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December 20, 2006

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COMMISSION
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VIA HAND DELIVERY

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

Docket No. 060732-TL - In the Matter of: Complaint Regarding BellSouth Telecommunications, Inc.'s Failure to Provide Service On Request In Accordance with Section 364.025(1), F.S., and Rule 25-4.091(1), F.A.C. by Lennar Homes, Inc.

Dear Ms. Bayó:

Enclosed for filing in the above referenced Docket, please find the original and 15 copies of Lennar Homes, Inc.'s Response to BellSouth's Assertion of Affirmative Defense.

CMP 1 Your assistance in this matter is greatly appreciated. If you have any question, please
COM _____ don't hesitate to contact me at the number listed below.

- CTR _____
- ECR _____
- GCL 1
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1
- OTH _____

Sincerely,

Beth Keating
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32302-1877
Phone: (850) 224-9634
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Enclosures

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11613 DEC 20 06

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:)
Complaint Regarding BellSouth)
Telecommunications, Inc.'s)
Failure to Provide Service On Request)
In Accordance with Section 364.025(1),)
F.S., and Rule 25-4.091(1), F.A.C.)
by Lennar Homes, Inc._____)

Docket No. 060732-TL
Filed: December 20, 2006

RESPONSE OF LENNAR HOMES, INC. TO BELLSOUTH'S
ASSERTION OF AFFIRMATIVE DEFENSE

In accordance with Rule 1.100(a), Florida Rules of Civil Procedure, Lennar Homes, Inc. (LHI or Lennar) hereby files this response in opposition to the Affirmative Defense set forth in BellSouth Telecommunications, Inc.'s (BellSouth) Answer to LHI's Complaint, and herein states as follows:

1. BellSouth has failed to properly plead its affirmative defense. BellSouth appears to plead that Lennar fails to state a cause of action based on the alleged lack of standing by Lennar. Under Rule 1.140(b), Florida Rules of Civil Procedure, a motion or pleading stating this defense must state with specificity the grounds for the defense, as well as the substantial matters of law intended to be argued. BellSouth has not stated any basis other than the bare allegation that Lennar has not requested service from BellSouth.
2. Without conceding that BellSouth's assertion of Affirmative Defense is properly pled, Lennar denies the allegation set forth in BellSouth's Affirmative Defense.
3. Lennar has requested that BellSouth extend its facilities and make service available to LHI homes in the Echo Lake project, as well as to the Copper Creek and Madera Isles projects, so that LHI customers in these developments can obtain telephone service from BellSouth in a timely manner.

4. Lennar has standing under Florida Statutes and Commission rules, as well as the test prescribed in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2nd DCA 1981), which is the recognized test for standing in Florida administrative proceedings. As stated in its Complaint, Lennar meets the definition of "applicant" in Rule 25-4.089(1), Florida Administrative Code, for purposes of applying Rule 25-4.091, Florida Administrative Code. Furthermore, Lennar stands in the stead of its customers in requesting extension of facilities and provision of telecommunications service to these developments by BellSouth. More accurately, Lennar is the customer in these developments at this point in time.

5. As stated in the Complaint, BellSouth's refusal to provide service without the referenced attestations from the developer that it has not entered into any other contracts with providers of other data, video, and information services, results in (and has already resulted in) delays in these projects, which has a direct and immediate impact on: (1) Lennar's ability to obtain adequate service to these projects in a reasonable time frame; (2) the costs to Lennar for each project due to the delay; and (3) Lennar's ability to freely contract for goods and services to these developments with competitive providers of other services, such as cable and broadband. The only alternatives available to Lennar are: (1) to enter into exclusive agreements for the full range of telecommunications, data, and video services (as well as marketing rights) with BellSouth; (2) to install Lennar's own telecommunications distribution facilities; or (3) to allow another provider to install facilities. Each of these alternatives, however, results in a different, but no less severe, injury to Lennar that is of sufficient immediacy to meet the Agrico test. If Lennar elects the first alternative, it is denied the ability to contract with other providers of services

other than voice service, and is forced into an exclusive arrangement with BellSouth covering the gamut of BellSouth service offerings, not just voice service. Consequently, Lennar and its customers are denied the opportunity to choose from a variety of providers, a key benefit of a competitive market. If Lennar elects either of the latter two alternatives, Lennar and its customers in the development are unable to obtain any service from BellSouth in a timely manner once facilities are installed by anyone other than BellSouth.

5. The provision of service to customers in a timely manner by the Carrier of Last Resort, BellSouth, falls within the zone of interests that Section 364.025(1), Florida Statutes, was designed to protect, even in a competitive environment, for as the Legislature stated,

. . . 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.

Section 364.025(1), Florida Statutes. See also, Section 1.01, Florida Statutes.¹ This is also within the zone of interests contemplated in the objective of Rule 25-4.091(1), Florida Administrative Code, which is to assure the applicant will receive ". . . reasonably safe and adequate telephone service for the reasonably foreseeable future."

Based on the foregoing, Lennar opposes BellSouth's suggestion that Lennar is

¹ Section 1.01, Florida Statutes, provides that, "The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."

without standing to bring the subject Complaint.

Lennar Homes, Inc.



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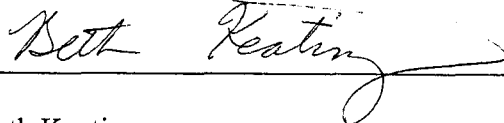
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and U.S. Mail First Class to James Meza, III c/o Nancy H. Sims, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, FL 32301-1556, and that a copy has also been provided to the persons listed below this 20th day of December, 2006:

Jason Fudge, Senior Staff Counsel
Florida Public Service Commission,
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Beth Salak, Director/Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Blvd.
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By:



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