

MESSER CAPARELLO & SELF, P.A.

Attorneys At Law

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July 5, 2007

**BY ELECTRONIC FILING**

Ms. Ann Cole, 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. Cole:

Enclosed for filing on behalf of Nocatee Development Company, SONOC Company, LLC, Toll Jacksonville Limited Partnership, Pulte Home Corporation and Parc Group, Inc. ("Nocatee") is Nocatee's Prehearing Statement in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely,

  
Floyd R. Self

FRS/amb  
Enclosure

cc: Lynn Pappas, Esq.  
Parties of Record

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of BellSouth Telecommunications, Inc. )  
for Relief from Carrier-of-Last-Resort Obligations ) Docket No. 060822-TL  
Pursuant to Florida Statutes §364.025(6)(d). ) Date Filed: July 5, 2007  
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**NOCATEE PREHEARING STATEMENT**

Nocatee Development Company, SONOC Company, LLC, Toll Jacksonville Limited Partnership, Pulte Home Corporation and Parc Group, Inc. (“Nocatee”), pursuant to Order No. PSC-07-0473-PCO-TL, issued June 1, 2007, hereby submit their prehearing statement in the above captioned matter.

**A. APPEARANCES**

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Counsel to Nocatee Development Company, SONOC Company, LLC, Toll Jacksonville Limited Partnership, Pulte Home Corporation and Parc Group, Inc.

**B. WITNESSES**

Nocatee does not intend to call any witnesses, but reserves the right to call witnesses, if necessary, as may be required by later filed testimony, completion of discovery, or new issues identified at the prehearing conference.

### **C. EXHIBITS**

Nocatee has not prefiled any exhibits, but reserves the right to introduce exhibits, if necessary, as may be required by cross examination, later filed testimony, completion of discovery, or new issues identified at the prehearing conference.

### **D. POSITION**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T”) AT&T and Nocatee negotiated for nearly a year a comprehensive agreement whereby AT&T would provide video, data, and voice telecommunications services throughout the entire Nocatee development. When AT&T was unable to deliver on its promises, Nocatee negotiated a video and data marketing agreement with Comcast for the private communities within Nocatee. Consequently, within the private subdivisions of Nocatee AT&T may install any facilities but AT&T may offer only voice telecommunications and voice-related telephone services. As for the public developments within Nocatee, there are no limitations on AT&T’s ability to install facilities or provide services, and AT&T is proceeding on that basis within the public communities.

AT&T has not shown good cause to be relieved of its COLR obligations within Nocatee. Nocatee is not required under Florida law to pay any compensation to AT&T to build out its network within any part of the Nocatee development.

### **E. ISSUES OF FACT, LAW, AND POLICY AND JOINT PETITIONERS’ POSITIONS**

**ISSUE 1:** Under Section 364.025(6)(d), Florida Statutes, has AT&T Florida shown good cause to be relieved of its Carrier-of-Last-Resort obligation to provide service at the Coastal Oaks and Riverwood subdivisions in the Nocatee development located in Duval and St. Johns Counties?

#### **NOCATEE’S POSITION:**

AT&T has not shown good cause to be relieved of its COLR obligations within any part of Nocatee. If the waiver is granted, over 3,000 Nocatee homes, representing more than 3,000

individuals, will be denied voice telephone services, and the precedent here could serve to deny service to 5,000 to 7,000 homes that are to be built in the various private subdivisions. Regardless of whether AT&T has a COLR obligation within any or all of the private communities within Nocatee, Nocatee is not required under Florida law to pay any compensation to AT&T to build out its network within Nocatee.

In addressing this issue, there are two separate aspects that must be considered.

First, AT&T has not shown good cause to be relieved of its COLR obligation. AT&T's argument for a COLR waiver is based upon an incorrect understanding of the facts and an economic analysis that is flawed in several respects. AT&T ignores the fact that this is a network within a network – the private subdivisions are located within the larger Nocatee development, thus surrounded by the AT&T network. Moreover, the network being proposed is excessive and unnecessary for the efficient provision of voice telephone services unless it is considered a part of the overall, single AT&T local network. Likewise, the penetration analysis significantly understates the marketplace choices residents are likely to make. Further, any economic analysis predicated on the inability to provide data and/or video services cannot be considered by the Commission in a COLR analysis since this Commission is without jurisdiction over video and data services. If non-jurisdictional services, or non-jurisdictional economic costs, can be used to determine whether jurisdictional services are to be provided then customers will not receive voice telephone service because of AT&T's non-regulated business decisions that have nothing to do with voice telephony.

Second, there is no basis to require any compensation from Nocatee or its residents for the AT&T infrastructure to be built in the private communities. Whether there is a COLR obligation or not, the service being requested is the construction of a regulated, local voice

telephone service network for an entire subdivision that is a part of the local, regulated telephone network being built within the overall Nocatee development. This is not a situation of a single customer who is located miles from the nearest phone line requesting service or a customer requesting some non-standard service. The fundamental question is whether AT&T has the obligation to build a residential local telephone network as it has done everywhere else within its service territory for the last 100 years. There is no “special construction” within the meaning of the Commission’s rules or AT&T’s tariff. The construction at issue is for the basic network itself. The request for service is not via a particular technology or in a special way. If this is special construction, then any local network that hereafter is to be constructed would be “special construction.” If AT&T has no obligation to build this network at its own cost subject only to the usual new service connections charges that apply to every other customer, then the universal service goals of Florida law are meaningless. Without universal service, the ubiquitous public switched network will come to an end, to the detriment of customers not just within the private communities of Nocatee but to all customers everywhere.

#### **F. STIPULATED ISSUES**

None at this time.

#### **G. PENDING MOTIONS**

Nocatee does not have any pending motions.

#### **H. PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY**

Nocatee has two pending claims for confidentiality. One claim was filed on February 14, 2007 with the response to Staff’s Data Request NOC-1 and another claim was filed on February 28, 2007 with a revised response to Staff Data Request NOC-1.

**I. REQUIREMENTS THAT CANNOT BE COMPLIED WITH**

None at this time.

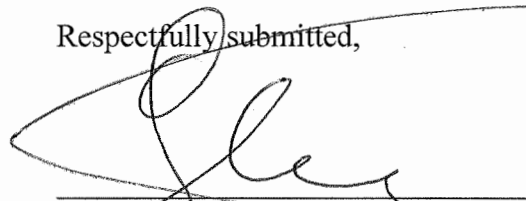
**J. DECISIONS PREEMPTING THE COMMISSION'S ABILITY  
TO RESOLVE THIS MATTER**

None at this time.

**K. OBJECTIONS TO WITNESSES QUALIFICATIONS AS AN EXPERT**

None at this time.

Respectfully submitted,



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Company, SONOC Company, LLC, Toll  
Jacksonville Limited Partnership, Pulte  
Home Corporation and Parc Group, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail this 5<sup>th</sup> day of July, 2007.

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