

Matilda Sanders

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Wednesday, December 20, 2006 4:24 PM
To: Filings@psc.state.fl.us
Cc: Susan Masterton; Beth Salak; Patrick Wiggins; Rick Moses
Subject: Electronic Filing - Docket No. 060763-TL
Attachments: PetitiontoIntervene.Dec20.doc

ORIGINAL

a. Person responsible for this electronic filing:

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
(850) 222-7206
swright@yvlaw.net

b. Docket No. 060763-TL

Petition for waiver of carrier of last resort obligations for multitenant property in Collier County known as Treviso Bay, by Embarq, Florida, Inc.

c. Document being filed on behalf of Treviso Bay Development, LLC.

d. There are a total of 8 pages.

e. The document attached for electronic filing is Petition to Intervene of Treviso Bay Development, LLC.

(see attached file: PetitiontoIntervene.Dec20.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Schef Wright
Phone: 850-222-7206
FAX: 850-561-6834

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
RCA _____
SCR _____
SGA _____
SEC 1
OTH Ken P

DOCUMENT NUMBER-DATE
11638 DEC 20 8
FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 20, 2006

PETITION TO INTERVENE OF TREVISO BAY DEVELOPMENT, LLC

Treviso Bay Development, LLC ("Treviso Bay"), pursuant to Chapter 120, Florida Statutes,¹ and Rules 25-22.039 and 28-106.205, Florida Administrative Code ("F.A.C."), and by and through its undersigned counsel, hereby petitions to intervene in the above-styled docket. In summary, Treviso Bay's substantial interests would be directly and immediately affected by Embarq Florida, Inc.'s ("Embarq") attempts to evade its obligation to provide voice telephone service to the Treviso Bay community that is being developed by Treviso Bay, and accordingly, Treviso Bay is entitled to intervene in this docket to protect its substantial interests.

1. The name, address, and telephone number of the petitioner for intervention is as follows:

Treviso Bay Development, LLC
19275 West Capitol Drive, Suite 100
Brookfield, WI 53045.

¹ All references herein to the Florida Statutes are to the 2006 edition thereof.

11638 DEC 20 06

FPSC-COMMISSION CLERK

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 Facsimile.

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

4. This proceeding was initiated by Embarq's Petition for Waiver filed on November 20, 2006. That petition was subsequently amended on December 13, 2006. On the latter date, Embarq also moved for expedited disposition of its Amended Petition for Waiver. Embarq has brought this action under Section 364.025, Florida Statutes. Particularly relevant subsections of this statute include section 364.025(1) and Sections 364.025(6)(a), (b), and (d).

5. Section 364.025(1) declares the State's intent that "universal service" be provided at just, reasonable, and affordable rates to customers, that universal service objectives be maintained after the local exchange market is opened to competitively provided services, and that, until January 1, 2009, the local exchange telecommunications companies - including Embarq - "shall be required to furnish basic local

exchange telecommunications service within a reasonable time to any person requesting such service within the company's service territory." This obligation to serve is known as the "carrier of last resort" ("COLR") obligation.

6. Section 364.025(6) (a) defines "communications service" as "voice service or voice replacement service through the use of any technology."

7. Section 364.025(6) (b) specifies four circumstances under which an Incumbent Local Exchange Carrier ("ILEC"), such as Embarq, can automatically be relieved of its obligation to provide communications service, as defined in section 364.025(6) (a). In summary, those four circumstances are where a property owner or developer, such as Treviso Bay, either: (i) permits only one communications service provider to install its communications service facilities; (ii) accepts incentives from a communications service provider that are contingent upon the ILEC being excluded from providing communications services; (iii) collects from the residents or occupants of the property charges for communications service; or (iv) enters into an agreement with a communications service provider that provides incentives or rewards to the property owner that are contingent on restricting or limiting the ILEC's access to the property.

8. Section 364.025(6) (d), Florida Statutes, provides that an ILEC "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" for which communications service is sought.

9. Although it recites those sections, Embarq effectively acknowledges that it is not entitled to automatic relief from its COLR obligations under Section 364.025(6)(b) by asking for relief specifically under Section 364.025(6)(d), claiming that it won't be able to provide service to the Treviso Bay community profitably and that this assertion constitutes "good cause" under the statute.

10. Statement of Affected Interests. In this docket, the Commission will decide whether to grant Embarq's petition for waiver of its COLR obligations to provide communications service to the Treviso Bay community. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Here, Embarq's current refusal to provide the requested communications service - even after extensive negotiations between Embarq and Treviso Bay toward the provision of the requested service - directly, immediately, and

adversely affects Treviso Bay's substantial interests in developing its community with adequate communications service available to the residents. These interests are directly protected by Section 364.025(1), Florida Statutes, the adverse impacts are present and immediate, and these interests are the type of interests that the proceeding is designed to protect.

11. Disputed Issues of Material Fact. Treviso Bay offers the following list of factual issues (which will likely also implicate mixed issues of fact, law, and policy) that will or may be disputed in this proceeding.

a. Whether Embarq's provision of the requested communications service to Treviso Bay will, in fact, result in Embarq not being able to recover the investment reasonably and prudently required to provide the requested service.

b. Whether Treviso Bay has entered into any agreements, or done anything else, that would restrict or limit Embarq's ability to provide the requested communications service to the Treviso Bay community.

c. What, if any, measurable impact providing the requested communications service would have on Embarq Florida, Inc.'s profitability.

d. Whether Embarq can demonstrate any factual impact or circumstance that constitutes "good cause" within the meaning of Section 364.025(6)(d), Florida Statutes.

Treviso Bay reserves all rights to raise and litigate additional issues of material fact, as well as applicable issues of law and policy, as provided for by the Commission's rules and the procedural order that will govern this case.

12. Statement of Ultimate Facts Alleged. Treviso Bay believes that the following facts entitle it to the specific

relief requested herein, i.e., intervention as prayed by this Petition to Intervene, and also to the requested communications service pursuant to Section 364.025, Florida Statutes.

a. Embarq is a local exchange telecommunications company within the meaning of Section 364.025, Florida Statutes.

b. Treviso Bay has requested that Embarq provide communications service to the Treviso Bay community and has negotiated in good faith toward the arrangements pursuant to which that service would be provided.

c. Treviso Bay has not entered into any agreement with any communications service provider or any other entity that would exclude Embarq from installing communications service-related facilities in the Treviso Bay community or from providing communications services to the Treviso Bay community.

d. Treviso Bay has not entered into any arrangements that would give rise to any of the automatic excuses from COLR obligations under Section 364.025(6)(b), Florida Statutes.

e. Treviso Bay has not entered into any agreements with any communications service provider or other entity, nor has Treviso Bay done anything else of any nature whatsoever, that would restrict or limit Embarq's legal or physical ability to provide the requested communications service to the Treviso Bay community.

f. Embarq's claims that providing the requested communications service to the Treviso Bay community would not be sufficiently profitable to Embarq, even if true, do not constitute "good cause" to excuse Embarq from its statutory COLR obligations to provide the requested service.

13. Statutes and Rules that Require the Relief Requested by and Treviso Bay. Treviso Bay is entitled to relief by Section 364.025, Florida Statutes.

CONCLUSION AND RELIEF REQUESTED

The facts alleged above demonstrate that Treviso Bay Development, LLC, will be adversely affected by the actions that

Embarq is presently pursuing - i.e., refusing to provide requested communications service to the Treviso Bay community - and that Embarq has petitioned the Commission for permission to continue. These impacts are immediate and adverse, and the Commission's determinations in this proceeding will determine Treviso Bay's substantial interests. Accordingly, Treviso Bay is entitled to intervene in this docket as a full party.

WHEREFORE, Treviso Bay Development, LLC respectfully requests the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on Treviso Bay's representatives indicated in paragraph 2 above.

Respectfully submitted this 20th day of December, 2006.

S/Robert Scheffel Wright
Robert Scheffel Wright
Florida Bar No. 966721
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 Facsimile
swright@yvlaw.net

Attorneys for Treviso Bay
Development, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 20th day of December, 2006, to the following:

Beth Salak
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
bsalak@psc.state.fl.us

Patrick K. Wiggins, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
pwiggins@psc.state.fl.us

Rick Moses
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
rmoses@psc.state.fl.us

Susan S. Masterton, Esquire
Embarq
1313 Blair Stone Road
Tallahassee, Florida 32301
susan.masterton@embarq.com

S/Robert Scheffel Wright
Attorney