

James Meza III
General Counsel - Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

December 22, 2006

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

Re: **Docket No.:** _____
**Petition of BellSouth Telecommunications, Inc. for Relief from
Carrier-of-Last-Resort Obligations Pursuant to Florida Statutes
§364.025(6)(d)**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Petition for
Relief from Carrier-of-Last-Resort Obligations Pursuant to Florida Statutes
§364.025(6)(d), which we ask that you file.

Copies have been served to the parties shown on the attached Certificate of
Service.

Sincerely,



James Meza III

Enclosure

cc: All Parties of Record
Jerry D. Hendrix
E. Earl Edenfield, Jr.

CERTIFICATE OF SERVICE
Petition of BellSouth Telecommunications, Inc. for Relief from
Carrier-of-Last-Resort Obligations Pursuant to
Florida Statutes §364.025(6)(d)

I HEREBY CERTIFY that a true and correct copy of the Petition along with Exhibits A thru G, Order No. 06-1049-NOR-TL, Notice of Rulemaking in Docket No. 060554, and F.S. § 364.025 was served via Federal Express this 22nd day of December, 2006 to the following:

Florida Public Service Commission
Patrick Wiggins, Staff Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6212

Nocatee Development Company
Attention: Richard T. Ray
4314 Pablo Oaks Court
Jacksonville, Florida 32224

Anne T. Klinepeter, Registered Agent
4314 Pablo Oaks Court
Jacksonville, FL 32224

The Parc Group, Inc.
Attention: Richard T. Ray
4314 Pablo Oaks Court
Jacksonville, Florida 32224

Anne T. Klinepeter, Registered Agent
4314 Pablo Oaks Court
Jacksonville, FL 32224

SONOC Company, LLC
Attention: Richard T. Ray
4310 Pablo Oaks Court
Jacksonville, Florida 32224

DDI, Inc., Registered Agent
4310 Pablo Oaks Court
Jacksonville, FL 32224

Toll Jacksonville Limited Partnership
250 Gibraltar Road
Horsham, PA 19044

CT Corporation System, Registered Agent
1200 South Pine Island Road
Plantation, FL 33324

Pulte Home Corporation
100 Bloomfield Hills Parkway
Suite 300
Bloomfield Hills, MI 48304

CT Corporation System, Registered Agent
1200 South Pine Island Road
Plantation, FL 33324


James Meza III

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:)	
)	Docket No. _____
Petition of BellSouth Telecommunications,)	
Inc. for Relief from Carrier-of-Last-Resort)	
Obligations Pursuant to Florida Statutes)	
§364.025(6)(d).)	Filed: December 22, 2006
_____)	

PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. (“BellSouth”), pursuant to § 364.025(6)(d), Florida Statutes, files this Petition for Relief from Carrier-of-Last-Resort Obligations (“Petition”) for two private subdivisions in a development in Florida called Nocatee. In support, BellSouth states the following:

GENERAL ALLEGATIONS

1. During the 2006 session, the Florida Legislature enacted legislation¹ that, in certain instances, provides relief for a local exchange carrier (“LEC”) from carrier-of-last-resort (“COLR”) obligations. The COLR statute provides two avenues for a LEC to obtain COLR relief.

2. The first avenue² provides for automatic relief in four specific scenarios generally applicable when property owners or developers have entered into some type of arrangement with a communications services provider, as defined in § 364.025(6)(a)(3), Florida Statutes, other than the LEC.

¹ § 364.025(6), Florida Statutes.

² § 364.025(6)(b)(1)-(4), Florida Statutes.

3. The second avenue³ applies only when none of those four specific automatic relief scenarios are present. In that situation, the LEC may petition the Florida Public Service Commission (“Commission”) for COLR relief, which shall be granted upon good cause shown:

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.

§364.025(6)(d). It is this second avenue that serves as the basis for this Petition.

4. In today’s highly-competitive communications environment, property owners and developers in greenfield areas frequently select, well in advance of the first resident moving in, the communications company that will provide the suite of communications services to residents at the property. In other words, it is common-place for property owners and developers to (1) restrict, in advance, the ability of future residents to choose a provider other than the provider selected by the owner/developer due to exclusive agreements with a developer-selected provider; or (2) enter into preferred arrangements with a specific provider resulting in residents choosing the preferred provider instead of the LEC. These decisions by developers or property owners are driven, at least in part, by which communications provider makes the most lucrative financial offer to the property owner or developer, typically in the form of “door fees” paid to the developer by the communications provider. Thus, in return for these “door

³ § 364.025(6)(d), Florida Statutes.

fees” or other forms of financial consideration, the developer or property owner enters into agreements with the alternative provider that ban, restrict, or make it economically disadvantageous for other communications companies to provide services to the residents of that development.

5. For instance, developers or property owners enter into different types of agreements with alternative providers, including those that (1) restrict the ability of the LEC (or other providers) to provision service or bundles of services to customers, due to exclusive arrangements with the alternative provider; (2) essentially eliminate customer requests for the LEC’s services due to “bulk” arrangements with the alternative provider, wherein the developer or a homeowners association contracts for services from the alternative provider and the customers receive the services in return for payment of their rent or association fees; and (3) preferred arrangements, such as exclusive marketing arrangements, that create an “unlevel playing field” for securing customers and, thus, significantly reduce requests for the LEC’s services.

6. Additionally, in an attempt to avoid automatic COLR relief for the LEC as set forth in the new law, upon information and belief, the more savvy property owners and developers limit their restrictive or exclusive agreements with alternative providers to data and video services, thereby prohibiting or effectively prohibiting the LEC from providing anything other than traditional voice services to residents. And, even in that scenario, the alternative provider generally also has the capability or will be providing voice service to residents (in addition to data and video that the LEC is prohibited from providing or for which the alternate provider has been granted preferential rights, such as bulk rights or marketing rights). Accordingly, LECs, unlike

the alternative providers, are competitively disadvantaged from the start, because they are nearly or completely prohibited from providing certain services or bundles that consumers expect.

7. BellSouth does not challenge the rights of property owners and developers to make these competitive choices on behalf of future residents; however, in some instances, these decisions will have a direct adverse economic impact on a LEC if the LEC is required to serve the property with these arbitrary restrictions. This is particularly true where the property owner or developer is demanding that the LEC provide voice service - and only voice service -- pursuant to the LEC's COLR obligation even though the alternative provider at the property/development is capable of providing voice service to residents. In those situations, it is highly speculative as to whether the LEC will ever see an adequate return, if any at all, on its facilities' investment. And, having made a business decision that economically benefits them, developers or property owners should not be able to hijack COLR to force a LEC to make uneconomic business decisions.

8. Commissioner Deason echoed these same sentiments at the December 19, 2006 agenda conference, wherein the Commission adopted proposed rules to implement the new COLR legislation and he stated: "I believe that requiring uneconomic interest under 'carrier of last resort' is wasteful," Commissioner Terry Deason said. "And if there are viable alternatives to customers and they have service, that is the primary requirement."⁴

⁴ *BellSouth Customer Surcharge Approved*, THE PALM BEACH POST (Dec. 20, 2006).

PARTIES

9. Petitioner, BellSouth, is a Georgia corporation certificated to provide, and actually providing, telecommunications service in the State of Florida. BellSouth's principal place of business 675 W. Peachtree Street, NE, Atlanta, Georgia 30375. BellSouth's additional contact information is as set forth in paragraph 11, *infra*.

10. Pursuant to § 364.025(6)(d), Florida Statutes and the Commission's Proposed Rules in Docket No. 060554-TP, BellSouth is providing notice of this Petition, a copy of the Commission's proposed rules in Docket No. 060554-TP, and a copy of § 364.025 to the following parties via overnight mail. Upon information and belief, all of the identified entities are involved in developing the property that is the subject of this Petition:

- a. ***Nocatee Development Company***, Attention: Richard T. Ray, 4314 Pablo Oaks Court, Jacksonville, Florida 32224 and Registered Agent – Anne T. Klinepeter, 4314 Pablo Oaks Court, Jacksonville, FL 32224. Upon information and belief, this company is the “master” developer of the property that is the subject of this Petition.
- b. ***The Parc Group, Inc.***, Attention: Richard T. Ray, 4314 Pablo Oaks Court, Jacksonville, Florida 32224 and Registered Agent – Anne T. Klinepeter, 4314 Pablo Oaks Court, Jacksonville, FL 32224. Upon information and belief, this company is also involved in developing the property that is the subject of this Petition.

- c. ***SONOC Company, LLC***, Attention: Richard T. Ray, Ray, 4314 Pablo Oaks Court, Jacksonville, Florida 32224 and Registered Agent – DDI, Inc., 4310 Pablo Oaks Court, Jacksonville, FL 32224. Upon information and belief, this company is the owner of the property that is the subject of this Petition, some of which has been transferred to the other owners referenced in d) and e) below.
- d. ***Toll Jacksonville Limited Partnership***, 250 Gibraltar Road, Horsham, PA 19044 and Registered Agent – CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324. Upon information and belief, this company is the owner/developer of Coastal Oaks, one of the private subdivisions under construction within the property that is the subject of this Petition.
- e. ***Pulte Home Corporation***, 100 Bloomfield Hills Parkway, Suite 300, Bloomfield Hills, MI 48304 and Registered Agent – CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324. Upon information and belief, this company is the owner/developer of Riverwood, one of the private subdivisions under construction within the property that is the subject of this Petition.

The term “Developer” as used in this Petition refers to the companies referenced above, because BellSouth is uncertain as to the exact role each of these companies may have in developing the property that is the subject of the Petition.

11. All pleadings, notices and other documents directed to BellSouth in this proceeding should be provided to:

James Meza III
Sharon R. Liebman
c/o Nancy H. Sims
150 South Monroe Street, Ste. 400
Tallahassee, FL 32301
james.meza@bellsouth.com
305.347.5558 (telephone)
305.577.4491 (fax)

E. Earl Edenfield Jr.
Andrew D. Shore
BellSouth Telecommunications, Inc.
675 West Peachtree Street,
Suite 4300
Atlanta, GA 30375
kip.edenfield@bellsouth.com
404.335.0763 (telephone)

JURISDICTION

12. The Commission has jurisdiction over this Petition pursuant to the authority granted to the Commission in Florida Statutes § 364.025(6)(d).

INFORMATION REGARDING THE NOCATEE DEVELOPMENT

13. The development at issue in this Petition is known as Nocatee, which is a 16,000 acre master planned community under construction near Jacksonville in unincorporated Duval and St. John's Counties. Nocatee includes public and private communities; however, this Petition specifically addresses Riverwood and Coastal Oaks, two private subdivisions under construction within Nocatee.⁵ A drawing of the planned Nocatee community is attached hereto as Exhibit A. BellSouth understands that additional private subdivisions are expected within Nocatee.

⁵ In this context, "private subdivisions" means subdivisions that will be gated and on private property, such that, for example, the roads within the subdivisions will be private, not public.

14. BellSouth has not yet been provided the exact addresses for Riverwood and Coastal Oaks subdivisions. BellSouth has been informed that first occupancy is anticipated in March/April 2007 and that the two subdivisions will have a total of approximately 3,072 single family homes (891 at Coastal Oaks and 2,181 at Riverwood). BellSouth understands that portions of each subdivision are still in planning or design stages and, thus, the total number of homes is subject to change.

FACTS DEMONSTRATING GOOD CAUSE FOR COLR RELIEF

15. In 2006, representatives of the Developer and BellSouth discussed technical and engineering matters related to the provision of service within Nocatee. As part of BellSouth's due diligence, in September 2006, BellSouth reviewed the proposed plats for the Riverwood and Coastal Oaks subdivisions. This review revealed that the plats do not grant BellSouth any easement rights.

16. On September 25, 2006, BellSouth contacted BellSouth's primary contact for all Nocatee development matters, Richard T. Ray, President, Nocatee Development Company, regarding the easements that would be necessary for BellSouth to place facilities at Riverwood and Coastal Oaks. That same day, BellSouth received an e-mail reply from Mr. Ray advising that the request had been passed along to their counsel. (A copy of the September 25, 2006 e-mail is attached as Exhibit B).

17. On September 25, 2006, BellSouth contacted the Developer's counsel about the necessary easements, including inquiring about the timeframe within which the easements would be provided and noting that time was of the essence due to BellSouth's understanding that first occupancy was expected in early 2007. Again, that same day, the Developer's counsel responded via e-mail that she was working on a proposed form of

easement and asked for clarification regarding the timing concerns raised by BellSouth. (A copy of the September 25, 2006 e-mail is attached as Exhibit C). BellSouth provided the clarifications that same day.

18. On September 26, 2006, BellSouth received an email from the Developer's counsel confirming that she had received BellSouth's clarifications and that the proposed form of easement would soon be ready. (A copy of the September 26, 2006 e-mail is attached as Exhibit D).

19. On September 28, 2006, BellSouth received an e-mail from the Developer's counsel advising that it would be "premature" to circulate easements in advance of further "business" discussions between Mr. Ray and BellSouth. (A copy of the September 28, 2006 e-mail is attached as Exhibit E). Subsequent to this date and into to December 2006, BellSouth and Developer had several discussions regarding Nocatee, including consideration of several options that BellSouth was hopeful would enable it to economically serve these two private communities. Unfortunately, no agreement was reached.

20. On December 13, 2006, BellSouth finally received the proposed form of easement for the Riverwood and Coastal Oaks subdivisions. (A copy of the December 13, 2006 letter from Mr. Ray and the attached form of easement is attached as Exhibit F). The letter also attached a proposed form of easement for areas adjacent to the public roads in certain areas in the public communities.⁶

⁶ As information, BellSouth *does* plan to serve the public communities within Nocatee where the proposed "voice-only" restriction will not be imposed. As with the proposed easement for the private subdivisions (*see* note 7, *infra*), however, the proposed easement for the public communities also includes certain unacceptable provisions. BellSouth will be communicating its concerns to the Developer shortly in the hopes of obtaining mutually agreeable easement language.

21. Upon information and belief, the Developer plans to direct Coastal Oaks Developer and Riverwood Developer to grant to BellSouth an easement for each subdivision in the form received by BellSouth on December 13, 2006.

22. The proposed form easement restricts BellSouth to providing “voice-only” services in the Coastal Oaks and Riverwood subdivisions. Specifically, the easement states that: “. . . [BellSouth] may use the wires and facilities installed under this Easement for any type of voice service only and the rights granted herein shall specifically exclude delivery of internet/data services and/or video/television services or telecommunications services other than voice service by [BellSouth].”⁷

23. As a result of the restricted “voice-only” easement, BellSouth will not be able to offer subscribers in the Riverwood and Coastal Oaks subdivisions BellSouth’s full panoply of services that exist today or will be offered in the future, including data and video services. This restriction results in: (1) reduced revenue opportunities for BellSouth that create extreme uncertainty as to whether BellSouth can ever recover the cost of its facilities’ investment; (2) the inability of BellSouth to offer subscribers in the Riverwood and Coastal Oaks subdivisions the discounts generally obtainable when purchasing a bundle of voice and data services; and (3) BellSouth incurring costs to

⁷ Moreover, other provisions of the proposed easement made by the Developer for the private subdivisions are unacceptable. For example, the Developer has changed the easement to indicate that all BellSouth equipment will be placed underground. However, BellSouth will need to place aboveground equipment, such as optical network units and serving terminals and equipment markers, in the easement areas to provide service. In addition, the Developer has changed the easement to indicate that BellSouth may not install or relocate any equipment in the easement areas (except for customary repair or maintenance) after initial installation without written permission of the property owner. BellSouth, however, may need to install equipment in the easement area after initial installation from time to time and cannot agree to this proposed revision as permission could be refused or not timely provided. BellSouth will be communicating these concerns to the Developer.

modify its front-end ordering and provisioning systems to comply with the voice-only restriction.⁸

24. Moreover, upon information and belief, the Developer has entered into (1) exclusive marketing arrangements with Comcast for its voice, video and data services within all communities in Nocatee, including the private communities; and (2) exclusive service arrangements with Comcast for video and data services in the private communities in Nocatee, yielding the “voice-only” restriction in the proposed form of easement from the Developer for the private communities.

25. Upon information and belief, Comcast has compensated the Developer for the rights extended to Comcast in the above-described agreements.

26. Comcast offers voice services in the Jacksonville and St. Augustine areas and, upon information and belief, will offer voice services to residents in the Riverwood and Coastal Oaks subdivisions and in other private subdivisions located within Nocatee.

27. In essence, the Developer has made a unilateral decision on behalf of all future residents in the Riverwood and Coastal Oaks subdivisions regarding the identity of their data and video (and for all practical purposes voice) provider. Notwithstanding the agreements with Comcast and the fact that, upon information and belief, Comcast will providing voice services to residents of Nocatee, the Developer has also demanded, pursuant to COLR, that BellSouth install facilities and provide voice-only services throughout the Riverwood and Coastal Oaks subdivisions. Because of the exclusive service arrangements and exclusive marketing arrangements with Comcast, and the attendant service restrictions on BellSouth, however, there is an incredible amount of

⁸ It should be noted that BellSouth cannot control what services a CLEC provides on facilities leased by the CLEC that serve Nocatee.

uncertainty as to the anticipated demand, if any, for BellSouth voice services in the Riverwood and Coastal Oaks subdivisions and in other private subdivisions within Nocatee where the above arrangements with Comcast are present.

28. BellSouth estimates that it will cost approximately \$1.6 million to deploy facilities to the Riverwood and Coastal Oaks subdivisions of the Nocatee community. (See, Affidavit of Larry Bishop, attached hereto as Exhibit G.)

29. To date, the developer has been unwilling to reimburse BellSouth for any of the anticipated costs of BellSouth building a duplicate network (Comcast will construct its own) in the Riverwood and Coastal Oaks subdivisions.

30. While BellSouth does not object to the Developer trying to maximize its revenues by entering into exclusive marketing and service agreements, such a decision should not be used to force BellSouth, pursuant to COLR, to make unwise economic decisions by installing duplicative facilities with no certainty of ever recouping the costs, much less being able to make any positive return on the investment.

31. Clearly, the COLR statute was not enacted to countenance such an inefficient economic result, especially where consumers are not in jeopardy of being stranded without voice service and where an alternate voice provider has been selected by the developer, is installing its own network, is being granted preferential marketing rights for its voice services (and its bundle of voice, video and data services) and, upon information and belief, will be offering voice services to residents. In this scenario, the Developer is attempting to expand BellSouth's COLR obligations beyond its traditional and intended purposes for the Developer's own economic interest, which should be rejected. As Commissioner Deason stated, "requiring uneconomic interest under 'carrier

of last resort' is wasteful. . . . And if there are viable alternatives to customers and they have service, that is the primary requirement.'"⁹

32. At this time, BellSouth is unaware of any specific disputed issues of material fact. BellSouth anticipates that the Developer may dispute BellSouth's assertion that the grounds stated herein are sufficient to establish "good cause" under § 364.025(6)(d).

PRAYER FOR RELIEF

33. Given the circumstances of this case, the uncertainties surrounding any demand for BellSouth voice services, and the amount of capital investment required to provide voice service to the Riverwood and Coastal Oaks subdivisions and in other private subdivisions within Nocatee where the above arrangements with Comcast are present, and the availability to residents of voice service from another developer-selected and developer-preferred provider, the Commission should relieve BellSouth of any obligation to provide service at Coastal Oaks, Riverwood, and any other private communities in Nocatee where the above arrangements with Comcast are present.

WHEREFORE, BellSouth respectfully requests that the Commission:

- (a) find that good cause exists under Florida Statutes § 364.025(6)(d) to grant BellSouth COLR relief as to the Riverwood, Coastal Oaks, and other private subdivisions in Nocatee where the above-arrangements with Comcast are present;
- (b) order all other relief that the Commission deems appropriate in this matter.¹⁰

⁹ See note 4, *supra*.

Respectfully submitted this 22nd day of December.

BellSouth Telecommunications, Inc.



JAMES MEZA III
SHARON R. LIEBMAN

c/o Nancy H. Sims
150 South Monroe Street, Ste. 400
Tallahassee, FL 32301
(305) 347-5558



E. EARL EDENFIELD JR.
ANDREW D. SHORE

BellSouth Telecommunications, Inc.
675 West Peachtree Street,
Suite 4300
Atlanta, GA 30375
(404) 335-0763

662093

¹⁰ Although not currently in effect at this time but in an abundance of caution, pursuant to proposed rule 25-4.084, BellSouth states as follows: Interested persons have 14 calendar days from the date the Petition is received to file a response to the Petition with the Commission, unless the 14th day falls on a Saturday, Sunday, or Holiday, in which case the response must be filed no later than the next working day.

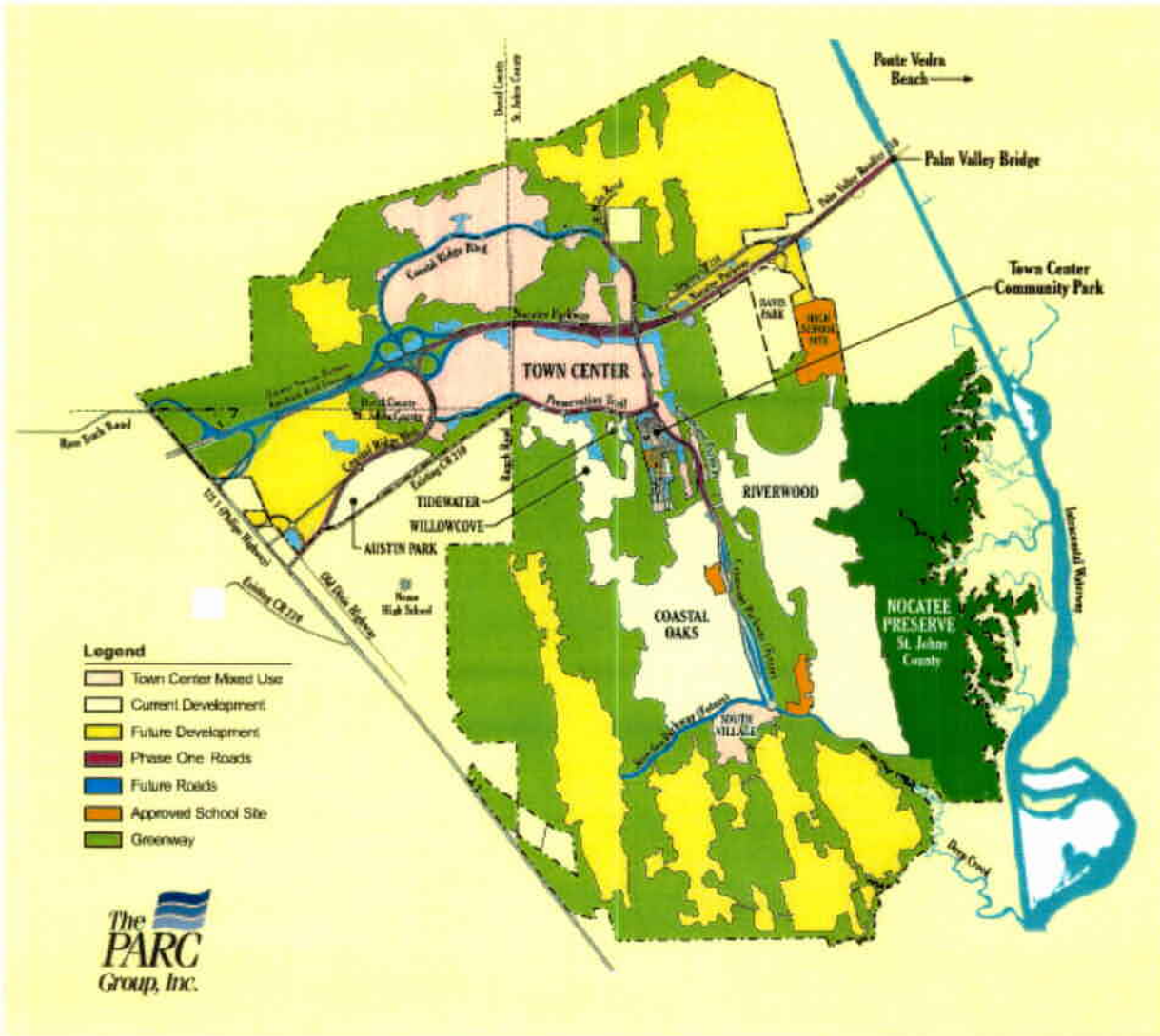


Exhibit A

From: Richard T. Ray [rray@parcgroup.net]
Sent: Monday, September 25, 2006 2:50 PM
To: Liebman, Sharon
Subject: Nocatee Easements

Sharon:

I have referred your request to our attorney who has been working to prepare the form of easement. Please feel free to call her directly. I have called Lynn and told her that she may hear from you.

Lynn Pappas
Pappas, Metcalf, Jenks and Miller
904-353-1980

Also, I am in the process of setting up a meeting to discuss various issues with the Bellsouth business representatives.
Thank you.

Richard T. Ray
(904) 992-9750

x|

Exhibit B

12/18/2006

From: M. Lynn Pappas [lpappas@papmet.com]

Sent: Monday, September 25, 2006 5:19 PM

To: Liebman, Sharon

Cc: rray@parcgroup.net

Sharon I just got back into the office from meetings out all afternoon. We are working with our client on the form of the easement and will have it to you as soon as we are able to complete the discussions with Rick and his group. I understand that you communicated with Rick directly last weeking requesting that the form be delivered at a specific time but neither he nor I understand that nature of the deadline you refer to. Can you please elaborate. Thanks.

Confidentiality Notice: The material in this transmission is intended only for the use of the individual to whom it is addressed and may contain information that is confidential. If you have received this transmission in error, please immediately notify us by return e-mail (lpappas@papmet.com) or telephone (904-353-1980) to arrange for the return of this material to us. Thank you.

Exhibit C

12/18/2006

From: Diane G. Frederick [dfrederick@papmet.com] on behalf of M. Lynn Pappas [lpappas@papmet.com]
Sent: Tuesday, September 26, 2006 9:12 AM
To: Liebman, Sharon
Subject: BellSouth Form Easement

Sharon:

After listening to your voice mail last evening, I confirmed with Rick that in your phone conversation he indicated that if the document was ready to be forwarded it would be sent Friday or Monday. At this point, we do not have the document in final form, but we will provide it to you as soon as it is available. I simply wanted to clarify so there was no misunderstanding.

Confidentiality Notice: The material in this transmission is intended only for the use of the individual to whom it is addressed and may contain information that is confidential. If you have received this transmission in error, please immediately notify us by return email (lpappas@papmet.com) or telephone Diane Frederick at (904) 353-1980 to arrange for the return of this material to us. Thank you.

Exhibit D

12/18/2006

From: M. Lynn Pappas [lpappas@papmet.com]
Sent: Thursday, September 28, 2006 10:58 AM
To: Liebman, Sharon ; Jacobs, Phil
Subject: Nocatee service

Sharon, I was able to talk to Rick Ray this morning about your call and requests for an easement document. As you may know there have been a number of meetings between BellSouth reps and Nocatee reps on the construction and development timetable for the Nocatee project and for the delivery of Bellsouth telephone service throughout the Nocatee community. It is our intention that BellSouth have complete access to install facilities and to market and provide all services throughout the non-private communities. Within the private communities, we want BellSouth to provide telephone service, but BellSouth has raised several issues regarding such service. To resolve these matters and provide the necessary easements, Rick Ray would like to pursue this discussion on the business issues and has called Phil Jacobs to set up a meeting in the near future to further these discussions. Until Mr. Ray and Mr. Jacobs have had an opportunity to meet on this issue, it would be premature to circulate any draft easements.

Confidentiality Notice: The material in this transmission is intended only for the use of the individual to whom it is addressed and may contain information that is confidential. If you have received this transmission in error, please immediately notify us by return e-mail (lpappas@papmet.com) or telephone (904-353-1980) to arrange for the return of this material to us. Thank you.

Exhibit E

12/18/2006



December 13, 2006

VIA COURIER

Mr. Phil Jacobs
President
Bellsouth Corporation
1025 Lenox Park Boulevard
Suite 6A628
Atlanta, Georgia 30319

Re: Forms of Easement

Dear Phil:

On behalf of SONOC Company, LLC, I have attached two (2) forms of easement documents for delivery to BellSouth to provide for construction and installation of BellSouth equipment in the Nocatee community. The first applies to the residential areas within Nocatee abutting public rights of way in which BellSouth has already commenced installation of lines and equipment and would apply to commercial properties within Nocatee. We are putting together the legal description for both easement forms.

The second form labeled "private" in the left hand footer would apply to residential areas abutting private roads.

As we have discussed, we are well under construction in all areas of the Nocatee community. As I have repeatedly indicated to you, it is critical that we receive your written confirmation of your agreement to provide telephone services to all of the Nocatee community prior to or coincident with unit construction as we have requested.

Absent such confirmation, we will be forced to proceed through regulatory process to obtain telephone service from BellSouth. I look forward to hearing from you as soon as possible.

Very truly yours,

NOCATEE DEVELOPMENT COMPANY

A handwritten signature in black ink, appearing to read "Rick", written over a horizontal line.

Richard T. Ray
President

Enclosure(s)

STATE OF FLORIDA

BELLSOUTH

COUNTY OF _____

Preparer's name:

EASEMENT

For and in consideration of Ten and 00/100 dollars (\$10.00) and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the undersigned owner(s) of the premises described below, hereinafter referred to as Grantor, do(es) hereby grant to **BELLSOUTH TELECOMMUNICATIONS, INC.**, a Georgia corporation, its licensees, agents, successors, assigns, hereinafter referred to as Grantee, a non-exclusive easement to construct, maintain, add, and/or remove certain telecommunications wires and facilities under the Easement Property more particularly described below and located in _____ County, Florida and to operate the telecommunications wires and facilities to deliver voice service, all on the terms more particularly set forth below. The Easement Property is more particularly described as follows:

All that tract or parcel of land lying in Section _____, Township _____, Range _____, _____ County, State of Florida, described as follows:

[Insert Description]

(the "Easement Property").

The following rights are also granted to the Grantee: the right of the Grantee to attach wires or lay cable or conduit or other appurtenances under said Easement Property for telecommunications purposes or electric power transmission or distribution to serve the telecommunications facilities; ingress and egress over said Easement Property at all times; the right, but not the obligation, with the consent of the Grantor or Grantor's designated successor or assign, and in accordance with applicable law, to clear the Easement Property and keep it cleared of all trees, undergrowth, or other obstructions; the right, but not the obligation, with the consent of the Grantor or Grantor's designated successor or assign, and in accordance with applicable law, to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside the Easement Property which might interfere with or fall upon the lines or systems of telecommunication or power transmission or distribution; with the consent of the Grantor or Grantor's designated successor or assign, and in accordance with applicable law, the right at Grantee's cost and expense to relocate said systems of telecommunications on the Easement Property to conform to any future highway relocation, widening, or improvements.

To have and to hold the above granted easement unto Grantee forever and in perpetuity. Grantor warrants that it is the fee owner of the land upon which the above described easement is granted.

There shall be no new installation and/or relocation of any lines or other improvements by Grantee within the Easement Property, after initial installation, without written permission from the Grantor or Grantor's designated successor or assign. Written permission of the Grantor or Grantor's designated successor or assign is not required by the Grantee for any Grantee customary repairs and /or maintenance of the Easement Property.

It is understood that Grantee may use the wires and facilities installed under this Easement for any type of voice service only and the rights granted herein shall specifically exclude delivery of internet/data services and/ or video/television services or telecommunications services other than voice service by Grantee. In addition to enforcement by Grantor, this provision may be enforced at law or in equity (including the right to specific performance and/or injunctive relief) by SONOC Company, LLC, a Delaware limited liability company, its successors or assigns, who is an intended third party beneficiary of this provision.

Grantor reserves the right and privilege to use and occupy and to grant to others the right to use and occupy the surface and air space over the easement area for any purpose which is not inconsistent with the rights herein granted to Grantee and which does not interfere with Grantee's use of the easement area, including, without limitation, the installation, construction, maintenance and use of paving, grass, driveway and sidewalk improvements; provided, however, that Grantor will not plant trees or install structures (other than paving, driveway, sidewalk and similar surface improvements) on top of Grantee's facilities in the easement area.

All facilities and equipment will be installed, operated and maintained at all times beneath the surface of the Easement Property; provided that the same may be temporarily exposed or removed to the surface when necessary or desirable for the purpose of repairing and/or replacing the same.

By: _____
Print Name: _____ Name: _____

Title: _____
Print Name: _____

STATE OF FLORIDA }
 }SS
COUNTY OF _____}

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, of _____, a _____, on behalf of the company.

Print Name: _____
NOTARY PUBLIC
State of Florida at Large
Commission # _____

My Commission Expires:

Personally Known

or Produced I.D.

[check one of the above]

Type of Identification Produced

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:)
) Docket No. _____
Petition of BellSouth Telecommunications,)
Inc. for Relief from Carrier-of-Last-Resort)
Obligations Pursuant to Florida Statutes)
§364.025(6)(d).) Filed: December 22, 2006
_____)

AFFIDAVIT OF LARRY BISHOP

COMES NOW the Affiant, and swears under oath as follows:

1. My name is Larry Bishop. I graduated from Florida State in 1998 with a Bachelor of Science degree in Electrical Engineering. I graduated from the University of Florida in 2003 with a Masters in Business Administration. I am currently employed by BellSouth as a Supervising Manager in the Outside Plant Engineering & Construction Support Staff in Atlanta, Georgia. I have held this position since August 2005.
2. In my position as a Supervising Manager, I supervise a team of subject matter experts responsible for supporting the BellSouth region in fields such as: outside plant engineering, Greenfield deployment planning, loop deployment planning, digital loop electronics planning and provisioning, proactive maintenance, capital investment for the rehabilitation of cable plant, building industry consultants, and unbundled network elements. BellSouth building industry consultants and outside plant engineers work with property developers to place telecommunications facilities for single family and multi-dwelling unit developments.

3. Prior to becoming a Supervising Manager, I held various positions in the network organization including both Outside Plant Engineer (OSPE) and Loop Capacity Manager (LCM). In these positions I was responsible for planning fiber optic cable, digital loop electronics, broadband, and new Greenfield deployment. I coordinated with property developers to place telecommunications facilities for single family and multi-dwelling unit developments. I spoke directly with developers, planned the network architecture, and designed the Engineering Work Order that would be implemented by BellSouth construction forces.
4. This Affidavit is filed on behalf of BellSouth Telecommunications, Inc. ("BellSouth") in support of BellSouth's Petition for Relief from Carrier of Last Resort Obligations ("Petition") filed with the Florida Public Service Commission ("Commission") on December 22, 2006. The purpose of this Affidavit is to describe the anticipated network deployment and associated costs for two of the private subdivisions in Nocatee, a single family residential home development located in St. Augustine, Florida.
5. The development at issue is known as Nocatee, which is a 16,000 acre master planned community under construction near Jacksonville in unincorporated Duval County and St. John's County. The two private subdivisions in question are called Coastal Oaks and Riverwood. The street addresses for these subdivisions have not yet been provided by the developer. The developers of these subdivisions have not yet provided to BellSouth signed and recorded easements for the placement of feeder and distribution facilities within the subdivisions. On December 13, 2006, the "master developer" for the Nocatee

development, which has been BellSouth's contact for all such development matters for subdivisions in Nocatee, proposed restricted easements to BellSouth for the two subdivisions, which prohibit BellSouth from placing facilities in the easement areas for non-voice services.

6. In conjunction with the developer's representatives, local BellSouth Network representatives in North Florida have developed a network deployment strategy for this development. I have spoken with the local network engineers and reviewed the proposed network deployment strategy. Based on my experience, I find the network deployment strategy to be reasonable and efficient.
7. I have also reviewed the estimated costs for the network deployment to Coastal Oaks and Riverwood, which amount to approximately \$1.6 million (approximately \$500,000 for Coastal Oaks and approximately \$1.1 million for Riverwood). Based on my experience, this cost estimate encompasses the necessary and reasonable work required for network deployment to Coastal Oaks and Riverwood. Any additional similar private subdivisions in Nocatee would require a similar network deployment strategy.

Further affiant says not.

This 21 day of December 2006.


LARRY BISHOP

Sworn to and subscribed
before me this 21
day of December 2006.


Notary Public
My commission expires: _____

Notary Public, Gwinnett County, Georgia
My Commission Expires Feb. 19, 2008

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed adoption of Rule 25-4.084,
F.A.C., Carrier-of-Last-Resort; Multitenant
Business and Residential Properties.

DOCKET NO. 060554-TL
ORDER NO. PSC-06-1049-NOR-TL
ISSUED: December 20, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF RULEMAKING

BY THE COMMISSION:

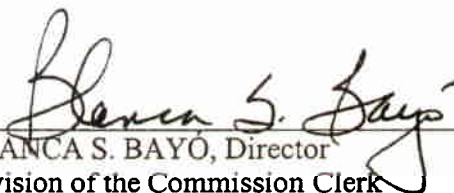
NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to adopt Rule 25-4.084, Florida Administrative Code, relating to carrier-of-last-resort; multitenant business and residential properties.

The attached Notice of Rulemaking will appear in the December 29, 2006, edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at a time and place to be announced in a future notice.

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than December 19, 2006.

By ORDER of the Florida Public Service Commission this 20th day of December, 2006.


BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

CTM

DOCUMENT NUMBER-DATE

11615 DEC 20 8

FPSC-COMMISSION CLERK

ORDER NO. PSC-06-1049-NOR-TL
DOCKET NO. 060554-TL
PAGE 2

NOTICE OF PROPOSED RULEMAKING
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060554-TL

RULE TITLE:

RULE NO.:

Carrier-of-Last-Resort; Multitenant Business and Residential Property 25-4.084

PURPOSE AND EFFECT: To specify the requirements for a local exchange company to petition the Commission for relief if it is not automatically relieved of its Carrier-of-Last-Resort (COLR) obligations as defined in Section 364.025(6)(b)1 through 4, F.S., for a multitenant business or residential property.

SUMMARY: The rule implements Section 364.025(6)(d), F.S., providing notice and filing requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: There should be little or no impact on individuals or companies subject to this rule.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), FS

LAW IMPLEMENTED: 364.025, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Christiana T. Moore, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6098.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-4.084 Carrier-of-Last-Resort; Multitenant Business and Residential Property.

(1) A petition for waiver of the carrier-of-last-resort obligation to a multitenant business or residential property pursuant to Section 364.025(6)(d), Florida Statutes, shall be filed with the Division of the Commission Clerk and Administrative Services and shall be delivered by hand delivery on the same day, or by overnight mail on the day following filing, upon the relevant owners or developers together with a copy of Section 364.025(6) and this rule.

(2) A petition for waiver of the carrier-of-last-resort obligation shall be limited to a single development.

(3) The petition must include the following:

(a) The name, address, telephone number, electronic mail address, and any facsimile number of the petitioner;

(b) The name, address, telephone number, electronic mail address, and any facsimile number of the attorney or qualified representative of the petitioner if any;

(c) The address or other specific description of the property for which the waiver is requested;

(d) The specific facts and circumstances that demonstrate good cause for the waiver as required by Section 364.025(6)(d);

(e) A statement that interested persons have 14 calendar days from the date the petition is received to file a response to the petition with the Commission, unless the fourteenth day falls on a Saturday, Sunday, or holiday, in which case the response must be filed no later than the next working day; and

(f) A statement certifying that delivery of the petition has been made on the relevant owners or developers and the method of delivery.

(4) A response to a petition must include the following:

(a) The name, address, telephone number, electronic mail address, and any facsimile number of the respondent;

(b) The name, address, telephone number, electronic mail address, and any facsimile number of the attorney or qualified representative of the respondent if any upon whom service of pleadings and other papers shall be made; and

(c) Whether the respondent disputes the facts and circumstances alleged in the petition.

Specific Authority 350.127(2) FS.

Law Implemented 364.025 FS.

History–New.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ray Kennedy

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: December 19, 2006.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 32,
Number 34, August 25, 2006

ORDER NO. PSC-06-1049-NOR-TL
DOCKET NO. 060554-TL
PAGE 5

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

Select Year: 2006[Go](#)

The 2006 Florida Statutes

Title XXVII
RAILROADS AND OTHER REGULATED
UTILITIES

Chapter 364
TELECOMMUNICATIONS
COMPANIES

[View Entire
Chapter](#)

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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