

ORIGINAL

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COMMISSION
CLERK

Direct Dial + 305-995-5258 dkonuch@whitecase.com

February 9, 2007

VIA FEDEX

Ms. Ann Cole
Division of Commission Clerk and
Administrative Bureau of Records
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 060763-TL

Dear Ms. Cole:

On behalf of non-party, Comcast of the South, Inc. ("Comcast"), enclosed please find the following documents for filing with the Commission:

1. An original and seven copies of Comcast's Request for Confidential Classification and Treatment.
2. A separate envelope, marked "CONTAINS CONFIDENTIAL INFORMATION," and which contains a copy of the Affidavit of Larry Schweber on Behalf of Non-party Comcast of the South, Inc. with confidential information highlighted, and two copies of the affidavit with the confidential information redacted, pursuant to Florida Administrative Code Section 25-22.006(4)(a).

Comcast has submitted the original of the Schweber Affidavit under separate cover to Jason Fudge, the Commission staff attorney assigned to this proceeding.

Should you have any questions concerning this filing, please do not hesitate to contact me at 305-995-5258.

Sincerely,


David A. Konuch

This confidentiality request was filed by or for a "telco" for DN 01418-07. No ruling is required unless the material is subject to a request per 119.07, FS, or is admitted in the record per Rule 25-22.006(8)(b), FAC.

DAK:wu
Enclosures

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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: February 9, 2007

REQUEST OF NON-PARTY COMCAST OF THE SOUTH, INC. FOR CONFIDENTIAL CLASSIFICATION AND TREATMENT

Comcast of the South, Inc. ("Comcast"), pursuant to rule 25-22.006, Florida Administrative Code ("F.A.C."), and Florida Statutes Section 364.183, hereby requests confidential treatment of certain portions of documents furnished on this date to the Commission Staff and the parties to this proceeding, and in support, states as follows:¹

1. On January 26, 2006 and February 1, 2006, Embarq of Florida, Inc. ("Embarq") served subpoenas and document requests upon Comcast affiliate Comcast Cable Communications Holdings, Inc. and Comcast employee Nikki Mello. Thereafter, Comcast reached an agreement with parties Embarq, Treviso Bay Development, LLC ("Treviso Bay") and staff counsel Jason Fudge pursuant to which Comcast would submit an affidavit from its employee, Larry Schweber ("Schweber Affidavit"), in lieu of the discovery and depositions sought by Embarq.

2. Certain material contained in the Schweber Affidavit is proprietary and confidential. Comcast seeks confidential treatment for this material pursuant to Rule 25-22.006, F.A.C., and Florida Statutes Sections 364.183(1) and (3). The information for which Comcast

¹ Comcast is a non-party to this proceeding, and submits this pleading solely for the purpose of resolving a dispute concerning discovery requests served upon it by Embarq of Florida, Inc. in this proceeding. Comcast expressly does not concede that the Commission possesses jurisdiction over its activities as a provider of Voice-over-Internet Protocol service. See Fl. Stat. 364.011(3) (stating that "VoIP" services are "exempt from oversight" by the Commission)

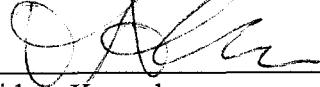
seeks confidential treatment satisfies the requirements of the Commission's rules and applicable statutes, and accordingly, the Commission should grant Comcast's request.

3. The information for which confidential treatment is requested concerns the extent of Comcast's current and future plans to deploy and market Voice over Internet Protocol service. The information for which confidential treatment is requested is contained on page 2 of the Affidavit. A more detailed description of the justification for confidential classification and treatment of the information is provided on Attachment A hereto. Pursuant to Rule 25-22.006(4), F.A.C., simultaneous with the filing of this Request, Comcast is filing under seal with the Clerk's Office a copy of the Schweber Affidavit with the confidential material highlighted, as well as two copies of the affidavit with the confidential information redacted. A copy of the Schweber Affidavit with the confidential information redacted is also attached hereto as Attachment B.

4. The information for which confidential treatment is requested is treated by Comcast as private and confidential. Comcast has not disclosed the subject information publicly. Comcast disclosed the information only to parties in this proceeding that signed a protective agreement in which they committed to use the material only in this proceeding and not to disclose it to the public or any third parties. A copy of the protective agreement is attached hereto as Attachment C.

WHEREFORE, Comcast respectfully requests that the Florida Public Service Commission grant its Request for Confidential Classification and Treatment for the highlighted

portions of the Affidavit of Larry Schweber, exempt the redacted information from disclosure pursuant to Chapter 119, Florida Statutes, and issue any appropriate protective order, protecting the information from disclosure while it is maintained at the Commission.



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dkonuch@whitecase.com
Attorneys for Comcast of the South, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail this 9th day of February, 2007 to:

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

Jason Fudge, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
jfudge@psc.state.fl.us

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

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

Susan S. Masterton, Esq.
Embarq of Florida, Inc.
1313 Blair Stone Road
Tallahassee, Florida 32301
Susan.masterton@embarq.com

Robert Scheffel Wright, Esq.
Young van Assenderp, P.A.
225 S. Adams Street, Suite 200
Tallahassee, Florida 32301
swright@yvlaw.net



David A. Konuch

ATTACHMENT “A”

ATTACHMENT A

Document Page & Line Numbers

Justification for Confidential Classification

Affidavit of Larry Schweber

Page 2, the final two sentences of paragraph 4.
(lines 13-16)

The redacted information discusses timing and other issues concerning deployment of Comcast's VoIP service and the disclosure of which would be adverse to Comcast's competitive business interests pursuant to Florida Statutes 364.183(3).

ATTACHMENT “B”

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: February 7, 2007

AFFIDAVIT OF LARRY SCHWEBER OF NON-PARTY
COMCAST OF THE SOUTH, INC.

STATE OF FLORIDA)
) ss:
COUNTY OF COLLIER)

BEFORE ME, the undersigned authority, personally appeared Larry Schweber, who, after being duly sworn, states:

1. My name is Larry Schweber and I am the Vice President and General Manager of Comcast of the South, Inc.'s operations in Collier County, Florida, an area that includes the proposed subdivision development of Treviso Bay that is at issue in this proceeding ("Treviso Bay"). Comcast's voice service is called Comcast Digital Voice. Comcast provides this service using Voice over Internet Protocol ("VoIP") technology. I am the person most knowledgeable concerning Comcast's ability to provide its Comcast Digital Voice product in Collier County, including at Treviso Bay. Nikki Mello, to whom Embarq issued a subpoena and document requests in this proceeding, indirectly reports to me.

2. Comcast has begun a nationwide rollout of its Comcast Digital Voice service, which uses VoIP technology, and currently provides such service throughout Collier County, Florida on a retail, customer-by-customer basis. Because the plans for the Treviso Bay development include broadband network facilities, Comcast can, and likely will, market its retail Comcast Digital Voice product to subscribers at the development once homes are constructed.

Comcast's ability to offer this service relies on its own network facilities being in place and Comcast will not be able to provide this service until they are. Once available, Comcast will provide its Digital Voice service only on an individual, retail basis, and not on a "bulk" basis. A so called "bulk" basis is where the service provider individually negotiates a private contract with a developer or homeowner association and bills the association instead of the individual residents for the service.

3. Comcast does not provide Digital Voice service on a "bulk" basis to any customers in Collier County. To the extent an Internet search on a Comcast web site or call to Comcast's customer service line by inputting a customer zip code or address indicates that Comcast Digital Voice service is available in Collier County, that service is retail service and not bulk service.


4. At present, Comcast has no plans to offer Comcast Digital Voice service on a bulk basis to the Treviso Bay development. [REDACTED]

[REDACTED]

[REDACTED]

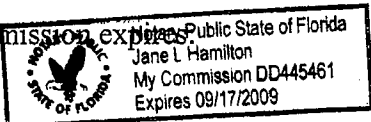
[REDACTED]

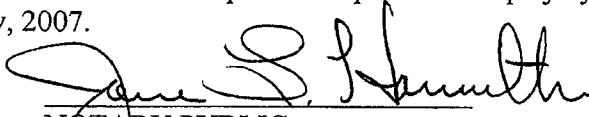
FURTHER AFFIANT SAYETH NOT.



LARRY SCHWEBER

Sworn to (or affirmed) and subscribed to before me under the pains and penalties of perjury by Larry Schweber on this 7th day of February, 2007.

My Commission expires  Public State of Florida
Jane L. Hamilton
My Commission DD445461
Expires 09/17/2009



NOTARY PUBLIC

(Check one)

Personally known

Or Produced identification

Type of identification produced _____

ATTACHMENT “C”

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
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PROTECTIVE AGREEMENT

The undersigned parties, through their respective attorneys, hereby stipulate and agree as follows:

1. *Exchange of Confidential Information.* Upon execution of this Protective Agreement by Treviso Bay Development, LLC (hereinafter, "Treviso Bay"), Embarq Florida, Inc. (hereinafter "Embarq"), and Comcast of the South, Inc. ("Comcast"), Comcast will provide the affidavit of Larry Schweber (the "Affidavit"), discussed with the parties to be submitted by Comcast in lieu of the depositions and discovery sought in subpoenas to Comcast Cable Communications Holdings, Inc and Nikki Mello propounded by Embarq on January 26, 2007 and February 1, 2007 in Florida Public Service Commission ("FPSC") Docket No. 060763TL (the "Proceeding"). This Protective Agreement is intended to and shall apply to and govern the provision of Confidential Information by Comcast to Embarq, and by Comcast to Treviso Bay in the Proceeding. To preserve and maintain the confidentiality of any confidential, proprietary or trade secret information provided by Comcast to Treviso Bay and Embarq in the Proceeding, Comcast will designate the information to be protected pursuant to this Protective Agreement, and the information so designated shall be "Confidential Information" under this Protective Agreement ("Confidential Information"). Comcast may redact any such Confidential Information from the version of the Affidavit that will be placed in the FPSC's publicly available file. Any party to this Protective Agreement (i.e., Comcast, Embarq, or Treviso Bay) shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Protective Agreement before the FPSC, a member of the FPSC, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Agreement. Notwithstanding the foregoing, this Protective Agreement shall not apply to the Confidential Information to the extent (i) the Confidential Information is or becomes generally known to the public other than as a result of a breach of this Agreement, (ii) the Confidential Information becomes generally known to the public on a non-confidential basis from a third party, provided such third party has no duty of confidentiality with respect to such information, and (iii) the Confidential Information was available on a non-confidential basis prior to disclosure of such information. Although it is a party to this Protective Agreement, Comcast is a non-party in the Proceeding.

2. *Permissible Disclosure of Confidential Information.*

(a) The Confidential Information provided pursuant to this Protective Agreement may be disclosed without the disclosing party's (i.e., Comcast's) prior

consent only to the following persons, only in prosecuting this Proceeding, and only to the extent necessary to assist in prosecuting this Proceeding:

(1) Treviso Bay's or Embarq's officers, employees, counsel, legal support personnel (e.g., paralegals and clerical employees) employed by Treviso Bay's or Embarq's counsel, expert witnesses, and financial advisors for Treviso Bay or Embarq who have a reasonable need to know the contents of the Confidential Information in connection with this Proceeding.

(2) The FPSC or its staff, pursuant to the rules of the FPSC, including Rule 25-22.006, Florida Administrative Code.

(3) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions provided that all parts of the record having the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.

(4) Any person designated by the FPSC in the interest of justice, upon such terms as the FPSC may deem proper, and pursuant to the rules of the FPSC.

(5) Any such other person(s) agreed to in writing by the parties.

(b) Persons obtaining access to the Confidential Information under this Protective Agreement shall not disclose information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this Proceeding before the FPSC, or before any arbitrator appointed by this FPSC, or in any other related legal proceeding between the parties to this Protective Agreement. Each individual who is provided access to Confidential Information pursuant to paragraph 3(a), (1), (4), or (5), must first sign a nondisclosure statement affirmatively stating that the individual has reviewed this Protective Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the statement to be used is attached as Attachment A to this Agreement. Each party agrees to furnish to the other party true copies of the nondisclosure statements executed by authorized persons who are given access to the Confidential Information.

(c) Upon the termination of this Proceeding, including all appeals and petitions, all originals and reproductions of the Confidential Information received by either Embarq or Treviso Bay which are in Embarq's or Treviso Bay's possession and/or control, including any notes or other work product (collectively the "Work Product"), derived in whole or in part from the Confidential Information shall be returned to the disclosing party or destroyed by the receiving party upon written notice from the disclosing party requesting the return of such Confidential Information. Upon such return or destruction of the Confidential Information and Work Product, counsel for the respective receiving party shall

provide a written, notarized certification of return and/or destruction of the Confidential Information and Work Product received or produced by the receiving party. Work Product may either be returned or destroyed, at the sole discretion of the receiving party. Nothing herein is intended to, or may be construed to, impair either the attorney-client privilege or the attorney work product privilege. A limited exception to the provisions of this Section is recognized for the FPSC wherein the FPSC, pursuant to its applicable rules and any orders on confidentiality that may be issued in this Proceeding, shall be allowed to retain, under seal, one copy of all Confidential Information for purposes of preserving the official record of the Commission. Further, the parties contemplate that, pursuant to applicable FPSC rules and confidentiality orders, all FPSC staff notes or work product shall be accumulated and kept under seal with all other confidential information which compiles the official record of the FPSC.

3. *Use.* Treviso Bay and Embarq, as receiving parties, shall use the Confidential Information only for preparation of and the conduct of litigation in this Proceeding and any related appeals or review proceedings or any other legal proceedings relating to this Proceeding between the parties to this Protective Agreement as provided in this Protective Agreement, and shall not use such Confidential Information for any other purpose.

4. *Non-Termination and Survival of Obligations to Protect Confidential Information.* The provisions of this Protective Agreement shall not terminate at the conclusion of this Proceeding, but shall continue for a period of five (5) years after the conclusion of the Proceeding, including any appeals that may be taken from the FPSC's actions therein. Moreover, the duties of Embarq and Treviso Bay, and of all persons who come into possession of Confidential Information, or to whom Confidential Information is disclosed in any way, shall survive for a period of five (5) years after the conclusion of the Proceeding, including any appeals that may be taken from the FPSC's actions therein. Notwithstanding the foregoing, this Protective Agreement shall automatically terminate with respect to any Confidential Information at such time as this Protective Agreement would not apply to such Confidential Information as provided under Section 1 of this Protective Agreement.

5. *Counterparts.* This Protective Agreement may be executed by one or more parties to this Protective Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument binding on and inuring to the benefit of each party so executing this Protective Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

6. *Relief.* The parties to this Protective Agreement agree and recognize that the disclosure of Confidential Information will likely not be remediable at law, and accordingly, the parties agree that relief may, in addition to any available remedies at law, include specific performance, injunctive relief, or any other form of equitable relief appropriate to prevent the disclosure of Confidential Information other than as provided for by this Protective Agreement

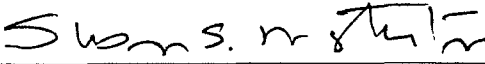
Neither the taking, nor the failure to take, any action to enforce the provisions of this Protective Agreement, nor the failure to object to any such action or omission, shall constitute a waiver of any claim or defense in this Proceeding or elsewhere, including, but not limited to, lack of personal or subject matter jurisdiction, or any claim or defense that any documents or information disclosed are or are not proprietary or embody trade secrets. The procedures set forth in this Protective Agreement shall not affect the rights of any party to the Protective Agreement to object to discovery or other information requests on any grounds. In the event that any party to the Proceeding or the FPSC requests additional discovery beyond the Affidavit, Comcast reserves the right to require the parties to execute an addendum to this Protective Agreement setting forth a higher level of confidentiality, such as "Attorneys Eyes Only."

If the disclosing party mistakenly produces materials protected by the attorney/client privilege, work product doctrine, or other privilege, doctrine, or right, the disclosing party may obtain the return of those materials by notifying the recipient(s) of the privileged materials and providing a privilege log therefore. Within three (3) business days, the recipient(s) shall gather and return all copies of the privileged material to the disclosing party, or alternatively, destroy and certify as such to the disclosing party.

7. *Amendments.* This Protective Agreement may only be amended in writing by the parties.

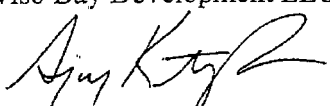
8. *Severability.* In the event that this Protective Agreement or any portion or section hereof is declared invalid by a court of competent jurisdiction, the parties covenant that their duties, and those of the persons to whom Confidential Information has been disclosed, shall remain in full force and effect and that the parties will immediately undertake in good faith to execute any new agreement that may be necessary to prevent the disclosure of Confidential Information other than as authorized by this Protective Agreement.

Dated: 5th day of February 2007.

<p>Treviso Bay Development LLC</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>Telephone No.: _____</p>	<p>Embarq Florida, Inc.</p> <p>By: </p> <p>Susan S. Masterton 1313 Blair Stone Road Tallahassee, FL 32301 (850) 599-1560 (phone) (850) 878-0777 (fax) susan.masterton@embarq.com</p> <p>Counsel for Embarq Florida, Inc.</p>
<p>Comcast of the South, Inc.</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>Telephone No: _____</p>	


8. *Severability*. In the event that this Protective Agreement or any portion or section hereof is declared invalid by a court of competent jurisdiction, the parties covenant that their duties, and those of the persons to whom Confidential Information has been disclosed, shall remain in full force and effect and that the parties will immediately undertake in good faith to execute any new agreement that may be necessary to prevent the disclosure of Confidential Information other than as authorized by this Protective Agreement.

Dated: 6th day of February 2007.

<p>Treviso Bay Development LLC</p> <p>By: </p> <p>Name: <u>ARIY KUTTEMPEROOR</u></p> <p>Title: <u>VICE PRESIDENT</u></p> <p>Address: <u>19275 W. CAPITOL DR., #100</u> <u>BROOKFIELD, WI 53005</u></p> <p>Telephone No.: <u>262-790-6000</u></p>	<p>Embarq Florida, Inc.</p> <p>By: _____</p> <hr/> <p>Susan S. Masterton 1313 Blair Stone Road Tallahassee, FL 32301 (850) 599-1560 (phone) (850) 878-0777 (fax) susan.masterton@embarq.com</p> <p>Counsel for Embarq Florida, Inc.</p>
<p>Comcast of the South, Inc.</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>Telephone No: _____</p>	

8. *Severability.* In the event that this Protective Agreement or any portion or section hereof is declared invalid by a court of competent jurisdiction, the parties covenant that their duties, and those of the persons to whom Confidential Information has been disclosed, shall remain in full force and effect and that the parties will immediately undertake in good faith to execute any new agreement that may be necessary to prevent the disclosure of Confidential Information other than as authorized by this Protective Agreement.

Dated: 5th day of February 2007.

<p>Treviso Bay Development LLC</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>Telephone No.: _____</p>	<p>Embarq Florida, Inc.</p> <p>By:</p> <p>_____ Susan S. Masterton 1313 Blair Stone Road Tallahassee, FL 32301 (850) 599-1560 (phone) (850) 878-0777 (fax) susan.masterton@embarq.com</p> <p>Counsel for Embarq Florida, Inc.</p>
<p> _____ David A. Konuch White & Case LLP Wachovia Financial Center, Suite 4900 200 South Biscayne Boulevard Miami, Florida 33131 Tel: 305-995-5258 Fax: 305-358-5744 dkonuch@whitecase.com</p> <p>Counsel for Comcast of the South, Inc.</p>	

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: 2.12.07
TO: David A. Konuch
FROM: T. Henry, Division of the Commission Clerk &
Administrative Services
RE: **Acknowledgment of Receipt of Confidential Filing**

01418-07

This will acknowledge receipt of a **CONFIDENTIAL DOCUMENT** filed in Docket No. 060763-TL or (if filed in an undocketed matter) concerning Schweber Affidavit, and filed on behalf of Comcast / Konuch. The document will be maintained in locked storage.

Any questions regarding this matter should be directed to Marguerite Lockard at (850) 413-6770.

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