

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 060763-TL
Filed: January 25, 2007

COMMISSION
CLERK

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TREVISO BAY DEVELOPMENT, LLC'S REQUEST FOR
CONFIDENTIAL CLASSIFICATION AND TREATMENT

Treviso Bay Development, LLC ("Treviso Bay"), pursuant to Rule 25-22.006, Florida Administrative Code ("F.A.C."), and Section 364.183(1), Florida Statutes (2006), hereby files this request for confidential classification and treatment of portions of Exhibit DJW-4 "Alternate Cash Flow Analysis", which is being filed on this date with the Commission. The information for which confidential treatment is requested satisfies the requirements of the Commission's rules and applicable statutes, and the Commission should accordingly grant Treviso Bay's request.

- CMP 1. The information for which confidential treatment is
- COM requested concerns Treviso Bay's projections of Embarq's market
- CTR share in Treviso Bay and cash flow for the next ten years.
- ECR
- GCL 2. The information for which confidential treatment is
- OPC requested is highlighted on Exhibit DJW-4, Page 1 of 1, and
- RCA related information from this Exhibit that appears on pages 26-
- SCR
- SGA 28, 31, and 33-34 of Mr. Wood's testimony.

Confidential
DOCUMENT NUMBER-DATE

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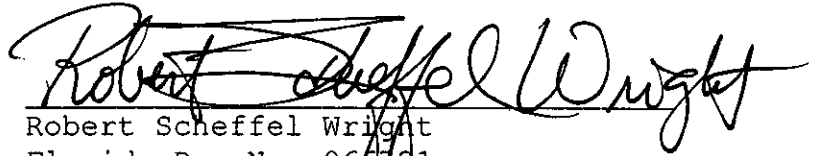
FPSC-COMMISSION CLERK

3. Redacted copies of Exhibit DJW-4, Page 1 of 1, and of pages 26-28, 31, 32-33 of Mr. Wood's testimony, are attached to this Request for Confidential Classification and Treatment.

4. The information for which confidential treatment is requested is treated by Treviso Bay as private and confidential and has not been disclosed to any other parties. The subject information includes confidential, proprietary business information relating to Embarq's projected market share and cash flow for the next ten years, and the disclosure of which could also be adverse to Embarq's competitive interests. A detailed justification for the confidential classification and treatment of the highlighted information is provided on Attachment A to this Request for Confidential Classification and Treatment.

WHEREFORE, Treviso Bay Development, LLC respectfully requests that the Florida Public Service Commission grant Treviso Bay's Request for Confidential Classification and Treatment as prayed herein.

Respectfully submitted this 25th day of January, 2007.

A handwritten signature in black ink that reads "Robert Scheffel Wright". The signature is written in a cursive style and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery on this 25th day of January, 2007, to the following:

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ATTACHMENT A

Document Page & Line Numbers

Justification for Confidential Classification

Exhibit DWJ-4, Alternate Cash Flow Analysis

Page 1, lines 6-15

The redacted information reflects proprietary business information concerning Embarq's projected market share and cash flow over the next ten years, the disclosure of which would be adverse to Embarq's competitive business interests.

Testimony of Don J. Wood

Page 26, lines 5, 8, 14, 16, 17 and 19

Page 27, line 2

Page 28, line 5

Page 31, lines 4-5

Page 33, line 10

Page 34, line 4

The redacted information reflects proprietary business information concerning Embarq's projected market share and cash flow over the Next ten years, the disclosure of which would be adverse to Embarq's competitive business Interests.

Embarq - Florida
Treviso Bay NPV Cash Flow Analysis
Impact of Assumed Market Shares on Reported NPV at Ten Years

Assumed
Market Share

Reported NPV
at Year 10

Redacted

1 A. Yes. This assumption is critical to Embarq's claims of "good cause," if "good
2 cause" is interpreted to mean "uneconomic to provide voice service." In his
3 testimony, Mr. Dickerson describes the assumed penetration rate as "key to
4 the analysis" that he is sponsoring. In his testimony, Mr. DeChellis explains
5 that the assumption of a penetration rate of only [REDACTED] is based on the fact
6 that Comcast will be providing data and video services to many of the
7 residents of the development.

8 Mr. DeChellis' projection of a penetration rate of [REDACTED] (a market
9 share that he expects to apply immediately beginning in year one and to
10 remain constant over a twenty year period) is based on two implicit, but very
11 important, assumptions. First, he assumes that among the very wide range of
12 market share percentages shown on the "Embarq - Florida Market Share
13 Analysis Summer 2006" table, only those that are approximately equal to
14 [REDACTED] are meaningful. Unfortunately, he provides no basis for this
15 assumption. In reality, Embarq's reported market share among the eighteen
16 identified locations ranges from [REDACTED] to [REDACTED], with a mean of
17 [REDACTED] and a standard deviation of [REDACTED]. Based on the data
18 provided, there is certainly no clear path to a conclusion that the "right"
19 answer for the Treviso Bay area will be [REDACTED].

20 I have also tested the possibility that Embarq's market share in these
21 eighteen areas might be driven by the length of time that a competing provider
22 has offered service. Unfortunately, I have not been able to find any

1 correlation between Embarq's reported market share in these areas and either
2 the length of time that "cable internet phone service" has been offered or the
3 interval of time between when Embarq placed its facilities and began to
4 provide service and the time that the competing provider began to offer an
5 alternative service. Embarq reports some relatively high market shares in
6 areas where "cable internet phone service" has been available for the longest
7 period of time or where the competing service was introduced at
8 approximately the same time that Embarq began providing service, and some
9 relatively low market shares where the competing service was introduced
10 more recently or after a longer interval of time. These results are not
11 consistent with a conclusion that the presence of "cable internet phone
12 service" in a given area represents an accurate predictor of Embarq's market
13 share in any area, existing or planned.

14
15 Q. HAS ADDITIONAL EVIDENCE BEEN PRESENTED THAT SUPPORTS
16 YOUR CONCLUSION?

17 A. Yes. In response to Treviso Bay's Data Request and POD No. 7, Embarq
18 responded that market share data from additional markets had been collected,
19 and provided a chart showing Embarq's market share in twenty additional
20 markets. Embarq's reported share in these additional markets ranges from a
21 high of [REDACTED] to a low of [REDACTED]. In six of these additional twenty
22 locations Embarq reports that "cable internet phone service" is available,

1 while in the remaining fourteen it is not. Oddly enough, in some of the areas
2 in which the competing service is offered (and has been offered for some
3 time), Embarq reports some of its highest market shares, while in some of the
4 areas in which "cable internet phone service" is not available Embarq reports
5 a market share as low as [REDACTED].

6 Embarq asserts in its response to Treviso Bay Data Request No. 7 that
7 "the market share information for these [additional] developments is not
8 instructive to the conditions faced in Treviso Bay." I agree, but it is also clear
9 that the market share information contained in the "Embarq – Florida Market
10 Share Analysis Summer 2006" table is likewise "not instructive" when
11 attempting to predict Embarq's market share for voice services at Treviso
12 Bay. Both sets of market share data provided by Embarq demonstrate that
13 factors other than the existence of a provider of "cable internet phone service"
14 play a significant role the determining what percentage of the customers in an
15 area will choose to subscribe to Embarq's voice services.

16
17 Q. ARE YOU AWARE OF ANY ADDITIONAL INFORMATION THAT
18 SUGGESTS THAT EMBARQ'S PAST EXPERIENCE MAY BE A POOR
19 PREDICTOR OF FUTURE MARKET SHARE?

20 A. Yes. In a January 11, 2007 press release that I downloaded from www.
21 Embarq.com, Embarq Chairman and CEO Dan Hesse explains that Embarq's
22 line losses slowed in 2006 when compared to previous years because the

1 A. Yes, for several reasons.

2 First, important costs used in Embarq's analysis⁹ are not fully
3 developed or explained. Although the investment associated with copper
4 distribution facilities represent ██████████ or almost ██████████ percent of
5 Embarq's projected capital investment of ██████████, Embarq has not
6 explained the basis for this assumption. In response to Staff's Data Request
7 No. 4(h), Embarq replied that it had not expended the resources and costs
8 necessary to perform this analysis. Because the investment in these facilities
9 represents such a large percentage of the total, even minor adjustments to
10 Embarq's estimate have a significant impact on the results.

11 Second, Embarq has applied inconsistent assumptions about revenues
12 and costs in its analysis. While insisting that the only potential revenues will
13 be from the sale of voice services, Embarq has used network design
14 constraints associated with the need to provision data services.¹⁰ Embarq
15 cannot have it both ways: it can built a more expensive, data-capable network,
16 in which case it must include in its analysis a reasonable projection of the
17 revenues derived from those services, or it can consider only the revenues

⁹ My references to Embarq's analysis are to the CD ROM produced in response to Staff Data Request No. 10(a) that contains the Excel spreadsheet described in Mr. Dickerson's testimony.

¹⁰ The "engineering standards" described by Mr. Dickerson at p. 3 of his testimony apply to digital data capability, for example, and it appears from the investment values that Embarq has used a larger gauge of copper cable than is necessary to provide voice services.

1 A. Yes. While Mr. Dickerson and Mr. DeChellis describe at some length the
2 importance of the market share assumption, they do not explain that – based
3 on Embarq’s assumptions regarding the costs that it would incur to construct
4 an efficient network for serving the residents of Treviso Bay – *no* market
5 share would be sufficient for Embarq to recoup its costs over the life of the
6 equipment placed at the beginning of the project. Confidential Exhibit DJW-4
7 shows the reported cumulative NPV in year ten for market shares starting at
8 10% and progressing at 10% intervals up to 100%. According to Embarq, if it
9 achieved 100% market share in the area it would nevertheless experience a
10 cumulative NPV of [REDACTED] after ten years.

11
12 Q. THESE RESULTS OF EMBARQ’S ANALYSIS SUGGEST THAT THE
13 AREA OF TREVISO BAY IS A PARTICULARLY COSTLY AREA TO
14 SERVE. DO THE CHARACTERISTICS OF THE AREA SUPPORT SUCH
15 A CONCLUSION?

16 A. Not at all. To get some perspective on Embarq’s claims, I calculated the line
17 density of the area within the Treviso Bay development that will be developed
18 and to which telephone plant will need to be built. This calculation (1200
19 lines spread over about .6 square miles) yields a line density of about 2000
20 lines per square mile.¹¹ I can say with confidence that no cost model that has

¹¹ For purposes of this analysis, I assumed that each customer location would represent only one loop, even though it appears that Embarq has calculated its costs

1 been brought before this Commission since the 1996 Act treats an area with a
2 density of 2000 lines/square mile as a high cost area. Yet Embarq claims that
3 in such an area and with 100% market share, it would be losing money for at
4 least [REDACTED] years. Such a claim strains credibility.

5 It has not been so long ago that bundled services offerings were a thing
6 of the future, and ILECs such as Embarq operated successfully by selling only
7 telephone voice services. Now, with the availability of new technology and in
8 an area whose characteristics suggest lower-than-average network costs,
9 Embarq's analysis suggests that it would be unable to survive as simply a
10 "telephone company."

11
12 Q. EMBARQ'S FOURTH AREA OF DISPUTE IS WHETHER THE FACTS
13 AND CIRCUMSTANCES IN TREVISO BAY CONSTITUTE "GOOD
14 CAUSE" FOR A WAIVER OF EMBARQ'S COLR OBLIGATIONS
15 UNDER §364.025(6)(d). HAS EMBARQ DEMONSTRATED "GOOD
16 CAUSE" FOR A WAIVER OF ITS COLR OBLIGATION?

17 A. No. As explained previously in my testimony, Embarq's definition of "good
18 cause" would excuse it from operating as a COLR in most, if not all, of its
19 Florida territory. In addition, the analysis supporting Embarq's claim that it

based on more than a single pair per household. The actual experienced line density would therefore probably be higher than 2000 lines/square mile.