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February 22, 2007

Jason Fudge  
Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RE: Docket No. 060732-TP

Dear Mr. Fudge:

Pursuant to Florida Public Service Commission (“Commission”) Staff’s request, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”), submits the following Position Paper addressing the policy arguments that support the reference to video and data agreements in Developer Letters issued by AT&T Florida.

### **INTRODUCTION AND BACKGROUND**

During the 2006 session, the Florida Legislature enacted legislation<sup>1</sup> that, in certain instances, provides relief for a local exchange carrier (“LEC”) from carrier-of-last-resort (“COLR”) obligations. The COLR statute provides two avenues for a LEC to obtain COLR relief. The first avenue<sup>2</sup> provides for automatic relief in four specific scenarios generally applicable when property owners or developers have entered into some type of arrangement with a communications services provider, as defined in § 364.025(6)(a)(3), Florida Statutes, other than the LEC. The second avenue<sup>3</sup> applies only when none of those four specific automatic relief scenarios are present. In that situation, the LEC may petition the Commission for COLR relief, which shall be granted upon good cause shown:

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<sup>1</sup> § 364.025(6), Florida Statutes.

<sup>2</sup> § 364.025(6)(b)(1)-(4), Florida Statutes.

<sup>3</sup> § 364.025(6)(d), Florida Statutes.

A local exchange telecommunications company that is not automatically relieved of its carrier-of-last-resort obligation pursuant to subparagraphs (b)1-4 may seek a waiver of its carrier of last resort obligation from the commission for good cause shown based on the facts and circumstances of provision of service to the multitenant business or residential property. Upon petition for such relief, notice shall be given by the company at the same time to the relevant building owner or developer. The commission shall have 90 days to act on the petition.

§364.025(6)(d).

In today's highly-competitive communications environment, it is becoming more common-place for property owners and developers in greenfield areas to enter into agreements with communications providers other than LECs well in advance of the first resident moving in. These agreements typically provide alternative communications providers with the exclusive or near-exclusive ability to offer a suite of communications services to residents at the property to the exclusion of LECs and other providers. For instance, developers or property owners enter into agreements with alternative providers that (1) restrict the ability of the LEC (or other providers) to provision service or bundles of services to customers, due to exclusive arrangements with the alternative provider; or (2) essentially eliminate customer requests for the LEC's services due to "bulk" arrangements with the alternative provider, wherein the developer or a homeowners association contracts for services from the alternative provider and the customers receive the services in return for payment of their rent or association fees.

These decisions by developers or property owners are driven, at least in part, by which communications provider makes the most lucrative financial offer to the property owner or developer, typically in the form of "door fees" paid to the developer by the communications provider. Thus, in return for these "door fees" or other forms of financial consideration, the developer or property owner enters into agreements with the alternative provider that ban, restrict, or make it economically disadvantageous for other communications companies to provide services to the residents of that development.

Additionally, in an attempt to avoid automatic COLR relief for the LEC as set forth in the new law, upon information and belief, some property owners and developers limit their restrictive or exclusive agreements with alternative providers to data and video services, thereby prohibiting or effectively prohibiting the LEC from providing anything other than traditional voice services to residents. And, even in that scenario, the alternative provider generally also has the

capability or will be providing voice service to residents. Accordingly, LECs, unlike the alternative providers, are competitively disadvantaged from the start, because they are nearly or completely prohibited from providing certain services or bundles that consumers expect.

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

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

### **POLICY ARGUMENTS**

There are numerous policy and business reasons supporting AT&T Florida's request for information regarding video and data agreements<sup>5</sup> from a developer or property owner.

**First**, it is undisputed that AT&T Florida's COLR obligation is limited to the provision of basic local exchange telecommunications service and that AT&T Florida has the right to determine the network architecture that will be used to provide this service. In some instances, traditional copper facilities will be used; in others, fiber or other advanced technologies will be deployed to provide voice and other advanced services. The cost structure for each type of network facility varies, and AT&T Florida has the unilateral right to make network deployment

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

<sup>5</sup> "Video and data agreements" as used in this Position Paper mean (1) exclusive service or (2) bulk agreements between a developer or homeowners or condominium association and a communications provider.

strategies based on the economics and service needs of each particular property.

If a property is subject to video or data agreements with an alternative provider, AT&T Florida can expect little or no take rate for similar services and voice service. Indeed, as stated in the Commission's 2006 Competition Report, technologies are "converging" so that providers can offer multiple types of services over a single network. When a data and/or video agreement is present with an alternative provider, and where that provider is also offering a voice product, due to customers' desires for bundles of services, the provider is likely to secure customers for its "triple play" product, including voice. This, in turn, impacts AT&T Florida's ability to secure customers for *voice*.

In such a situation, the expense associated with deploying a network that is capable of providing data, video and other advanced services, services that AT&T Florida is prohibited from providing, may not be justified. Accordingly, information regarding the existence or potential existence of video and data agreements is necessary to allow AT&T Florida to make prudent, economic business and network deployment decisions.

**Second**, Section 364.025(6)(d), Florida Statutes, provides that a LEC may seek a waiver of its COLR obligation from the Commission for "good cause shown based on the facts and circumstances of provision of service" to a development. "Good cause" and "facts and circumstances" are not defined or limited in the statute or by Commission decisions. Further, contrary to the suggestion of developers, the plain language of the statute requires that the Commission consider all relevant facts, *without limitation*, which may include facts about video and data agreements for a particular property. Such a finding is consistent with the Commission's decision adopting rules to implement Section 364.025(6)(e), wherein the Commission determined in Docket No. 060554-TL that the scope of "good cause" would be developed through subsequent Commission decisions. Therefore, information regarding the existence or potential existence of video and data agreements with alternative providers is necessary to assist AT&T Florida in determining if grounds exist for AT&T Florida to petition the Commission for COLR relief.

**Third**, as Staff is fully aware, exclusive service agreements for data and video prohibit AT&T Florida from offering data and video but not basic local exchange telecommunications service to the property. Thus, upon receiving a request for data, video, or other prohibited services, AT&T Florida is in the difficult position of having to explain to potential customers that, while it can provide basic voice service, AT&T Florida is prohibited by developers from providing data, video, or other services that consumers expect. AT&T Florida essentially becomes the "messenger" of the fact that consumers in the development do not have a choice, resulting in a negative perception of AT&T Florida, even though AT&T Florida desires to provide all of its services to the

customer. AT&T Florida should not be put in a position of experiencing any harm to its reputation or brand because of the business decision of a developer or property owner. In such a situation, AT&T Florida may decide that, instead of damaging its good will and brand, it is a better to seek relief from the Commission of its COLR obligation. As with the other points addressed above, information from the developer regarding the existence of data and video agreements will assist AT&T Florida in determining if grounds exist to seek relief from the Commission.

**Fourth**, any suggestion that the requested information should not be provided because the information is confidential is not persuasive. The type of information sought by AT&T Florida for video and data agreements – *i.e.*, the existence of and general type of agreement – is not the type of information that would be considered confidential. It is not, for example, a request for the financial terms of the agreements or for the developers to disclose the identity of the alternative provider. Further, the information for video and data agreements that AT&T Florida is seeking is the same type of general information being requested for voice service agreements. If the developer or property owner can provide the requested information regarding voice agreements without violating such provisions, there is no plausible reason why the same information cannot be provided for video and data agreements. Thus, any confidentiality concern about disclosing this general, basic information is misplaced.

**Fifth**, lest there be any confusion, it is AT&T Florida's desire to serve all properties with all of its services. It is also AT&T Florida's goal to be effective, responsive business partners with developers and property owners. In this regard, the free-flow of all information, not just information relating to video and data agreements, is vital. AT&T Florida's request for information relating to video and data agreements fosters relationships as well as the requisite free-flow of information by, among other things, (1) limiting the potential for confusion as to the existence or nonexistence of any restrictions on the property; (2) promoting discussion of the issues between AT&T Florida and developers; (3) ensuring AT&T Florida has accurate information to enable the appropriate network design to meet the needs of future occupants of a development; and (4) potentially limiting the number of COLR Petitions filed.

**Sixth**, with all due respect, AT&T Florida submits that the Commission is without authority to regulate AT&T Florida's request for information from or communications with developers and property owners.

For all these reasons, AT&T Florida submits that inquiring and receiving information from developers regarding video and data agreements with alternative providers constitutes good public policy.

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

James Meza III

cc: Ms. Beth Salak  
Mr. Patrick Wiggins  
Ms. Beth Keating  
Mr. Jim Tobin  
Mr. Jerry Hendrix  
Ms. Nancy Sims

668701

**DRAFT 2/20/2007**

Sender's Name  
Sender's Address  
Sender's Phone  
Sender's email  
Sender's Fax

(Enter Today's Date)

(Enter Recipient's Name) (Must be Legal Entity Name of Property Owner/Developer)  
Attn: (Enter Name of Authorized Rep of Recipient)  
(Enter Recipient's Address)

RE: (Enter Project Name/Phase of Project/Location)

Dear (Enter Authorized Rep Name):

It is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T Florida") understanding that (Company Name) is developing the above development (the "Development") located in AT&T Florida's franchised service area. AT&T Florida looks forward to building a successful relationship that will enable you and the occupants at the Development to enjoy AT&T Florida's full panoply of services, which may include voice, data and video. If at any time I can answer questions about AT&T Florida and the services that may be available to the Development, please feel free to contact me.

As with any successful relationship, however, AT&T Florida needs to understand the facts and circumstances of providing services at the Development. Thus, before we can proceed with plans to serve the Development, we are requesting information to enable AT&T Florida to decide whether circumstances exist that impact AT&T Florida's "carrier of last resort" (or "COLR") obligation to provide basic local exchange telecommunications service under Section 364.025, Florida Statutes, attached as Attachment A. You may also receive a second letter asking a few additional questions about the circumstances of providing other services at the Development.

1. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership of control over the Development has entered into any exclusive service arrangements with a communications service provider other than AT&T Florida, such that AT&T Florida will not be permitted to install its facilities at the Development to provide voice service.

Yes \_\_\_\_\_ No \_\_\_\_\_

If no, are such arrangements planned? Yes \_\_\_\_\_ No \_\_\_\_\_

2. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership of control over the Development has entered into arrangements with a communications service provider other than AT&T Florida, where charges

for voice service provided by the other provider will be collected by any of those parties from occupants or residents at the Development in any manner, for example, via rent, fees, or dues.

Yes \_\_\_\_\_ No \_\_\_\_\_

If no, are such arrangements planned? Yes \_\_\_\_\_ No \_\_\_\_\_

3. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership of control over the Development has entered into arrangements with a communications service provider other than AT&T Florida that grant incentives or rewards to any of those parties contingent upon provision of voice service at the Development by the other provider or upon restriction of AT&T Florida's access to the Development.

Yes \_\_\_\_\_ No \_\_\_\_\_

If no, are such arrangements planned? Yes \_\_\_\_\_ No \_\_\_\_\_

4. Will AT&T Florida be restricted in any way from providing voice service at the Development?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer above is "yes," please explain, in general terms, how AT&T Florida will be restricted: \_\_\_\_\_

Please provide responses, signed by an authorized representative of (Company Name), to the address indicated above by (Date). If AT&T Florida believes that your responses indicate that conditions exist at the Development that would provide the basis for relief of AT&T Florida's COLR obligation under Section 364.025(6), Florida Statutes, which would then impact AT&T Florida's plans to serve the Development, you will be notified. If you have any questions, please call (###-###-###).

Sincerely,

AT&T Florida

\_\_\_\_\_

(Owner/Developer Company)

Signed by: \_\_\_\_\_

(Authorized Representative)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Attachment A

### 364.025, Florida Statutes - Universal service.--

(1) For the purposes of this section, the term "universal service" means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas. It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local exchange telecommunications companies be used to satisfy these objectives. Until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory.

(2) The Legislature finds that each telecommunications company should contribute its fair share to the support of the universal service objectives and carrier-of-last-resort obligations. For a transitional period not to exceed January 1, 2009, the interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall be established by the commission, pending the implementation of a permanent mechanism. The interim mechanism shall be applied in a manner that ensures that each competitive local exchange telecommunications company contributes its fair share to the support of universal service and carrier-of-last-resort obligations. The interim mechanism applied to each competitive local exchange telecommunications company shall reflect a fair share of the local exchange telecommunications company's recovery of investments made in fulfilling its carrier-of-last-resort obligations, and the maintenance of universal service objectives. The commission shall ensure that the interim mechanism does not impede the development of residential consumer choice or create an unreasonable barrier to competition. In reaching its determination, the commission shall not inquire into or consider any factor that is inconsistent with s. 364.051(1)(c). The costs and expenses of any government program or project required in part II of this chapter shall not be recovered under this section.

(3) If any party, prior to January 1, 2009, believes that circumstances have changed substantially to warrant a change in the interim mechanism, that party may petition the commission for a change, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances, including that the provider's customer population includes as many residential as business customers. The commission shall act on any such petition within 120 days.

(4)(a) Prior to January 1, 2009, the Legislature shall establish a permanent universal service mechanism upon the effective date of which any interim recovery mechanism for universal service objectives or carrier-of-last-resort obligations imposed on competitive local exchange telecommunications companies shall terminate.

(b) To assist the Legislature in establishing a permanent universal service mechanism, the commission, by February 15, 1999, shall determine and report to the President of the Senate and the Speaker of the House of Representatives the total forward-looking cost, based upon the most recent commercially available technology and equipment and generally accepted design and placement principles, of providing basic local telecommunications service on a basis no greater than a wire center basis using a cost proxy model to be selected by the commission after notice and opportunity for hearing.

(c) In determining the cost of providing basic local telecommunications service for small local exchange telecommunications companies, which serve less than 100,000 access lines, the commission

shall not be required to use the cost proxy model selected pursuant to paragraph (b) until a mechanism is implemented by the Federal Government for small companies, but no sooner than January 1, 2001. The commission shall calculate a small local exchange telecommunications company's cost of providing basic local telecommunications services based on one of the following options:

1. A different proxy model; or
2. A fully distributed allocation of embedded costs, identifying high-cost areas within the local exchange area the company serves and including all embedded investments and expenses incurred by the company in the provision of universal service. Such calculations may be made using fully distributed costs consistent with 47 C.F.R. parts 32, 36, and 64. The geographic basis for the calculations shall be no smaller than a census block group.

(5) After January 1, 2001, a competitive local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that competitive local exchange telecommunications company. Upon petition of a competitive local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the competitive local exchange company. The commission may establish the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the competitive local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations.

(6)(a) For purposes of this subsection:

1. "Owner or developer" means the owner or developer of a multitenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.
2. "Communications service provider" means any person or entity providing communications services, any person or entity allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer.
3. "Communications service" means voice service or voice replacement service through the use of any technology.

(b) A local exchange telecommunications company obligated by this section to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to any customers in a multitenant business or residential property, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, when the owner or developer thereof:

1. Permits only one communications service provider to install its communications service-related facilities or equipment, to the exclusion of the local exchange telecommunications company, during the construction phase of the property;
2. Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the local exchange telecommunications company;

3. Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the local exchange telecommunications company, to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or dues; or

4. Enters into an agreement with the communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the local exchange telecommunications company's access to the property.

(c) The local exchange telecommunications company relieved of its carrier-of-last-resort obligation to provide basic local telecommunications service to the occupants or residents of a multitenant business or residential property pursuant to paragraph (b) shall notify the commission of that fact in a timely manner.

(d) A local exchange telecommunications company that is not automatically relieved of its carrier-of-last-resort obligation pursuant to subparagraphs (b)1.-4. may seek a waiver of its carrier-of-last-resort obligation from the commission for good cause shown based on the facts and circumstances of provision of service to the multitenant business or residential property. Upon petition for such relief, notice shall be given by the company at the same time to the relevant building owner or developer. The commission shall have 90 days to act on the petition. The commission shall implement this paragraph through rulemaking.

(e) If all conditions described in subparagraphs (b)1.-4. cease to exist at a property, the owner or developer requests in writing that the local exchange telecommunications company make service available to customers at the property and confirms in writing that all conditions described in subparagraphs (b)1.-4. have ceased to exist at the property, and the owner or developer has not arranged and does not intend to arrange with another communications service provider to make communications service available to customers at the property, the carrier-of-last-resort obligation under this section shall again apply to the local exchange telecommunications company at the property; however, the local exchange telecommunications company may require that the owner or developer pay to the company in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the property initially, and the company shall have a reasonable period of time following the request from the owner or developer to make arrangements for service availability. If any conditions described in subparagraphs (b)1.-4. again exist at the property, paragraph (b) shall again apply.

(f) This subsection does not affect the limitations on the jurisdiction of the commission imposed by s. 364.011 or s. 364.013.

**History.**--s. 7, ch. 95-403; s. 18, ch. 97-100; s. 1, ch. 98-277; s. 1, ch. 99-354; s. 1, ch. 2000-289; s. 2, ch. 2000-334; s. 4, ch. 2003-32; s. 2, ch. 2006-80.

**DRAFT 2/20/2007**

Sender's Name

Sender's Address  
Sender's Phone  
Sender's email  
Sender's Fax

(Enter Today's Date)

(Enter Recipient's Name) (Must be Legal Entity Name of Property Owner/Developer)  
Attn: (Enter Name of Authorized Rep of Recipient)  
(Enter Recipient's Address)

RE: (Enter Project Name/Phase of Project/Location)

Dear (Enter Authorized Rep Name):

It is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T Florida") understanding that (Company Name) is developing the above development (the "Development") located in AT&T Florida's franchised service area. AT&T Florida looks forward to building a successful relationship that will enable you and the occupants at the Development to enjoy AT&T Florida's full panoply of services, which may include voice, data and video. If at any time I can answer questions about AT&T Florida and the services that may be available to the Development, please feel free to contact me.

As with any successful relationship, however, AT&T Florida needs to understand the facts and circumstances of providing services at the Development. Thus, before we can proceed with plans to serve the Development, we are requesting information to (1) assist AT&T Florida in network planning for the Development and (2) allow AT&T Florida to determine if circumstances exist that allow AT&T Florida to petition the Florida Public Service Commission ("Florida PSC") to be relieved of its carrier of last resort ("COLR") obligation to provide basic local exchange telecommunications service, under Section 364.025(6)(d), Florida Statutes. In a separate letter, AT&T Florida requested information about other facts and circumstances that might impact AT&T Florida's COLR obligation, and attached a copy of the statute to that letter.

Please respond to the following questions.

1. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership or control over the Development has entered into any exclusive service arrangements with a communications service provider other than AT&T Florida, such that AT&T Florida will not be permitted to install its facilities at the Development to provide any of the following services.

Data: Yes \_\_\_\_\_ No \_\_\_\_\_

If no, are such arrangements planned? Yes \_\_\_\_\_ No \_\_\_\_\_

Video: Yes \_\_\_\_\_ No \_\_\_\_\_

If no, are such arrangements planned? Yes \_\_\_\_\_ No \_\_\_\_\_

2. Please indicate if the owner, developer, condominium association, homeowners' association or any other entity having ownership or control over the Development has entered into any arrangements with a communications service provider other than AT&T Florida, where charges for any of the following services provided by the other provider will be collected by any of those parties from occupants or residents at the Development in any manner, for example, via rent, fees, or dues.

Data: Yes \_\_\_\_\_ No \_\_\_\_\_

If no, are such arrangements planned? Yes \_\_\_\_\_ No \_\_\_\_\_

Video: Yes \_\_\_\_\_ No \_\_\_\_\_

If no, are such arrangements planned? Yes \_\_\_\_\_ No \_\_\_\_\_

4. Will AT&T Florida be restricted in any way from providing data or video service at the Development?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer above is "yes," please explain, in general terms, how AT&T Florida will be restricted: \_\_\_\_\_

Please provide responses, signed by an authorized representative of (Company Name), to the address indicated above by (Date). If you do not provide the requested information, AT&T Florida will make network planning decisions based on information otherwise available and may use the lack of information as a basis to seek COLR relief from the Florida PSC. If you consider the information requested to be confidential, please indicate in your response the information you consider to be confidential, and AT&T Florida will not share that information with any third parties. If you have any questions, please call (###-###-####).

Sincerely,

AT&T Florida

\_\_\_\_\_

(Owner/Developer Company)

Signed by: \_\_\_\_\_

(Authorized Representative)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_