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COMMISSION
CLERK

January 16, 2007

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 060822-TL

Dear Ms. Bayó:

Enclosed for filing on behalf of Nocatee Development Company, SONOC Company, LLC, Toll Jacksonville Limited Partnership, Pulte Home Corporation and Parc Group, Inc. are an original and fifteen copies of Nocatee Response in Opposition to BellSouth's Petition for Relief from Carrier of Last Resort Obligations in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

- CMP _____
- COM _____
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- GCL _____
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- RCA _____
- SCR _____
- SGA _____
- SEC 1 _____
- OTH _____

FRS/amb
Enclosures
cc: M. Lynn Pappas, Esq.

Sincerely,


Floyd R. Self

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FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for relief from carrier-of-last-resort)	
(COLR) obligations pursuant to Florida Statutes)	Docket No. 060822-TL
364.025(6)(d) for two private subdivisions in)	Filed: January 16, 2007
Nocatee development, by BellSouth)	
Telecommunications, Inc.)	
)	

NOCATEE RESPONSE IN OPPOSITION TO BELL SOUTH'S PETITION FOR RELIEF FROM CARRIER OF LAST RESORT OBLIGATIONS

Nocatee Development Company, for itself and SONOC Company, LLC, Toll Jacksonville Limited Partnership, Pulte Home Corporation, and Parc Group, Inc. (hereinafter after collectively, "Nocatee"), pursuant to Section 364.025, Florida Statutes, and Rule 28-106.203¹, Florida Administrative Code, hereby responds in opposition to the BellSouth Telecommunications, Inc. ("BellSouth") Petition for Relief from Carrier-Of-Last-Resort Obligations (hereinafter, "Petition") filed with the Florida Public Service Commission ("Commission") in this docket on December 22, 2006. BellSouth has failed to demonstrate good cause under Florida law and so its requested carrier-of-last-resort ("COLR") waiver should be denied. While Rule 28-106.203, Florida Administrative Code, does not require an answer, Nocatee hereby offers this response based upon the information submitted thus far, and without limiting its grounds for objecting to the Petition, Nocatee states:

¹ By Order No. PSC-06-1049-NOR-TL, issued on December 20, 2006, the Commission proposed the adoption of Rule 4.084, Florida Administrative Code, which would implement Section 364.025(6), Florida Statutes. This proposed rule would require that responses to petitions for carrier-of-last-resort waivers be answered in 14 calendar days. However, since this rule is not yet effective, the provisions of Rule 28-106.203 apply.

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I. Introduction

1. On or about December 22, 2006, BellSouth served its Petition in this docket on the various development companies identified in the Petition. The individual companies received the Petition at various times thereafter.

2. SONOC Company, LLC, is the owner and master developer of a 14,000 acre comprehensive master planned community in St. Johns and Duval Counties generally known as Nocatee. The Nocatee Development Company has been engaged by SONOC as a development manager. Parc Group, Inc. has had a management contract for the development. There are a number of separate subdivisions planned for within the overall Nocatee project, two of which are known as Coastal Oaks and Riverwood. Toll Jacksonville Limited Partnership is the general developer of the Coastal Oakes project, a private subdivision. Pulte Home Corporation is the developer of Riverwood, a private subdivision. Collectively, these various corporate entities shall be referred to as "Nocatee" in this Response.

3. Pleadings, orders, notices, and other papers filed or served in this matter should be served upon Nocatee's counsel in this matter as follows:

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4. On the basis of the information contained within BellSouth's Petition, the requested relief from BellSouth's carrier-of-last-resort obligation must be denied.

II. Background Facts and History

5. The background and facts presented to the Commission by BellSouth are incomplete and inaccurate. An examination of the complete record in this matter demonstrates that BellSouth's petition is legally insufficient as a matter of law and fact. BellSouth is attempting to link its provisioning of voice telephone services with its failed bid to also provide video and broadband services, both of which are outside the jurisdiction of this Commission and irrelevant to the carrier-of-last-resort obligation. The effect of BellSouth's waiver, if granted, is to deny over 3,000 Nocatee homes, representing more than 3,000 individuals, voice telephone services. More importantly, if BellSouth is able to establish a waiver precedent here, it could potentially be applied to deny service to 5,000 to 7,000 homes that are to be built in the various private communities and the thousands of people who will live in them.

6. The evolution of the Nocatee community has involved an extensive pre-development planning process. One of the critical development considerations for the Nocatee community has been the establishment of an advanced technology infrastructure for the delivery of state-of-the-art voice telephone, broadband, and video services.

7. In order to provide the best possible opportunities for the future Nocatee residents, in June 2004 Nocatee solicited proposals from some of the leading technology companies in Florida, including Comcast, Sprint, Time Warner, MCI, Litestream, and BellSouth.

8. Based upon the responses Nocatee received, for nearly a year, between June 2005 and April 2006, Nocatee and BellSouth extensively negotiated an agreement whereby BellSouth would be the preferred provider of voice telephone, broadband, and video services within the

Nocatee communities. Of special interest to Nocatee was BellSouth's proposal to provide Internet Protocol Television ("IPTV"), which promised many new and unique services.

9. In April 2006, after extensive negotiations, Nocatee decided not to proceed with Bellsouth as the preferred voice telephone, broadband, and video provider for several important business reasons: (1) Bellsouth did not have a franchise to provide video services in Duval County which would have exposed a comprehensive master planned community to two distinct service standards depending merely upon which side of the county line a resident chose to live; (2) Bellsouth's IPTV product was still an unproven product and BellSouth, after initially agreeing to install a back-up conventional cable system, was no longer willing to install it; (3) Bellsouth required a bulk service agreement in lieu of physical exclusivity; and (4) BellSouth did not provide acceptable terms to ensure that the residents would be assured a continuous state-of-the art infrastructure and services over time.

10. Based upon BellSouth's inability to reliably, consistently, and legally provide all of the services requested, Nocatee decided to proceed with a two level development plan for voice telephone, broadband, and video services based upon whether the subdivision was a "public" community or a "private" community.

11. In a "public" community the streets and rights of way are dedicated to public use. Within these subdivisions, any voice telephone, broadband, or video provider may place its equipment along the streets and rights of way subject only to general plat or easement requirements that uniformly apply to all providers. For BellSouth's purposes, there are no limitations on the facilities or equipment it can locate along the dedicated streets and rights of ways nor is there any limitation on the services BellSouth can offer utilizing those BellSouth facilities. Based upon the statements made by BellSouth in Footnote 6 of its Petition at page 9, it

appears that BellSouth will install the necessary equipment along the public streets and rights of way in order to offer voice telephony services along with any other services BellSouth may choose and is legally authorized to offer, such as broadband or video. Nocatee is committed to resolving the easement questions regardless of the outcome of this docket.

12. With respect to a "private" community, which would include the Riverwood and Coastal Oaks subdivisions that are the subject of BellSouth's Petition in this docket, the streets and rights of way are private roads, not open to the public at large. For the private communities, Nocatee has entered into a contract with Comcast whereby Comcast is to be the provider of video and broadband services. There are no limitations on the equipment BellSouth may place in the private communities and BellSouth may use those facilities to provide any voice telephony services. The only limitation is that BellSouth may not offer video or broadband services within the private communities.

13. Based upon the public/private development plan, in July 2006 Nocatee met with BellSouth's management and operations personnel to explain the development plan and BellSouth's restriction to voice telephone service in the private communities. At that time, BellSouth expressed its commitment to serve all of Nocatee and both parties started to work on a design plan. In September 2006, Mr. Phil Jacobs, the President of Bellsouth Community Technologies, told Mr. Richard T. Ray, the President of Nocatee Development Company, that BellSouth would most likely not provide voice telephone service at all to the private communities. After several phone conversations, in October 2006 Mr. Ray traveled to Atlanta to meet with Mr. Jacobs in an attempt to reach a business solution for voice service in the private communities. The only alternative offered by BellSouth for the private communities was for Nocatee or Comcast to pay BellSouth's cost of the equipment and installation, otherwise,

BellSouth's bottom line was that unless it could provide all three services, voice telephone, broadband, and video in the private communities, BellSouth would provide nothing.

14. In December 2006, Nocatee provided to BellSouth the various forms of easement for the Nocatee development. The parties continue to discuss the forms of easement. Nocatee recognizes that the Commission's decision in this docket may have an impact on the final forms of easement or whether it will be necessary to grant any easement at all if BellSouth is to be relieved of its COLR obligation. In the interim, Nocatee has proposed that the parties continue to work on satisfactory voice easements since at this point there has been no determination by the Commission that BellSouth is to be relieved of its carrier-of-last-resort obligation.

15. It goes without saying that time is of the essence in a development project such as Nocatee where residential units will be available for occupancy coincident with the completion of infrastructure. BellSouth negotiated for a year with Nocatee to provide voice telephone, broadband, and video services. But after a year, BellSouth could not demonstrate that it could legally, technically, and consistently provide video and broadband services commensurate with its representations. Now, BellSouth is attempting to link those same video and broadband services as preconditions to it providing voice telephone services. BellSouth's denial of service violates the letter and spirit of the universal service provisions of Florida Statutes section 364.025 as well as the legislative directive of Florida Statutes sections 364.01 and 364.337 that there should be competition and competitive choice for consumers of telecommunications services.

III. Legal Argument and Analysis

16. BellSouth's waiver is based solely on the theory that if it cannot provide video and broadband services within Nocatee, then it is uneconomic for it to provide voice telephone services. This argument is not supported by a plain reading of the COLR statute, the legislative intent of the statute, or public policy. BellSouth cannot use a contract for video and broadband services, which are not regulated by this Commission, as a basis for denying voice telephone services to over 3,000 homes and their residents.

A. A Plain Reading of the Statute Does Not Authorize COLR Relief on the Basis of Non-Regulated Video and Broadband Services

17. Florida courts have repeatedly and consistently ruled that an agency must look within the four corners of a statute to divine its purpose and meaning. *Verizon Florida, Inc. v. Jacobs*, 810 So.2d 906, 908 (Fla. 2002); *Lee County Elec. Co-op., Inc. v. Jacobs*, 820 So.2d 297 (Fla. 2002). In this context, the Legislature has provided ample language and definitions to make clear its directives for competition in the provision of voice telephone services and that the carrier-of-last-resort obligation is to be removed under only extremely limited circumstances.

18. The starting point for an analysis of BellSouth's Petition must begin with its preexisting legal duty under Florida law to provide "universal service" under Section 364.025. In Section 364.025(1), the Legislature has said that it is important that consumers have access to telecommunications services at "just, reasonable, and affordable rates" and that these "universal service objectives be maintained after the local exchange market is opened to competitively provided services." In this context, the term "service" carries the definition from Section

364.02(13), Florida Statutes, which specifically excludes broadband service and voice-over-Internet protocol service.

19. On the basis of this universal service policy, in Section 364.025(1) the Legislature has imposed on each local exchange company a carrier-of-last-resort obligation:

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 territory.

20. The Commission has implemented this statute by adopting Rule 25-4.091(1), Florida Administrative Code, which provides:

Upon receipt of a proper application the utility shall install an underground telephone distribution system with sufficient and suitable materials which, in its judgment, will assure that the applicant will receive reasonably safe and adequate telephone service for the reasonably foreseeable future.

21. In the 2006 amendment to Section 364.025, the Legislature has created the opportunity for a local exchange carrier to be relieved of its carrier-of-last-resort obligation, but only in narrow and specific circumstances. In order to understand this limited relief, the Legislature has added two important definitions to Section 364.025. First, at Section 364.025(6)(a)(2), the Legislature has defined a "communications service provider" as a person or entity that provides communications services or has the right to select a communications service provider for a property owner or developer.

22. Second, with respect to the definition of "communications service," in Section 364.025(6)(a)(3), this term is defined as "voice services or voice replacement service through the use of any technology." So, for purposes of the carrier-of-last-resort relief, the term "service" means only voice or voice replacement services, which by definition would exclude video and broadband.

23. This limitation on the definition of service is reinforced by the last subparagraph of the new statute. Section 364.025(6)(f) provides, “This subsection does not affect the limitations on the jurisdiction of the commission imposed by s. 364.011 or s. 364.013.” These two statutory references are to services specifically exempted from Commission jurisdiction, including broadband services “regardless of the provider, platform, or protocol” and voice over Internet protocol (“VoIP”) services.

24. Based upon these definitions, the Legislature has determined that a local exchange carrier may be relieved of its carrier-of-last-resort obligations in two ways – either by operation of law under one of four “automatic” provisions or on specific findings of the Commission for “good cause shown.”

25. The four specific circumstances in which the carrier-of-last-resort obligation will be deemed automatically eliminated occur when the owner or developer of a property does the following:

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.

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

26. The premise of these four automatic provisions is some kind of arrangement whereby the local exchange company is either excluded from the property or otherwise restricted or limited in its access to the property or the customers already pay for the service to another carrier through some type of bulk service arrangement. A local exchange company relieved of its carrier-of-last-resort obligation under this statute must timely notify the Commission of that fact. Section 364.025(6)(c), Florida Statutes. BellSouth's Petition in this docket is not based upon the automatic relief provisions of Section 364.025(6)(b)(1)-(4), and none of these provisions apply to the facts present for Nocatee. *See* BellSouth Petition, at Para. 3, p. 2.

27. In the present situation, BellSouth has petitioned this Commission under the alternative "good cause shown" provisions of Section 364.025(6)(d). This statute provides that a local exchange company that does not have an automatic waiver under Section 364.025(6)(b)(1)-(4) may petition the Commission and "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." This provision requires notice to the affected building owner or developer, and the Commission is required to rule on such a petition within 90 days. Section 364.025(6)(d), Florida Statutes.²

28. Reading all of these statutes together as a whole demonstrates that BellSouth's sole basis for relief, that BellSouth is permitted to only provide voice telephone services, is contrary to the statute.

² This provision also requires the Commission to commence rulemaking to implement this subsection, which the Commission is doing in Docket No. 060554-TL, but the proposed rules in that docket are not yet effective.

29. First and foremost, the plain language of the statute does not support BellSouth's bundling argument. This Commission has no authority with respect to broadband or video services, and both are excluded by operation of the various statutory provision of Chapter 364 in Sections 364.011, 364.013, 364.02(13)-(16), and 364.025(6). There is nothing in Section 364.025(6) that authorizes the Commission to consider non-regulated services. The language of the statute gives no indication that services beyond voice telephone service are to be considered when determining if the "good cause" standard has been met. Rather, throughout the statute, the service at issue is referred to either as "communications service," which is only voice or voice replacement services or it is referred to as the local exchange company's "carrier-of-last-resort" obligation. Neither of these provisions refers to the panoply of other competitive services that the local exchange telecommunications company may offer. These definitions are, instead, specifically tied to "voice or voice replacement" service, as provided in the new law, or to basic local telecommunications service, which is also defined in Section 364.02(1), Florida Statutes, as a voice service offering to residential customers. Thus, reading the statute as a whole with the supplied definitions, the sole consideration for a COLR waiver is the provision of voice telephone services.

30. The requested waiver also flies in the face of the specific statutory directive of Section 364.025(1) that "universal service objectives be maintained after the local exchange market is opened to competitively provided services." BellSouth is being asked to provide voice telephone services, and there are no restrictions on the voice telephone services or bundling of voice services it may offer. BellSouth may well be in a position where it would have to compete someday with Comcast's VoIP voice replacement services. This is exactly what the Legislature says it wants – competitive choices for consumers. If the Legislature had intended that any

competitive voice alternative would absolve a local company like BellSouth of its carrier-of-last-resort obligation, then BellSouth essentially would have no COLR obligation anywhere in Florida given the proliferation of cellular and broadband VoIP opportunities. Rather, COLR relief can and must only be based upon denial of access, exclusive voice service arrangements, or bulk financial deals, none of which are true for the private communities within Nocatee.

31. Likewise, there are no limitations on the equipment or facilities that BellSouth can install along the streets or rights of way except for the normal restrictions that would apply to all utilities operating in the rights of way. Thus, there is no limit on BellSouth utilizing that equipment to provide new or advanced *voice* services in the future or to providing services other than video and broadband. For example, with BellSouth's recent merger with AT&T, BellSouth could use its network and package its wired voice services with its cellular services, an advantage that Comcast does not have in the market.

32. A complete read of the plain language of the relevant statutes establishes that the Commission has no authority to consider non-regulated services when evaluating whether a local exchange telecommunications company has demonstrated good cause for being relieved of its statutory carrier-of-last-resort obligation. The structure of this statute is predicated on exclusivity or financial arrangements made by a developer that would, in and of themselves, place the incumbent local company at a real competitive disadvantage in providing voice telephone service. This is not the case here. The statute is not worded to preclude BellSouth's COLR obligation merely because other competitive voice technologies exist in today's marketplace. Based upon this Petition, BellSouth has failed to demonstrate good cause, and its request should be denied.

B. The Legislative Intent Does Not Support COLR Relief

33. Assuming that the statute is not plain on its face, it is well settled law that one can look outside the four corners of the document to explore the legislative history to determine legislative intent. *BellSouth Telecommunications, Inc. v. Meeks*, 863 So.2d 287, 289 (Fla. 2003). While BellSouth's failure to demonstrate good cause can be established by looking solely to the relevant statutory language discussed above, in the unlikely circumstance the Commission decides that it must look to extrinsic evidence, in this situation we have the explicit legislative rejection of the very basis BellSouth is now seeking to employ, which is dispositive of the Legislature's intent on this matter.

34. As the Legislature considered creating a carrier-of-last-resort exemption, it specifically rejected language that would have expanded the bases for waiver or elimination of the COLR obligation to include other types services, such as cable, broadband, and perhaps even marketing arrangements. As set forth in Exhibit A to this Petition, the original version of House Bill 817, which was one of the bills in which the carrier-of-last-resort relief provisions were originally placed, contained an additional basis for automatic relief from the carrier-of-last-resort obligation:

Restricts or limits the types of services that may be provided by an eligible telecommunications carrier or enters into an agreement with a communications service provider which restricts or limits the types of services that may be provided by an eligible telecommunications carrier.

This provision was, however, eliminated very early on in the legislative process, demonstrating the Legislature's intent to focus the bill on the service that is directly associated with the carrier-of-last-resort obligation – *voice service*.

35. Florida courts have unanimously held that consideration and rejection of potential statutory language is telling in understanding legislative intent. *Health Options, Inc. v. Agency for Health Care Administration*, 889 So.2d 849, 852 (Fla. 1st DCA 2004). Here, the Legislature has spoken. The Legislature explicitly rejected the bundling of voice services with video and broadband services, and the Commission should take that rejection for what it is – that the bundling of non-regulated video and broadband services is not an acceptable basis for relief.

36. Given the rejection of the very argument BellSouth is now proffering, the Commission should not accept it as a basis for ending its carrier-of-last-resort obligation to these residents.

C. Granting BellSouth's Petition Is Not In the Public Interest

37. The fundamental premise of BellSouth's Petition is that unless it can bundle voice service with video and broadband services, it is simply uneconomic for it to provide voice only services. Under any construction of the statute, granting this Petition would be contrary to the public interest and not good cause for denying over 3,000 customers voice telephone service.

38. First, in order to be relieved of the obligation to provide service to customers, BellSouth must demonstrate good cause. But there is no evidence, let alone competent substantial evidence, that BellSouth's Petition demonstrates good cause. Indeed, there is nothing in the Petition that this request is in the public interest.

39. BellSouth wants to be relieved of its legal duty to provide voice telephone service because it says it is not economic to provide voice service unless it can also offer video and broadband. In paragraph 23, BellSouth makes three arguments – reduced revenue opportunities, inability to offer customers discounts on bundled packages, and that it will need to modify its

ordering and provisioning systems. That's it. There is no detail, no causal relationship, and no explanation of how these facts, even if true, substantiate a waiver. They are just plain statements of alleged facts, which even if true do not sustain a finding of good cause.

40. Second, bootstrapping a restriction on BellSouth's ability to provide video and broadband services into an argument that BellSouth does not have to provide a voice telephone service is disingenuous and a violation of public policy. BellSouth is trying to use non-regulated services as a basis for not providing regulated services. If BellSouth's theory is valid, then the denial of any other service should be a valid basis for not providing voice services. If this were true, then any other non-regulated business that BellSouth may be in or wish to enter would be relevant. The fact that BellSouth may also be prohibited from offering electric, water, wastewater, fire protection, or such other services cannot also be a basis for denying voice telephone services. While some of these examples may seem absurd, the fact that BellSouth has made a business decision to enter other, non-regulated businesses cannot be determinative or at all relevant as to whether BellSouth can be relieved of its carrier-of-last-resort obligation for voice telephone customers. If these other businesses are somehow relevant, then where does the Commission draw the line? Businesses that today may seem relevant and important tomorrow may not be.

41. Consider the "old" AT&T that bought video, broadband, and wireless companies all with the grand plan of offering the ultimate quadruple play. In short order the video and wireless companies were sold off. The "new" AT&T, of which BellSouth has now become a part of, has its own business plan apparently involving a "new" triple or quadruple play of its own. BellSouth, and its new parent, AT&T, are entitled to make business decisions to provide new services, enter new markets, and generally bundle those services. Bundling can be a great

tool, but it is no guarantee of business success, and it is not relevant to demonstrating good cause for COLR relief.

42. The line in the sand is voice telephone services. BellSouth is not being denied the opportunity to put in any facilities it wants nor is it being denied the opportunity to provide voice services. It is being asked to fulfill its statutory obligation to provide voice telephone service. Good cause for relief from providing voice telephone service can only involve voice services, not other services that may or may not be relevant tomorrow.

43. Third, the fact that there may be a competitive alternative provider of voice service is not good cause. It is State of Florida and Federal policy that there should be competitive alternative carriers offering service. The only competitive “disadvantage” that BellSouth faces is a *potential* competitor offering a very different type of voice-like product over a different technology that is still not widely accepted. The developers of Nocatee have not offered any exclusive financial or access arrangements to Comcast’s VoIP service. In addition, there certainly are no guarantees that each and every Nocatee resident first will subscribe to Comcast’s broadband service and, second, **also** to its VoIP service – the dynamics of the VoIP market are very different and certainly not ubiquitous in the same way as BellSouth’s voice telephone service. Thus, the presence of competitive voice offerings, whether cellular or VoIP, without any exclusivity or financial arrangements, is insufficient to relieve BellSouth of its statutory COLR duty.

44. Fourth, the cost data that BellSouth has offered also does not constitute good cause shown. BellSouth has said that it will cost approximately \$1.6 million to build its network in the two private communities. First, there is nothing in the record to substantiate this cost. Second, there is nothing in the record that this is a reasonable cost to provide service. Third, we

do not know if this cost is high or low, or typical or atypical, and therefore that it would be unreasonable to require its expenditure. Fourth, standing alone, there is nothing that demonstrates that this is an uneconomic cost to serve those communities with just voice service. Finally, even assuming this is an uneconomic cost, there is nothing to demonstrate that it is in the public interest for BellSouth to be relieved of this cost. This list is not exhaustive, but demonstrates that there is no substance to the request to be relieved of a statutory duty.

45. There is no evidence that proves by competent substantial evidence that it is uneconomic for BellSouth to serve these communities. BellSouth bears the burden of proof in demonstrating good cause based upon all the facts and circumstances. The only few and limited alleged facts that BellSouth has offered, even if they are accepted as true, do not even close to good cause.

IV. Specific Responses to the BellSouth Petition

46. Paragraph 1: Admitted.

47. Paragraph 2: Admitted.

48. Paragraph 3: Admitted that the statute speaks for itself, but Nocatee denies that BellSouth has stated a proper basis for seeking relief under section 356.025(6)(d).

49. Paragraphs 4-7: Nocatee cannot speak for other developers or the general comments, assumptions, or self-serving statements set for by BellSouth in these paragraphs, so these paragraphs are denied.

50. Paragraph 8: Nocatee has no basis for knowing whether the quote in this paragraph is accurate or proffered in context of the comments made by then Commissioner Deason at his final Agenda Conference. However, even if accurate and in context, Nocatee

denies that the statement is relevant to the consideration of BellSouth's proposed waiver of its high statutory obligation as the carrier-of-last-resort.

51. Paragraph 9: Admitted, on information and belief.

52. Paragraph 10: Admitted, except where the information in Petition Paragraph 10 conflicts with the information provided in this Response in Paragraphs 5-15 above.

53. Paragraph 11: Admitted, on information and belief.

54. Paragraph 12: Admitted.

55. Paragraph 13: Admitted, except where the information in Petition Paragraph 13 conflicts with the information provided in this Response in Paragraphs 5-15 above. In addition, from the quality of the drawing attached to the Petition Nocatee is unable to ascertain its accuracy.

56. Paragraph 14: Admitted, except where the information in Petition Paragraph 14 conflicts with the information provided in this Response in Paragraphs 5-15 above. The first occupancy will be in the summer of 2007 depending upon final site development, home construction, and actual sales.

57. Paragraph 15: Denied. As is more fully discussed at Paragraphs 5-15 above, Nocatee has been in discussions with BellSouth since 2004. There are continuing discussions regarding the easements so that BellSouth will be able to install its facilities along the streets and rights of way so that it can provide voice services.

58. Paragraph 16: Admitted.

59. Paragraph 17: Admitted.

60. Paragraph 18: Admitted.

61. Paragraph 19: Admitted.

62. Paragraph 20: Admitted, and Nocatee accepts the commitment in Footnote 6 regarding BellSouth offering services in the public communities.

63. Paragraph 21: Admitted, however, Nocatee is continuing to work on language that would be acceptable to the parties subject at this time to the limitation on voice only services in the Coastal Oaks and Riverwood communities.

64. Paragraph 22: Admitted. Nocatee is continuing to work on language that is acceptable to the parties, and Nocatee recognizes that some equipment will need to be above ground; such language needs to continue to be worked on by the parties.

65. Paragraph 23: Admitted that BellSouth will not be permitted to offer video and broadband services, otherwise denied.

66. Paragraph 24: Admitted that Nocatee has entered into certain contracts with Comcast and that as a result of those contracts BellSouth may not offer video and broadband services in the private communities; otherwise denied.

67. Paragraph 25: Admitted that there are certain business arrangements between Comcast and Nocatee regarding video and broadband services, but otherwise denied.

68. Paragraph 26: Admitted, on information and belief, that Comcast has a VoIP type voice service offering it intends to offer in the private subdivisions within Nocatee. Nocatee is without sufficient information regarding Comcast's business operations in Jacksonville and St. Augustine, so otherwise denied.

69. Paragraph 27: Admitted, as is more fully discussed at Paragraphs 5-15 above, that Nocatee has requested that BellSouth provide voice services within Nocatee. The video and broadband arrangements are irrelevant, and BellSouth's other assertions are otherwise denied.

70. Paragraph 28: Nocatee is without sufficient information as to form a belief regarding the allegations made or the meaning of such statements, including the attached affidavit, so therefore denied.

71. Paragraph 29: Denied.

72. Paragraph 30: Denied, as there is no evidence that this is an uneconomic decision or that BellSouth has otherwise demonstrated good cause shown to be relieved of its statutory obligation to be the carrier-of-last-resort.

73. Paragraph 31: Denied. Nocatee is only attempting to have BellSouth comply with its statutory obligations as the carrier-of-last-resort. BellSouth's inappropriate linkage of the non-regulated video and broadband services to its regulated voice services as a basis for denying voice service to over 3,000 homes and their residents is inexcusable and unlawful.

74. Paragraph 32: Denied, as there are disputed issues of material fact, some of which are identified, for example, in Paragraphs 37-45 above.

75. Paragraph 33: BellSouth's Petition fails to state a basis for granting any relief, and so the Petition should be denied.

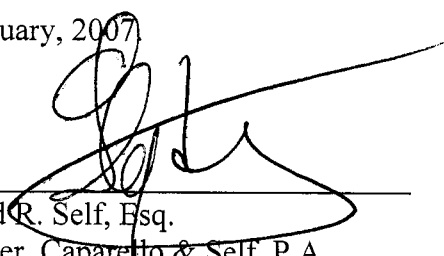
V. Conclusion

BellSouth has a longstanding statutory obligation to be the carrier-of-last-resort for the provision of voice telephone services within its franchise area. BellSouth does not meet any of the enumerated statutory criteria for a waiver of the COLR obligation and BellSouth has acknowledged this fact. For the purposes of its Petition in this docket, BellSouth also has not, and cannot show, the necessary statutory good cause to obtain a waiver of its COLR duties. BellSouth's bundling argument is irrelevant – non-regulated services are excluded from the plain

language of the statute, by the language specifically rejected by the Legislature, and as a matter of public policy. As a matter of Florida law, BellSouth has failed to meet its very high burden of demonstrating for good cause that it should be relieved of its carrier-of-last-resort obligation and deny voice telephone service to over 3,000 homes and their residents in Nocatee.

WHEREFORE, Nocatee respectfully requests that the Commission deny BellSouth's Petition and order it to provide voice telephone service to the public and private communities within Nocatee as is required by its statutory duty under section 364.025(1).

Respectfully submitted this 16th day of January, 2007



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A bill to be entitled
 An act relating to telecommunications carriers of last resort; amending s. 364.025, F.S.; providing definitions; providing that a telecommunications company obligated to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to customers in a multitenant business or residential property under certain circumstances; requiring the telecommunications carrier to notify the commission when it is relieved of the obligation to provide service; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) is added to section 364.025, Florida Statutes, to read:

364.025 Universal service.--

(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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

29 providers for a property owner or developer.

30 3. "Communications service" means those services or
 31 combinations of services provided to customers in a multitenant
 32 business or residential property, including, but not limited to,
 33 voice telecommunications service or voice replacement service,
 34 VoIP, broadband service, data service, information service, and
 35 cable service.

36 (b) A telecommunications company that is designated as an
 37 eligible telecommunications carrier by the commission pursuant
 38 to 47 C.F.R. s. 54.201 and is otherwise obligated by this
 39 section to serve as the carrier of last resort is not obligated
 40 to provide basic local telecommunications service to any
 41 customers in a multitenant business or residential property,
 42 including, but not limited to, apartments, condominiums,
 43 subdivisions, office buildings, or office parks, when the owner
 44 or developer thereof:

45 1. Permits only one communications service provider to
 46 install its communications service-related facilities or
 47 equipment, to the exclusion of an eligible telecommunications
 48 carrier, during the construction phase of the property;

49 2. Accepts or agrees to accept incentives or rewards from
 50 a communications service provider that are contingent upon the
 51 provision of any or all communications services by one or more
 52 communications service providers to the exclusion of the
 53 eligible telecommunications carrier;

54 3. Collects from the occupants or residents of the
 55 property charges for the provision of any communications
 56 service, provided by a communications service provider other

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57 than the eligible telecommunications carrier, to the occupants
 58 or residents in any manner, including, but not limited to,
 59 collection through rent, fees, or dues;

60 4. Restricts or limits an eligible telecommunications
 61 carrier's access to the property or enters into an agreement
 62 with a communications service provider that restricts or limits
 63 an eligible telecommunications carrier's access to the property
 64 or that grants incentives or rewards to such owner or developer
 65 contingent upon such restriction or limitation; or

66 5. Restricts or limits the types of services that may be
 67 provided by an eligible telecommunications carrier or enters
 68 into an agreement with a communications service provider which
 69 restricts or limits the types of services that may be provided
 70 by an eligible telecommunications carrier.

71 (c) If an eligible telecommunications carrier is relieved
 72 of its carrier of last resort obligation to provide basic local
 73 telecommunications service to the occupants or residents of a
 74 multitenant business or residential property pursuant to
 75 paragraph (a), the eligible telecommunications carrier shall
 76 notify the commission of that fact in a timely manner.

77 (d) Nothing in this subsection affects the limitations on
 78 commission jurisdiction imposed by s. 364.011 or s. 364.013.

79 Section 2. This act shall take effect July 1, 2006.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U.S. Mail this 16th day of January, 2007.

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