EXPEDITED HEARING ON EMBARQ FLORIDA, INC.'S AMENDED PETITION FOR WAIVER**

Pursuant to Sections 364.058(1), 120.569, and 120.57(1), Florida Statutes and Rules 25-28.104 and 25-28.211, Florida Administrative Code, Embarq Florida, Inc. ("Embarq") hereby files its Motion for Expedited Hearing on Embarq's Amended Petition for Waiver filed separately in this docket on this same day. In support thereof, Embarq states as follows:

1. On November 20, 2006, Embarq filed its Petition for Waiver of its carrier of last resort obligations in the Treviso Bay subdivision in Collier County, under section 364.025(6)(d), Florida Statutes. In accordance with the statute, Embarq served a copy of the petition on that same day on the developers of Treviso Bay at the addresses listed on the Division of Corporations website.
2. On December 4, 2006, Embarq was served with a response from Treviso Bay Development LLC ("Treviso Bay").<sup>1</sup> In its response Treviso Bay disputes several of the facts and circumstances alleged by Embarq to constitute "good cause" for relief from its carrier of last resort obligations.
3. On December 13, 2006, Embarq has filed an Amended Petition for Waiver to address certain issues of procedure not addressed in the original filing.

<sup>1</sup> Specifically, Treviso Bay served its response electronically after 5 p.m. on December 1, 2006 and by federal express on December 4, 2006.

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4. In its Amended Petition and the Direct Testimony supporting the petition, Embarq sets forth several facts and circumstances involving the Treviso Bay development that Embarq believes establish “good cause” for the Commission to grant Embarq a waiver of its carrier of last resort obligations, as envisioned by the statute.

5. Requests for waiver of the COLR obligation are extremely time sensitive in that generally there is time certain when facilities must be placed prior to construction of a development or multitenant property. If this construction window is missed, then the costs to place facilities increases significantly. Recognition of these additional costs is the basis of the language in section 364.025(6)(e) that allows an ILEC to bill a developer for additional costs incurred if the ILEC is required to fulfill its COLR obligations that previously had been waived. It also was this time sensitivity that was basis for the 90-day time frame for a Commission ruling established in the statute.

6. Time is of the essence in ruling on Embarq’s Amended Petition because the construction schedule for Treviso Bay requires that placement of Embarq’s facilities must begin no later than mid-March 2007 with service to model homes by mid-April 2007. Therefore, Embarq (and the developer) must know whether its petition for waiver will be granted or denied within that time frame.

7. Section 364.025(6)(d), F.S., provides that the Commission has 90 days to act on a petition for waiver. For Embarq’s Amended Petition, that time frame would run on March 13, 2007.

8. Section 364.051(4), F.S., allowing ILECs to file petitions to recover costs incurred as a result of named tropical storms, contains similar language (although the prescribed time frame is 120 days) regarding the time frame for a decision. The

Commission has implemented the language in section 364.051(4), F.S., to provide for final action by the Commission within the 120-day period.<sup>2</sup>

9. On December 7, 2006 the Commission staff issued a recommendation for a proposed rule setting forth appropriate procedures to implement section 364.025(6)(d), F.S. (See, Staff Recommendation in Docket No. 060763-TL, issued December 7, 2006.) In the recommendation the staff acknowledges that the Commission has 90 days to act on a petition. (at page 2) Staff also suggests that parties may request an expedited hearing on a petition and that the Commission has jurisdiction to grant such requests under section 364.058(1), F.S. (at page 6)

10. While not strictly applicable to Embarq's Waiver Petition, Rule 25-22.0365, F.A.C., provides a model for expedited consideration of disputed issues before the Commission. Under relevant portions of that rule, if a petition desires expedited resolution, the petition must:

- a. file a request for expedited treatment, including direct testimony and exhibits, and simultaneously provide a copy to the other party to the dispute;
- b. identify the issues to be litigated and the company's position on the issues;
- c. state the relief requested; and
- d. explain why the expedited process is appropriate.

After allowing time for a response, the prehearing officer is directed to rule "promptly" on the request.

11. By this Motion, Embarq is requesting expedited treatment of its Amended Petition and has explained the reasons why expedited relief is appropriate. In its Amended Petition, filed this same day, Embarq has identified the disputed issues to be litigated, has filed direct testimony and exhibits supporting its Amended Petition and addressing these

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<sup>2</sup> See Dockets Nos. 050374-TI, 060598-TL and 060644-TL.

issues, and has stated the relief it is requesting, that is, relief from carrier of last resort obligations in Treviso Bay.

12. In addition to setting an expedited hearing date, the Commission should set a corresponding time frame for intervening and responding to the Amended Petition, and for filing responsive testimony, and should establish discovery time frames appropriate for the expedited hearing schedule

13. It is clear that there are disputed facts regarding Embarq's allegations of good cause for a waiver. Setting this matter for a hearing on an expedited basis would serve the interests of both Embarq and the developer by providing certainty regarding the provision of voice services at the development as soon as practicable. Rule 28-106.211, F.A.C., clearly authorizes the presiding officer to order such a schedule to promote the "just, speedy, and inexpensive determination of all aspects of the case."

14. In addition, Embarq believes an expedited process fulfills the legislative intent in establishing the statutory 90-day time frame for ruling on a waiver petition.

WHEREFORE, Embarq asks that the Commission schedule an expedited hearing and procedural schedule on the disputed issues in Embarq's petition for waiver and, based on the evidence presented at the hearing, render a ruling on Embarq's Petition.

15. Embarq notified counsel for Treviso Bay about the filing of the Motion but has not received a response yet concerning its position.

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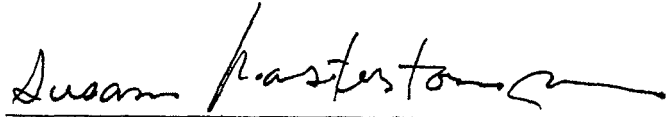
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Respectfully submitted this 13th day of December 2006.

A handwritten signature in black ink, reading "Susan Masterton", with a horizontal line underneath it.

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