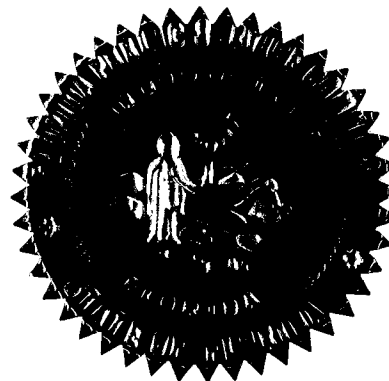


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060554-TL

In the Matter of:

PROPOSED ADOPTION OF RULE 25-4.084,
F.A.C., CARRIER-OF-LAST-RESORT;
MULTITENANT BUSINESS AND RESIDENTIAL
PROPERTIES.



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 6

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. TEW

DATE: Tuesday, December 19, 2006

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
 Official Commission Reporter
 (850)413-6732

1 PARTICIPATING:

2 BETH KEATING, ESQUIRE, representing Lennar
3 Developers, Inc.

4 R. SCHEFFEL WRIGHT, ESQUIRE, representing Treviso Bay
5 Development, LLC, and VK Development Corporation.

6 TOM McCABE, representing TDS Telecom.

7 JIM MEZA, ESQUIRE, representing BellSouth
8 Telecommunications, Inc.

9 SUSAN MASTERTON, representing Embarq Florida, Inc.

10 GERARD LAVERY LEDERER, ESQUIRE, representing Florida
11 Real Estate Alliance.

12 HOWARD E. (GENE) ADAMS, ESQUIRE, representing Time
13 Warner Telecom of Florida, L.P.

14 DULANEY L. O'ROARK III, representing Verizon Florida
15 Inc.

16 CHRIS MOORE, representing the Florida Public Service
17 Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: And we have one remaining item on
3 our agenda. That is Item 6.

4 Okay. We are on Item 6. And we do have, I believe,
5 one participant by phone, so let me make sure that he is with
6 us.

7 Mr. Lederer.

8 MR. LEDERER: Good afternoon, Madam Chair. I am
9 here.

10 CHAIRMAN EDGAR: Okay. I am going to ask our staff
11 to present the item, and I will call upon you when we are
12 asking for comments from others. So if you will just listen
13 in, and I will call upon you in a few minutes.

14 MR. LEDERER: Absolutely. Thank you.

15 CHAIRMAN EDGAR: Thank you. Okay.

16 MS. MOORE: Thank you. Chris Moore with the
17 Commission's Office of General Counsel.

18 Item Number 6 is a recommendation to propose the
19 adoption of a new rule to implement a new section of the
20 Florida Statutes on telecommunications companies and universal
21 service. The statute authorizes a waiver of a local exchange
22 company's carrier of last resort obligation to customers in a
23 multi-tenant business or residential property. The statute,
24 Section 364.025 in Paragraph 6(b) provides for an automatic
25 waiver in certain circumstances. In Paragraph (d) it allows a

1 LEC that has not been automatically relieved of its COLR
2 obligation to petition the Commission, and if they can show
3 good cause, to receive a waiver.

4 This rule prescribes the filing requirements for the
5 petition and for a response. Staff recommends that the
6 Commission limit the rule to procedural requirements, at least
7 until it gains some experience through petitions for waiver or
8 complaints.

9 CHAIRMAN EDGAR: Who would like to begin? Okay.
10 You're recognized.

11 MR. O'ROARK: Good afternoon, Madam Chairman,
12 Commissioners. I'm De O'Roark with Verizon. Verizon views
13 COLR as a critical issue. To understand why you don't have to
14 look any further than the massive investment that we are making
15 in Florida. This year alone Verizon has invested \$400 million
16 in our FIOS network. As we are rolling out that network, more
17 and more Floridians are gaining access to the services we
18 provide over it, voice, lightning speed broadband, and state of
19 the art video. Simply put, we are re-inventing ourselves so we
20 can keep pace with the tremendous changes that are happening in
21 the industry, changes that I know you are aware of, changes
22 that you recognized in your report to the legislature that you
23 submitted just recently.

24 There is no doubt that we are spending heavily, but
25 to succeed we must invest wisely. We cannot afford to make

1 uneconomic expenditures or wasteful ones. That's why we see
2 COLR as being so important.

3 Now, when you think about COLR policy, it's important
4 to take a step back and think about what we are trying to
5 accomplish here. The carrier of last resort obligation was
6 initiated decades ago back when often the local phone company
7 was the only game in town. If the local phone company didn't
8 roll out, didn't extend its network to your home or your
9 business, the result might very well mean that you didn't have
10 phone service. At the same time, back then phone companies had
11 a pretty good way of recouping costs expended to serve
12 difficult-to-serve areas. You could spread those costs out to
13 your rate base, and if necessary, you could come to the
14 Commission and ask for a rate increase.

15 Those old assumptions have changed. With the
16 explosion of competition, consumers often and usually have
17 alternatives in service providers, and at the same time, phone
18 companies now face price competition. You can't simply make
19 wasteful investments and hope to recoup them by raising your
20 costs. Consumers are going to go elsewhere.

21 In 2006, this year, the Legislature took an important
22 step. It recognized that the old assumptions have changed, and
23 it has reevaluated COLR in today's environment. As staff
24 reported, the Legislature has set out four scenarios where
25 there is an automatic waiver of the COLR obligation. Those

1 generally involve, MDUs, subdivisions in situations where there
2 is some kind of exclusive arrangement for the provision of
3 voice service. The statute goes one step further and permits
4 local phone companies to seek a waiver of the COLR obligation
5 from the Commission for good cause shown based on the facts and
6 circumstances of provision of service to the multi-tenant
7 business or residential property.

8 The Legislature did not define good cause. It did,
9 however, delegate to you, the Commission, responsibility for
10 implementing the good cause paragraph through rulemaking and,
11 obviously, that's why we are here.

12 Now, staff has recommended a purely procedural rule,
13 one that lays out what has got to be included in the petition
14 and the response. We respectfully submit that the Commission
15 should go further and at least start to define good cause. We
16 understand that sitting here at this point the Commission is
17 not going to be able to address every conceivable situation.
18 But what the Commission can do is embody in its rules at least
19 a basic view of COLR policy.

20 There are at least a couple of advantages to doing
21 that now. First, you have the time to give the matter due
22 consideration and consider what your policy should be.
23 Oftentimes when you get these petitions for COLR waiver, there
24 is intense time pressure. And from Verizon's standpoint I can
25 tell you that if you are looking at rolling out service to a

1 residential subdivision, you have got a go/no go decision that
2 you have got to make. If you wait and the landscaping is done,
3 the driveways are in, that happens, your costs if you
4 ultimately roll out service go up astronomically. So if you
5 can begin to deal with COLR now, you can do it when you are not
6 under that kind of intense time pressure.

7 The other thing is that if you can begin to make some
8 judgments now, you are going to remove some uncertainty from
9 the industry. You can give us some guidance and, hopefully,
10 the result of that will be fewer cases that you have to decide
11 down the road.

12 Now, Verizon, BellSouth, and Embarq have submitted to
13 the Commission a proposed red line of staff's rules. I'm not
14 going to walk you through all our red lines given the hour. I
15 want to focus on just one section. That is Section 9, which is
16 at Page 5 of our proposed rules. That concerns rebuttable
17 presumptions that we have proposed.

18 Now, a rebuttable presumption is different than an
19 automatic waiver. Rebuttable presumption is not automatic.
20 The carrier has got to allege facts. And once alleged, an
21 interested person can come in and attempt to rebut those facts.
22 We have recommended rebuttable presumptions in three
23 circumstances.

24 First, when there are no opposing comments filed. It
25 is reasonable to assume when no one comes in to dispute a

1 petition that there is good cause.

2 The second rebuttable presumption is when the MDU
3 owner or developer refuses to provide certain basic information
4 to the local phone provider. If we don't have certain
5 information, like what arrangements are you making for
6 communications service at your property, we are operating in
7 the dark. And I can tell you from Verizon's perspective that
8 we've been burned. We are rolling out FIOS. We have rolled it
9 out to developments only to find out later that the apartment
10 owner is telling us, oh, by the way, there's a cable exclusive
11 here. You can't provide your video service.

12 That is the kind of information that we need to know
13 up front. If an owner or developer is not willing to cooperate
14 with us, is not willing to provide us that basic information,
15 there ought to be a presumption that there is good cause for us
16 not to have to serve the property.

17 Then, third, is when the owner or developer has
18 entered into, or plans to enter into, an agreement with an
19 alternate provider that will be offering phone service to the
20 residents. Again, we kind of have to take a step back and
21 consider what is the point of COLR? If we are in a situation
22 where, let's say, the MDU owner has an arrangement with a
23 provider, and they are going to offer phone service to
24 everybody in the complex, what is the point of requiring, say,
25 Verizon to roll out service? And just to make it -- well, if

1 you look at it from the MDU owner's perspective, frankly, there
2 can be cases where they are wanting to have their cake and eat
3 it, too. When they enter into, say, an exclusive deal or a
4 bulk deal with a cable provider, there is typically an up-front
5 payment involved. And we are not here to criticize that, but
6 once they have done that, you've got a cable provider in -- and
7 everybody knows in the Tampa area our biggest competitor is
8 Bright House. Bright House offers phone service virtually
9 everywhere it offers cable service.

10 If you have got that up front payment, but then you
11 also want, say, Verizon to come in, the MDU owner is seeking to
12 enhance its property value and perhaps the rents it can receive
13 by offering a different brand of telephone voice service. That
14 is different, though, for COLR purposes than a situation where
15 there is no phone service at all.

16 Now, from Verizon's point of view, where we have got
17 our competitor, say the cable provider that's got a bulk deal
18 or an exclusive deal for cable service, and perhaps even for
19 data service, what we're looking at if we are forced to go in
20 and serve is potentially having to make an uneconomic
21 investment. Because if we roll out our FIOS service, we are
22 not going to be able to offer all the services that we can.
23 And what's more, we are going to be competing with someone who
24 can offer a more compelling bundle than we can, at least a
25 larger bundle than we can. That's going to have a significant

1 effect on the take rate, and may well make that an uneconomic
2 investment for us.

3 Let me be clear. We are not saying that MD owners
4 should not be able to negotiate bulk deals. Frankly, Bright
5 House does that; we do that. That's not the point. The point
6 is that if they negotiate a bulk deal with a cable provider
7 that is going to provide voice service to the residents, at
8 that point there should be no COLR obligation. Verizon may or
9 may not decide that it's a good investment to roll out service
10 to that subdivision, but at that point it should be a business
11 decision by Verizon, something that is governed by the
12 marketplace, not by regulation.

13 So those are the three presumptions that we have
14 recommended. And for the reasons I've just described, we would
15 recommend respectfully that the Commission accept the red line
16 changes that we have proposed.

17 Thank you.

18 CHAIRMAN EDGAR: I don't know that I have those
19 changes? Have you --

20 MS. MOORE: I don't either. I'm not sure if --

21 CHAIRMAN EDGAR: Do you have copies that you would
22 like to share us and with everyone else?

23 MR. O'ROARK: Madam Chair, I apologize, I do not. I
24 can tell you that the red line was filed on October 5th, 2006.

25 MS. MOORE: The post-workshop comments?

1 MR. O'ROARK: Yes. They were filed in conjunction
2 with the post-workshop comments.

3 MS. MOORE: Okay. I don't have copies with me,
4 either.

5 CHAIRMAN EDGAR: Okay. Well, let's go down the line
6 and hear from those that would like to speak on this issue, and
7 then we can see where we need to go.

8 Mr. Meza.

9 MR. MEZA: Thank you, Madam Chairman. Jim Meza on
10 behalf of BellSouth.

11 BellSouth concurs with Verizon's comments as it
12 relates to this rulemaking proceeding.

13 Thank you.

14 CHAIRMAN EDGAR: Thank you.

15 Ms. Masterton.

16 MS. MASTERTON: Susan Masterton, representing Embarq,
17 and Embarq also concurs with Verizon's comments about the
18 critical importance of COLR and the need to address additional
19 issues besides the purely procedural issues that are addressed
20 in the rule as proposed by staff.

21 Thank you.

22 CHAIRMAN EDGAR: Mr. Wright.

23 MR. WRIGHT: If it's okay with you, I think
24 Ms. Keating will go before I. We represent similar clients.

25 Thank you.

1 CHAIRMAN EDGAR: Okay. Ms. Keating.

2 MS. KEATING: Good afternoon, Madam Chairman,
3 Commissioners. Beth Keating, Akerman Senterfitt, on behalf of
4 Lennar Corporation and Lennar Homes.

5 Let me just start out by saying that we appreciate
6 the opportunity to address you on this issue. This is a very
7 big issue for Lennar Corporation, as one of the largest
8 developers in the nation. We appreciate the efforts that staff
9 has put into this and the opportunities for input that we've
10 had. And, ultimately, we think that the proposed rule that
11 staff has put before you today is the right direction for this
12 rule.

13 Surprisingly enough, we agree to some extent with the
14 ILECs that it might be beneficial to have some parameters or
15 guidelines put around what constitutes good cause, that that
16 might lead to some level of regulatory certainty in the
17 industry and between developers and various carriers as far as
18 negotiations.

19 That being said, we understand staff's
20 recommendation. We appreciate their suggestion that it's
21 really too premature at this point to try to define good cause
22 and, ultimately, we support that recommendation and just hope
23 that the Commission will perhaps give some consideration at a
24 future date once more experience has been gained in this area
25 to going back and taking a look at adding some definitions and

1 parameters for good cause.

2 As far as the rebuttable presumptions that the ILECs
3 have suggested, we suggest that staff's recommendation with
4 regard to those is directly on point. It's entirely
5 inappropriate to shift the burden of proof to property owners
6 and developers on those issues. And with regard to provision
7 of information and those issues, we think that, you know, we
8 are certainly more than happy to provide that information to
9 the Commission in the context of a petition for waiver, which
10 is what the Legislature contemplated. But we find that it's
11 entirely inappropriate to provide information about contracts
12 and pending negotiations with any other service provider to a
13 potential competitive bidder.

14 So that being said, we support staff's recommendation
15 and appreciate this opportunity to present our comments to the
16 Commission.

17 CHAIRMAN EDGAR: Thank you.

18 Mr. Wright, additional comments?

19 MR. WRIGHT: Thank you, Madam Chairman. Schef
20 Wright. I'm here representing Treviso Bay Development, LLC,
21 and VK Development Corporation, which is Treviso Bay's parent.

22 Treviso Bay is on the receiving end presently of a
23 petition for waiver filed by Embarq in your Docket 060763, and
24 that is why I'm here to talk about the rules. We will be
25 filing a petition to intervene in that docket most likely

1 tomorrow.

2 First, generally speaking, we agree with the comments
3 made by Ms. Keating. We support the staff's recommendation.
4 We believe that a case-by-case determination of whether good
5 cause is established is appropriate at this time, and we would
6 urge you to adopt the rules as proposed.

7 With regard to the rebuttable presumption issues, the
8 way I look at them is that the idea that an information request
9 could give rise to a presumption that good cause exists is just
10 beyond inappropriate. Hypothetically -- and it looks like to
11 me they are really trying to make this into a (6)(b) issue not
12 a (6)(d) issue, but this is a (6)(d) rulemaking process, not a
13 (6)(b) rulemaking process.

14 And with that, again, we would urge you to adopt
15 staff's recommendation as proposed.

16 Thanks very much.

17 CHAIRMAN EDGAR: Thank you.

18 MR. McCABE: Tom McCabe on behalf of TDS Telecom.

19 I agree with the comments that were offered by
20 Verizon, and we are completely in support of that. We think
21 that it is important for the Commission to start taking a
22 greater look at this issue.

23 With respect to whether exclusive arrangements are a
24 good thing or a bad thing, I don't know. I mean, certainly,
25 there are some benefits if you are on the receiving end, and,

1 obviously, disadvantages if you're on the other side of it.

2 One of the things that I remember when I worked at
3 this Commission back in the '90s is when we opened up payphone
4 competition. And there what we had was competition for
5 payphone locations, and that's all I think we are starting to
6 look at in this arena in which now we are starting to see
7 developers going out there and trying to find somebody that is
8 going to pay him the most amount of money for you to put your
9 network in there, at the same time looking to exclude other
10 providers from offering service to end users. From a policy
11 standpoint, perhaps that's not a good thing to end users. From
12 an industry standpoint it is probably a benefit, because these
13 networks are expensive.

14 But it is really difficult when you have to provide
15 only one portion of that network and that being the voice side
16 of it. And this isn't limited to the large companies. I have
17 experienced it a couple of times already over in Quincy in
18 competition with the city. And I have also had several of our
19 other properties that have had situations in which we were
20 being excluded or only limited to being able to provide the
21 voice component.

22 In one of those situations we informed the developer
23 that we would not provide the voice. The developer's response
24 back was that I've got this multi-million-dollar project here.
25 And we said, well, we're not going to do it. And what

1 happened? He got rid of his exclusive arrangement with the
2 cable provider and both of us are providing facilities into
3 this neighborhood. And that was the end result. And now we
4 are competing -- we'll end up competing on a level playing
5 field.

6 So I think this is certainly an issue that the
7 Commission needs to take a look at and get their hands around.

8 Thank you.

9 CHAIRMAN EDGAR: Mr. Lederer, are you with us?

10 MR. LEDERER: Yes, Madam Chair, I am.

11 CHAIRMAN EDGAR: Okay. If you would go ahead and
12 identify yourself and share your comments with us.

13 MR. LEDERER: Thank you very much. Good afternoon,
14 everyone. Commission Deason, by the way, congratulations upon
15 your retirement and the best of luck in your new life. You and
16 I actually worked together on a couple of matters. I sat on
17 the other side in front of NARUC when I was representing the
18 real estate industry there, as well.

19 My name is Jerry Lederer. I'm here on behalf of what
20 we call the Real Estate Alliance. The Real Estate Alliance is
21 a combination or a confederation of nine national organizations
22 and their Florida affiliates, and those are in the record, and
23 I won't, therefore, bore you all by reading through the names.

24 I think suffice it to say that pretty much everyone
25 that is involved in the landlord-tenant relationship is

1 involved in this -- is involved in the alliance. We thought
2 that we were going to make a very simple statement here simply
3 to support staff's proposal and move on in silence. But in
4 light of the ILEC presentation, we think we need to take just a
5 few seconds to set the record straight.

6 The statute is clearly being misused by the ILECs in
7 Florida to increase their bargaining leverage in negotiations
8 with developers and owners. And you don't have to take my word
9 on that. You've got three complaints pending, and we believe
10 that the number will move on. A failure by the Commission to
11 act in this matter, to at least establish the procedural
12 boundaries will result in increased bullying tactics by the
13 ILECs.

14 But before -- we also, though, before I get into all
15 of that, want to say that we are grateful to the Commission and
16 to your professional staff for your collective efforts to
17 inform and invite the real estate community to provide comments
18 in this docket. That has not always been the case, and your
19 counsel and the individual professionals that worked on this
20 bent over backwards to make sure that real estate was heard,
21 and we thank you for that.

22 The Alliance supports competition in the
23 communications arena. I think that's a point that is sometimes
24 lost, and it is also a point that is sometimes lost when people
25 talk about these agreements. These agreements that we are

1 doing are not with the incumbents. They are with new
2 providers. They are with new starts. They are the folks that,
3 in fact, provide some of the only competition that's left in
4 the environment. We typically are involved because the
5 Alliance abhors mandatory access laws, and, in fact, we became
6 involved in Florida as far back as 1999 when the Commission
7 first started to investigate and examine the issue of mandatory
8 access.

9 And it is, in fact, that discussion from which this
10 whole COLR opportunity or this COLR legislation arose. Because
11 while we agree or while we abhor mandatory access, we do agree
12 that a carrier of last resort that is denied physical access to
13 a multi-tenant property should not bear COLR of last
14 responsibility obligations. I mean, we can't make that any
15 clearer. That is why we supported the legislation in the
16 Legislature, specifically the Senate passed version, and the
17 final passed version.

18 But there is a difference -- there is a difference
19 between an exclusive arrangement and a preferred arrangement.
20 And I don't think that Mr. O'Roark intentionally mixed those
21 two terms, but, in fact, his presentation did. And that is
22 what we want to talk about. Preferreds are fine. It's
23 exclusives, exclusives that lead to the banning from the
24 property that really are what this is all about. The carrier
25 of last resort relief legislation, S-142, and the Bill's

1 legislative history make it abundantly clear that the only
2 justification for COLR relief at a multi-tenant property are:
3 One, the denial of physical access to a requesting party; or,
4 two, an existing requirement that tenants prepay for non-COLR
5 provided basic local telecommunications services. That is it.
6 Those are the reasons. That is the basis for the action and
7 the action that we supported.

8 In fact, we would suggest that by rejecting the House
9 version of the COLR relief bill, that was HB-817, and adopting
10 the Senate version, the Legislature made clear that there are
11 limited circumstances that warrant COLR relief. You know, what
12 we said to the House and the House agreed with was that
13 817 went beyond fairness and, in fact, it provided greater
14 weight to the ILECs in negotiations. SB-142 mandated fairness,
15 not advantage. In fact, the staff analysis makes clear that it
16 is the lack of access, the so-called access conundrum which was
17 driving all this.

18 And so when Mr. O'Roark says that they ought not have
19 to provide service where there is a voice service available, I
20 guess my question to the Commission, and I'm not a
21 telecommunications expert, but is it possible today to actually
22 get a video service that doesn't have a voice component that
23 would go with it? And so does that mean that if we do any deal
24 with any video provider other than the ILEC's video provider
25 that they automatically have a rebuttable presumption in favor

1 of COLR relief? That is the difficulty with rebuttable
2 presumptions.

3 The staff report has it exactly correct. The
4 rebuttable presumptions would turn the legislative direction to
5 the Commission on its head, and we just -- we can't stay with
6 that. If the Commission does want to examine the red line that
7 the ILECs offered, we would just let you know that the real
8 estate industry red line, the ILEC red line, and any
9 consideration should address both their red line and ours.

10 Finally, I just wanted to repeat real estate supports
11 competition. We thought that the staff's proposal moved us
12 down that road. And by moving us down the road, it gets us
13 closer to identifying the three complaints that are pending.
14 If the Commission would like to go further, the real estate
15 industry would love guidance from the Commission as to what
16 actions a real estate owner can take that would not constitute
17 a good faith cause or good faith waiver of obligations.

18 With that, I will stop and be more than happy to take
19 any questions or to participate.

20 CHAIRMAN EDGAR: Thank you, Mr. Lederer.

21 And, Mr. Adams.

22 MR. ADAMS: Thank you, Madam Chairman. Very briefly,
23 I'm representing Time Warner Telecom here today. We did have
24 the opportunity to participate in the rule hearings and filed
25 comments, as well. We agree with the comments of Ms. Keating

1 and Mr. Wright. We feel the staff recommendation is
2 appropriate. The petitions that are currently before the
3 Commission will help you define what is good cause, and you
4 should approach that on a case-by-case basis. And we do not
5 feel the rebuttable presumption is appropriate for adoption at
6 this time.

7 Thank you.

8 CHAIRMAN EDGAR: Thank you.

9 Okay. I don't think I've missed anybody.

10 Commissioners, as you have heard, we have our staff
11 proposal, and we have -- I don't mean to overstate it, but
12 dueling red line versions, suggestions that have been proposed
13 as a part of our process to bring us to this point. Are there
14 questions?

15 Commissioner Tew.

16 COMMISSIONER TEW: This is for staff about the
17 process, what we have before us and how we go forward to
18 address good cause at some point. It sounds like everyone is
19 in agreement that that should be addressed. Maybe not
20 everyone, including staff, but it sounds like several of the
21 parties on different sides of this issue say it would be good
22 to do that at some point.

23 Can you explain what the plan is for going forward
24 with this versus coming back later waiting on certain dockets
25 to be completed? Does this need to go forward before those

1 dockets are taken up, that sort of thing?

2 MS. MOORE: Well, we have already received one
3 petition for a waiver, so we think that we should have the
4 procedural rule in place, and to go forward with this rule.
5 The three cases will probably have hearings or be taken up by
6 the Commission by February, and once the Commission has more
7 knowledge about what might be good cause or what facts and
8 circumstances it believes are relevant to that determination,
9 then we can come back and amend the rule.

10 COMMISSIONER TEW: If this rule were to be protested,
11 for instance, and we have those other cases coming up, are we
12 at a loss as to what guidance we need without a rule firmly in
13 place in those other dockets?

14 MS. MOORE: No. Well, two are complaint dockets, but
15 the other is a petition for a waiver. The statute gives some
16 guidance. It provides for a response or a notice to the party
17 who might respond, in any event. This fleshes it out a little
18 bit more and provides a time for filing a response. The rule,
19 if no one asks for a hearing or files further comments, then it
20 would be in effect by February.

21 COMMISSIONER TEW: I have one for Mr. O'Roark. When
22 you were describing your rebuttable presumption, I think it was
23 Number 3 when you talked about the owner or developer entering
24 into contracts with alternative providers that are offering
25 phone service. Is that -- as you have described it there, is

1 that that they are currently offering or that they have the
2 ability to offer?

3 MR. O'ROARK: That they have the ability to offer
4 and, in fact, will be offering. For example, Commissioner Tew,
5 the situation in the real world that Verizon faces, as I
6 mentioned, our biggest competitor is Bright House. Wherever
7 they offer -- well, 99 percent of the time when they offer
8 cable service, they also offer their voice service. So that is
9 a case where if Bright House has either a bulk deal or an
10 exclusive deal, they are going to have a huge leg up on the
11 video piece of the business, and they are also going to be
12 offering voice service to the residents. That is sort of the
13 prototypical situation that at least Verizon has in mind.

14 COMMISSIONER TEW: This will be to Ms. Keating and to
15 Mr. Wright and possibly Mr. Lederer. Have I got his name
16 right? I know Ms. Keating mentioned guidelines about good
17 cause. Did you intend for that to be after we finish some of
18 these cases and consistent with the staff rec, that we would
19 wait until we got some of these cases under our belt and then
20 decided what would constitute good cause and then look at a
21 rule amendment at that point, or are you talking about at this
22 point you would be interested in working with parties to try to
23 come up with some kind of proposal for good cause language up
24 front?

25 MS. KEATING: We are always happy -- Madam Chair.

1 We're always happy to work with the parties to, you know, come
2 up with some joint proposal, and if that's feasible, then
3 that's something we will certainly continue to do. I will say
4 that in the workshop we had made some suggestions as to what we
5 thought should be included as far as defining good cause. But
6 now looking back at the staff recommendation, we certainly
7 understand the perspective that they are coming from and
8 support where the recommendation is at, which would be to come
9 back after the Commission has had a chance to look at the
10 petition for waiver and the two complaints and perhaps revisit
11 the issue of how that should be defined in the context of the
12 rule. So amend it at a later date is what we are thinking at
13 this point.

14 CHAIRMAN EDGAR: Mr. Wright.

15 MR. WRIGHT: I would just say that I agree with what
16 Ms. Keating said. My view, if anything, would be more strongly
17 toward wait until you have seen what comes up in these cases.
18 This really seems to me like a classic incipient rulemaking
19 McDonald context. And, you know, we don't know what's going to
20 be in there. And you will have a rule, you will have
21 implemented the statute. And personally I think it is more
22 appropriate as just a straightforward rulemaking matter just to
23 wait and see what all comes up.

24 As I understand it -- we did not participate in the
25 rulemaking, but you have had the ILECs on the one hand saying

1 this, this, and this do, and some folks on our side saying
2 this, this, and that don't. And I think you have got a lot to
3 do. I would wait. That would be my thought, and I think it is
4 consistent with the whole intent of rulemaking under 120.

5 CHAIRMAN EDGAR: Commissioner Carter, I know, will
6 appreciate this comment, but I think ever since I took APA with
7 Pat Dora (phonetic), I have been waiting to see the classic
8 incipient rulemaking McDonald case.

9 Commissioners, questions, discussion?

10 Commissioner Deason, you know that I would have been
11 disappointed if we let you have a short day today.

12 COMMISSIONER DEASON: Well, if your intent was to
13 have a long day, you certainly succeeded.

14 Madam Chairman, if there are no other questions, I
15 can make a motion.

16 CHAIRMAN EDGAR: I'm ready, and I'm not seeing
17 anybody jump up for further questions, so I look forward to
18 hearing it.

19 COMMISSIONER DEASON: Okay. First of all, just let
20 me preface the motion by saying that I believe that requiring
21 uneconomic investment under the guise of carrier of last resort
22 obligations is wasteful and is not productive and not in the
23 public interest. And if there are viable alternatives to
24 customers, then they have service, and that is the primary
25 requirement of COLR obligations it seems to me.

1 But having said that, I believe that the Commission
2 would be better served to have some experience in this regard,
3 and that there are several dockets that are out there that will
4 provide that, and that once the Commission feels comfortable
5 with revising the rule, the Commission can do so. So at this
6 point I'm comfortable with moving staff's recommendation.

7 COMMISSIONER CARTER: Second.

8 CHAIRMAN EDGAR: Okay. Once again, good discussion.
9 We have a motion and we have a second. All in favor of the
10 motion say aye.

11 (Unanimous affirmative vote.)

12 CHAIRMAN EDGAR: Those opposed?

13 Did I say aye? I meant to say aye. Aye.

14 Show it adopted. Thank you all.

15 Anybody want to come up with anything further, so we
16 can keep Commissioner Deason in his chair a little longer?

17 COMMISSIONER CARTER: Yes, Madam Chair, I do. I want
18 to keep him here.

19 COMMISSIONER DEASON: I'm leaving.

20 COMMISSIONER CARTER: We want to make him the hearing
21 officer on everything that we left pending.

22 COMMISSIONER DEASON: Well, if I can negotiate an
23 hourly rate with the Chairman, I may be --

24 CHAIRMAN EDGAR: All right. Thank you all. We are
25 adjourned.

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

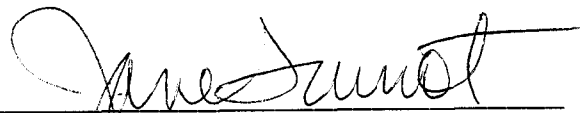
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5 I, JANE FAUROT, RPR, Chief, Office of Hearing
6 Reporter Services, FPSC Division of Commission Clerk and
7 Administrative Services, do hereby certify that the foregoing
8 proceeding was heard at the time and place herein stated.

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a relative
16 or employee of any of the parties' attorney or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 26TH DAY OF DECEMBER, 2006.

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23 JANE FAUROT, RPR
24 Official FPSC Hearings Reporter
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