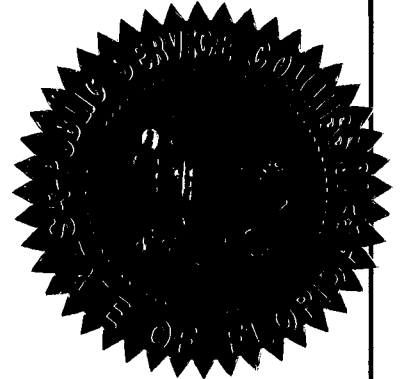


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070126-TL

In the Matter of:

PETITION FOR RELIEF FROM CARRIER-OF-
LAST-RESORT (COLR) OBLIGATIONS PURSUANT
TO SECTION 364.025(6)(D), F.S., FOR
VILLAGES OF AVALON, PHASE II, IN HERNANDO
COUNTY, BY BELLSOUTH TELECOMMUNICATIONS,
INC. D/B/A AT&T FLORIDA



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 6

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. McMURRIAN
 COMMISSIONER NANCY ARGENZIANO
 COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, July 10, 2007

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
 Official FPSC Reporter
 (850) 413-6734

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 JAMES MEZA, III, ESQUIRE, representing AT&T Florida.

3 MICHAEL COOKE, GENERAL COUNSEL, PATRICK K. WIGGINS,

4 ESQUIRE, H. F. RICK MANN, ESQUIRE, representing the Florida

5 Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: We will move to Item 6, and we'll
3 give a moment for our staff and for the other parties to get
4 into their positions.

5 MR. BUYS: Good morning, Commissioners. Dale Buys
6 with Commission staff. Item 6 is staff's recommendation in
7 Docket Number 070126-TL regarding AT&T Florida's petition for
8 relief from its carrier-of-last-resort obligations for the
9 provision of voice service at the Villages of Avalon, Phase II,
10 located in Hernando County.

11 Staff is recommending that the Commission deny AT&T
12 Florida's petition as AT&T has not made a prima facie case for
13 good cause. Additionally, staff would like to point out that
14 subsequent to filing our recommendation, the developer filed a
15 letter in response to AT&T Florida's request for payment of
16 line extension charges. The information in the filing does not
17 change staff's recommendation. With that said, staff is
18 available for any questions the Commissioners may have, and
19 also representatives for AT&T Florida are here to address the
20 Commission.

21 CHAIRMAN EDGAR: Mr. Meza.

22 MR. MEZA: Thank you, Madam Chairman. AT&T Florida
23 requests that you deny staff's recommendation in this matter
24 and find that AT&T should be relieved of its COLR obligation
25 for this development called Avalon, Phase II.

1 As this Commission knows, the Legislature amended the
2 COLR statute in 2006 to expressly give local exchange companies
3 like AT&T Florida the right to seek a waiver of its COLR
4 obligation from the Commission for good cause shown. This is
5 our second such petition. The first, Nocatee, you denied at a
6 preliminary agency action which we protested and is subject to
7 hearing later this month. And we believe that in this instance
8 we have established a prima facie case such that you should
9 deny staff's recommendation, and there are several reasons for
10 that.

11 First, it is undisputed that the developer in this
12 case is prohibiting AT&T Florida from providing anything other
13 than voice service through an easement. Generally speaking,
14 developers impose these types of restrictions on local exchange
15 companies because they have received some type of economic
16 consideration from an alternative provider in return for giving
17 the alternative provider the exclusive or essentially near
18 exclusive right to provide video and data services to residents
19 of that property.

20 There is no evidence to refute AT&T Florida's claim
21 that an alternative provider named Beyond Communications will
22 be providing voice services to residents at this property.
23 This is no evidence to refute AT&T Florida's claim that Beyond
24 Communications will be providing data and cable service to
25 residents of this development as part of their homeowners

1 association dues.

2 There is no dispute that AT&T's --

3 (Technical difficulty with audio system.)

4 CHAIRMAN EDGAR: Hold on. We'll get it right.

5 MR. MEZA: Okay. There's no dispute that the mike is
6 not working.

7 (Pause.)

8 CHAIRMAN EDGAR: Let's try again.

9 MR. MEZA: There is no dispute that AT&T Florida's
10 take rate, which is the anticipated percentage of customers
11 that will take its voice services at this property, will likely
12 be 20 percent or less. AT&T Florida has provided a sworn
13 unrefuted affidavit establishing that it will incur a minimum
14 of \$245,000 to serve this property with voice services only,
15 and staff has determined that it will take AT&T Florida between
16 eight to ten and a half years to recover these costs.

17 Finally, the developer in this case has provided no
18 evidence, none, to refute these facts. Nevertheless, staff has
19 determined that we still have not established good cause, and,
20 with all due respect to staff, that simply is incorrect for
21 three primary reasons.

22 First, staff states that AT&T Florida's burden in
23 this case is extremely high, that we have an extremely high
24 threshold to pass before you can grant us COLR relief for good
25 cause. However, the underlying statute, 364.025, does not

1 support this what I would call a super burden. The statute is
2 clear. We may seek a waiver of COLR for good cause shown based
3 on the facts and circumstances surrounding serving a particular
4 development. There's nothing in the statute that says that
5 AT&T Florida's burden is high or that the PSC should rarely
6 grant COLR requests, waiver requests or that the instances that
7 support good cause are very limited. The statute doesn't
8 support this high super burden that staff is imposing on us.

9 Second, staff finds that the sworn uncontroverted
10 testimony regarding AT&T Florida's cost to serve the property
11 is insufficient to meet its good cause burden. Specifically
12 staff does not dispute the testimony; rather, they do not
13 believe it is enough to carry the burden because no supporting
14 cost information was provided. However, the developer has
15 provided no evidence to refute AT&T's cost information and
16 sworn testimony and staff did not ask for any detailed cost
17 information regarding the affidavit and the underlying numbers.
18 The bottom line, the only evidence in the record at this point
19 is unrefuted by the developer and not disputed by staff. AT&T
20 Florida's cost estimate should therefore be sufficient to
21 satisfy its burden in this case.

22 Third, staff finds that AT&T Florida did not meet its
23 burden because we did not prove that the developer entered into
24 an exclusive arrangement for video and data services; however,
25 based on information known to AT&T Florida at the time, it

1 asserted in its position that it believed the developer had
2 entered into a bulk arrangement for video and data service with
3 an alternative provider. The developer has provided no
4 information to refute this claim, and, in fact, staff asked the
5 developer to produce its copies or copies of the agreements it
6 has with an alternative provider. And even though the
7 developer made an appearance in this proceeding to oppose our
8 request, they refused to provide any information. The
9 developer has the information, staff asked for it, and they
10 refused to provide it. Nevertheless, staff is rewarding the
11 developer for not providing us information and penalizing
12 AT&T Florida by finding that we cannot meet our burden without
13 the information.

14 If the Commission adopts staff's recommendation,
15 developers will know all they have to do to defeat a COLR
16 petition is refuse to provide information to staff and there's
17 no way that we can meet our burden.

18 In sum, staff's recommendation imposes burdens on
19 AT&T Florida that are not supported by the law and which AT&T
20 Florida may not be able to ever meet. In fact, based on this
21 recommendation there may not be any set of facts that would be
22 sufficient to establish good cause, thereby rendering the 2006
23 amendment to the statute meaningless. For these reasons, AT&T
24 Florida requests that you deny staff's recommendation and find
25 that AT&T Florida is relieved of its COLR obligation for this

1 property. Thank you.

2 CHAIRMAN EDGAR: Thank you, Mr. Meza.

3 Commissioner Argenziano.

4 COMMISSIONER ARGENZIANO: Thank you. Could you cite
5 for me specifically where in that statute you are relying on
6 your relief of obligation?

7 MR. MEZA: Yes, ma'am. It's Section 364.025(6)(e).

8 COMMISSIONER ARGENZIANO: (6)(e)?

9 MR. MEZA: Yes, ma'am.

10 COMMISSIONER ARGENZIANO: Thank you.

11 CHAIRMAN EDGAR: And do we have anybody here that is
12 representing the Villages of Avalon? Mr. Wiggins?

13 MR. WIGGINS: No, ma'am.

14 CHAIRMAN EDGAR: We do not. Okay.

15 Commissioners. Commissioner Skop.

16 COMMISSIONER SKOP: Thank you, Madam Chair.

17 Staff addressed with respect to the developer's
18 failure to provide staff with any agreements that staff
19 requested. What's the statutory reference that the developer
20 could have provided that to the Commission under
21 confidentiality for in camera review?

22 MR. WIGGINS: I'm sorry, Commissioner. Would you
23 repeat the question? Were you asking under what statutory
24 provision we could --

25 COMMISSIONER SKOP: It's my understanding, and I

1 don't have the exact reference in front of me, but it's my
2 understanding there is a statutory provision or --

3 MR. WIGGINS: I believe it's 364.181, but I would
4 have to -- we can, we can, yes, sir, we can preserve it as
5 confidential.

6 COMMISSIONER SKOP: That would, that would be good to
7 know because to the extent that staff requested something and
8 the developer could have filed that under cloak of
9 confidentiality and the Commission could have reviewed it in
10 camera as Commissioners that need to make determinations to see
11 if AT&T had, in fact, met its burden of proof, to me that would
12 be relevant to, to know.

13 MR. WIGGINS: I -- it's routine that in these
14 situations that we can protect information as confidential,
15 sometimes by the method by which we collect them but also in,
16 by nature of the content. It's my understanding that
17 confidentiality had nothing to do with Avalon refusing to, to
18 produce information for us.

19 COMMISSIONER SKOP: Would -- in staff's opinion,
20 would Avalon have produced the data had they been able to take
21 advantage of the confidentiality or they just simply refused?

22 MR. WIGGINS: No. For their own reasons, of which
23 I'm not aware, they're not producing the information, sir.

24 MR. BUYS: Commissioner Skop.

25 COMMISSIONER SKOP: Yes.

1 MR. BUYS: I personally spoke with the representative
2 from Avalon Development and I informed her that they could
3 provide that information under a claim of confidentiality under
4 the statute, and they never really responded as to whether or
5 not they would do that or not.

6 COMMISSIONER SKOP: Thank you. And, like I say,
7 fellow Commissioners, I find that to be very problematic in
8 this particular instant case.

9 CHAIRMAN EDGAR: Commissioner Carter.

10 COMMISSIONER CARTER: Thank you, Madam Chair. I just
11 want to kind of get a perspective on here. I mean, I know that
12 when seeking a remedy it says, "Let he who seeks equity do so
13 with clean hands." And this, this case here gives me some
14 concern.

15 I think this is about the second or the third case
16 that we've had on this COLR, release of this COLR obligation.
17 So it would seem to me is that we need to have some clear
18 standards so that all parties will know exactly what those
19 standards are so that they will have notice about what it would
20 mean before we will allow relief under the COLR requirement.
21 And as such, I'm thinking out loud with staff about whatever we
22 do, we need to be consistent. Because I think there are two
23 other cases, if my memory serves me correctly, we're dealing
24 with the same issue. And I want to, for my own mind and my own
25 clarification as well as for the Commission, is to make sure

1 that our recommendations from staff are consistent with all of
2 these cases. That way people will be on notice. We don't want
3 to change one for one party and do something different and then
4 we'll be all over the parking lot. But can you kind of
5 fundamentally just, just kind of give just a few quick bullets
6 so we'll let people know that these are consistent with our
7 recommendations? And I think there was one other case before
8 and we've got one now and one coming up later on on this. Do
9 you understand the nature of my question?

10 MR. WIGGINS: May I?

11 CHAIRMAN EDGAR: Yes, Mr. Wiggins.

12 MR. WIGGINS: In each of the cases that we've been
13 dealing with, and this is, I believe, our third on a PAA that's
14 actually gotten to this point, the company's case has
15 essentially been the same; that if you show that the provision
16 of service is uneconomic and that there is an available
17 provider, then the intent of the good cause exception for the
18 COLR waiver is met. I believe that's their case.

19 Am I fairly stating that, Mr. Meza?

20 MR. MEZA: Yes, sir.

21 MR. WIGGINS: Okay. And --

22 CHAIRMAN EDGAR: Mr. Wiggins, could I stop you just
23 for a second?

24 MR. WIGGINS: Yes, ma'am.

25 CHAIRMAN EDGAR: And how is uneconomic defined or

1 determined?

2 MR. WIGGINS: It is not defined in the statute, it's
3 not mentioned in the statute, and that's the very reason we
4 find ourselves at the uncertainty, the uncertainties of staff
5 to say yes because they've not been defined yet, nor has the
6 two-prong test I've just suggested been endorsed by the
7 Commission. And, and I agree with Commissioner Carter; and
8 exactly is that as we move forward with these cases, these
9 standards will be articulated in the Commission's orders and it
10 will be known as to what the ground rules are.

11 But, Madam Chair, the, there's not a definition yet,
12 although we have been using -- help me with this, a, for -- we
13 got to a place where we were looking at a five-year payout as
14 a, as a rough measure as to whether it would be economic or not
15 based on a creative use of a CIAC rule, but I don't want to get
16 confused on that. But it's essentially the company's burden to
17 come forward and show that they've met that, that standard and
18 that those are the legitimate tests.

19 In response to Mr. Meza, I hope he saves that
20 argument because it sounds like a pretty good argument for, for
21 a case once you actually have testimony in the record and you
22 do have evidence of record and you do have cross-examination.
23 But at this point I think staff found itself, as you read the
24 recommendation, uncertain about the very things that AT&T is
25 certain about, which is to say that if, if we move forward with

1 a PAA and you grant staff's recommendations and AT&T protests
2 it, we do discovery, Avalon doesn't show up, they may very well
3 have the case that they want.

4 But at this point -- and I would also like to speak
5 to Avalon not showing up. I don't know if staff -- staff is
6 not happy about this. But this isn't about the developer, this
7 is about the end-users and the customers who will be living
8 there. And we're wanting to be very careful that until we get
9 clear guidance from Commission orders as to what the criteria
10 are that we take our time and do this right and make sure we're
11 serving our customers downstream.

12 CHAIRMAN EDGAR: Commissioner Carter, did you have a
13 follow-up?

14 COMMISSIONER CARTER: Not at this time.

15 CHAIRMAN EDGAR: Hold that. Okay. Hold that.

16 Commissioner Argenziano.

17 COMMISSIONER ARGENZIANO: Thank you.

18 What I'm finding when I read the statute, (6)(e), is
19 that it does not specify as you just said. It basically says
20 that if the developer does not -- has not arranged and does not
21 intend to arrange with another communication service provider
22 to make communication service available to customers. It
23 doesn't say what type of service, so it's not specified.

24 But now what I'm hearing, and please correct me if
25 I'm wrong, is that we're not sure, we're taking AT&T's word

1 right now that, that the developer has basically stated that he
2 has contacted another provider for communication services. And
3 in saying that, I understand the concern that it's not, using
4 the Internet is not the same as the voice. But it's not clear
5 in the statute when I read it that, that they -- to me it looks
6 like if the developer has contacted or has another provider for
7 communication services, then AT&T does have a right -- does
8 have cause to withdraw.

9 Do we know if there are other communication providers
10 for the Avalon community?

11 MR. WIGGINS: Yes. Yes, ma'am, there is.

12 COMMISSIONER ARGENZIANO: Well, then can I ask staff,
13 Madam Chair?

14 CHAIRMAN EDGAR: Yes.

15 COMMISSIONER ARGENZIANO: Well, then why is it -- and
16 forgive me if I don't get it, because I'm trying to read it
17 here and I was hoping that it would say something more
18 specific. And it looks like to me, and this is where I'm going
19 to rely on you to tell me if I'm just not seeing it right, is
20 that it's just any communication that services are provided
21 would allow them to opt out of the carrier-of-last-resort. Is
22 that correct?

23 MR. BUYS: If I understand your question, it's if
24 there's any other provider that's serving a community, then
25 AT&T Florida could opt out of providing service.

1 COMMISSIONER ARGENZIANO: That's what it says in the
2 statute.

3 MR. MOSES: Commissioner Argenziano, this is Rick
4 Moses with staff. I believe the statute, I'm sorry, I don't
5 have it in front of me, but if they have an exclusive contract
6 for the provision of voice services regardless of the
7 technology. In this case they do not have an exclusive
8 contract. They've got an exclusive contract for video, they've
9 got an exclusive contract for data but not for voice.

10 And I believe a previous statement by Mr. Meza is
11 saying the voice services were included in the homeowners fees,
12 and staff does not have any evidence to that fact.

13 COMMISSIONER ARGENZIANO: Okay.

14 CHAIRMAN EDGAR: Commissioner McMurrin, thank you
15 for your patience.

16 COMMISSIONER McMURRIAN: Thank you.

17 I guess -- sorry about that. I guess to start off, I
18 thought that Mr. Meza made a couple of good points and we've
19 probably talked about some of this before. But one of the
20 points that I'm concerned about, and I think we've already
21 talked about that, is that Avalon is not here. And I guess the
22 way I see it is they want something out of this process too,
23 and I guess I expect a certain level of cooperation if they
24 want to say we want to make sure that AT&T Florida provides
25 voice service in our territory, that they have sort of skin in

1 the game and that they ought to be here and sharing information
2 with us that we've asked for. I just, I frankly think that's
3 only fair.

4 And the point that Mr. Meza made that I hadn't given
5 a lot of thought to before is that that may send a signal that
6 all the developer has to do is sit back and not provide any
7 information to us and that that will convince us that AT&T has
8 not met its burden or any other company. And I'm afraid that
9 that signal might be sent, but I'll move on.

10 The other point I wanted to talk about was that
11 Mr. Meza said that staff didn't ask for cost data to
12 substantiate the sworn uncontroverted testimony, as Mr. Meza
13 put it, about the cost information. Is that correct? Have we
14 asked for the cost data to support that?

15 MR. BUYS: No, we have not asked for the specific
16 cost data supporting their affidavit.

17 COMMISSIONER McMURRIAN: I guess my follow-up to that
18 is I've really been struggling with how much information and
19 documentation is needed to support a PAA finding. I realize
20 that it's an on-its-face kind of thing. And I guess two people
21 could look at the same information and say on its face to me
22 they've met, they've met the standard for good cause, and
23 someone else could probably look at the same information and
24 say because there's documentation that's lacking, we don't feel
25 like there's enough to hang our hat on yet.

1 So, Mr. Wiggins, I guess my question to you is how
2 much evidence -- we're not in the sworn testimony stage. How
3 much evidence do we need to make an on-its-face finding,
4 especially given the fact that the other party primarily
5 involved doesn't feel compelled to share any information with
6 us?

7 MR. WIGGINS: That's the \$64 question, I suppose. I
8 think -- first of all, I want to say I'm troubled by any
9 suggestion that staff has not been diligent and proactive, I
10 hate to use that word, but active in seeking out information.
11 In fact, to some extent I feel like our staff has carried
12 AT&T's water on developing the, the underlying facts, which
13 brings me to my point is that it's for good cause shown. It's
14 their responsibility to show good cause.

15 COMMISSIONER McMURRIAN: Let me just jump in there.
16 I wasn't -- I really just wanted the answer to the question,
17 "Had we asked?" But I wasn't suggesting -- and I do -- let me
18 just say this before we go down this road too far. I do
19 believe that BellSouth clearly has the burden -- AT&T Florida
20 clearly has the burden. And perhaps in some of the earlier
21 proceedings we've had there might have been a suggestion that
22 perhaps that cost data would have been good to have upfront and
23 that would have helped make a stronger case so we wouldn't be
24 as unsure on that.

25 MR. WIGGINS: I'm not capable of giving you a clear

1 benchmark at this point. This is the second or third case, so
2 we're evolving an understanding. But what I will say is I
3 don't believe I've heard staff put on AT&T or any ILEC the
4 responsibility of producing information they do not have access
5 to. So, in other words, we're not saying get us Avalon's or
6 Nocatee's or anybody else's data. I believe that's -- we can
7 do that or we can't.

8 But obviously staff believes that there is a way for
9 AT&T to bring a case on the front end that we would be here
10 recommending a grant. I think to some extent that will be
11 easier in a couple of months rather than it is today because
12 we're moving through a case even as we speak which will help us
13 clarify some issues.

14 But I'd also like to say staff is, is, is dealing
15 with unknowns in terms of some legal standards. For example,
16 Mr. Meza referenced the burden of proof. He's right. There's
17 no standard for burden of proof in the statute. But there's
18 also inferentially a standard for rule waivers which tends to
19 be a little high. So in an abundance of caution, my legal
20 opinion is that this remains an extraordinary event to relieve
21 the COLR obligation. It should be a high burden. If it's the
22 Commission's wisdom after developing a record that it should be
23 a typical, normal burden because that facilitates the purpose
24 of the chapter, we're perfectly comfortable with that.

25 CHAIRMAN EDGAR: Commissioner McMurrian.

1 COMMISSIONER McMURRIAN: Thank you, Chairman.

2 I do have several questions, but if there is a good
3 breaking point, if someone else wants to ask questions on this
4 point. But I had one follow-up to that.

5 How was it decided that this case be processed with
6 PAA instead of going straight to hearing? Because I guess the
7 question with my, with respect to my last question is if we're
8 going to require a lot of documentation and all to prove the
9 things that the company and any other party puts forward,
10 should we just perhaps go straight to hearing to begin with?
11 I'm not sure we've gained anything.

12 MR. WIGGINS: The statute provides for a 90-day
13 window for the Commission to take action. It's been my legal
14 opinion, I believe the General Counsel agrees, that a PAA
15 action satisfies that, satisfies that requirement.

16 In the Treviso Bay case, which is on the agenda for
17 reconsideration, we went straight to hearing. I believe it's a
18 resource allocation issue and we're doing the best we can with
19 it.

20 CHAIRMAN EDGAR: Commissioner McMurrian, I'm going to
21 ask you to hold your questions for just a moment and I will
22 come back to you.

23 Commissioner Carter, I know you had a question in
24 case we're on the same stream of thought, and then we'll come
25 back. Commissioner Carter.

1 COMMISSIONER CARTER: Thank you, Madam Chairman.

2 My concern -- I started out about this maxim about
3 "Let he who seeks equity do so with clean hands." My concern,
4 Madam Chairman, is that -- Commissioner Argenziano is right. I
5 read the statute exactly the way you do. It's not clear.
6 Commissioner Skop raised issues that will be best decided in a
7 proceeding. Commissioner McMurrin, you're going through the
8 same kind of process that we -- Madam Chairman, in your wisdom
9 and how you're looking at it, we're all on the same page.

10 It seems to me that if we're going to have these
11 cases come up, we're going to need to do so with some kind of
12 standards.

13 And the other thing just parenthetically is that if I
14 were Avalon and I had an interest in this case, I wouldn't be
15 hanging behind the tree.

16 So it seems to me, you know, it seems to me, Madam
17 Chairman, that the best thing that we can do in this case here
18 is go, go to a formal hearing, get testimony, put people under
19 oath, take the evidence and rule on it, but that we'll have
20 some kind of standards. Like I say, this is the second or the
21 third case that we've got on this issue here. The Legislature
22 made this law last year. They're asking us to implement it.
23 So we need to have some standards to put the industry on
24 notice. So I don't know how we get there, but I'm asking maybe
25 the General Counsel can help us get there, but that's what we

1 need to do. Because this case here is -- this issue is too
2 important to just kind of pass off, just my opinion.

3 CHAIRMAN EDGAR: Thank you, Commissioner Carter.

4 And just a few comments. I think maybe we are, some
5 of us anyway, thinking along the same lines. I recognize the
6 company and our staff are struggling to interpret the statute
7 under different, sometimes similar, sometimes not similar
8 factual situations. We are struggling to interpret the statute
9 as we all have recognized we have a statutory direction that
10 has been implemented very few times, if, if any, and so we are
11 all kind of struggling along those lines. I tend to think of
12 the PAA process as being kind of along that 80 percent rule.
13 You know, we put notice out there of a proposed agency action
14 often in that roughly/approximately shorthand 80 percent of
15 information and data. And then if, if there is a concern,
16 there is the opportunity to protest and move to a different
17 step in the process. And, if not, then that issue is in a
18 situation where all parties can move on.

19 With this statute and these criterion, I'm not sure
20 where they are. And, Mr. Meza, I will give you the opportunity
21 to speak to this after we've had the opportunity here on the
22 bench to pose some questions.

23 One question that I was going to ask, and I'll throw
24 it out there and then wait for an answer, but is, to Mr. Meza
25 is, you know, how, how would you distinguish this factual

1 situation from -- hold, Mr. Meza. How would, in the position
2 of your client, how would you distinguish the factual scenario
3 that we have before us from that that we had in Nocatee, even
4 realizing that we are going to hearing in that and will be
5 getting additional data? And that's something that I'm
6 grappling with. I'm not sure that we have the information.
7 And I am interested in Commissioner thoughts and then our
8 General Counsel on the possibility that maybe we should, rather
9 than making an affirmative action one way or the other on the
10 item before us, go, go to hearing. But I'll pose that.

11 And, Commissioner McMurrin, I had asked you to hold
12 some of your questions, so I'm going to ask you to pose them.
13 Commissioner Skop, I know you had a question. Let's go ahead
14 and get those out, and then we'll look to our staff and to
15 Mr. Meza and see where we are.

16 Commissioner McMurrin.

17 COMMISSIONER McMURRIAN: Thank you. To a point
18 Commissioner Carter raised about there being some standards,
19 we've, of course, talked about that a lot before. And I asked
20 this the other day but I wanted to ask it again here, under the
21 COLR statute do we have explicit rulemaking authority? And
22 I'll go ahead and say I think what -- the way I understand it
23 is that staff's intention is to try to get some of these cases
24 under our belt and then try to go to rulemaking to perhaps
25 solidify those. But, of course, we continue to struggle with

1 what those standards are and I just wanted to ask that for the
2 record, so to speak.

3 MR. WIGGINS: Yes, ma'am.

4 COMMISSIONER McMURRIAN: Okay. Chairman, I have
5 several questions, you know, with regard to certain sentences
6 and all in the recommendation. Would you prefer I go through
7 those now or would you prefer to keep it at a higher level at
8 this point? It somewhat depends on, I guess, the
9 Commission's --

10 CHAIRMAN EDGAR: On the direction that we're going to
11 go. Okay. I appreciate the question, Commissioner McMurrian.
12 I mean, let's go ahead and, Commissioner Skop, have your
13 question. Then we'll hear from Mr. Meza and from staff and see
14 where we, where we are. If there is consensus, then we can
15 address that. And if we need to have more discussion,
16 Commissioner McMurrian, you know, certainly we'll look to you
17 for more specificity.

18 Commissioner Skop.

19 COMMISSIONER SKOP: Thank you, Madam Chairman.
20 Again, I tend to agree with Commissioner Carter to the extent
21 that there are potentially some issues of fact which would
22 support moving towards a hearing. So I'm struggling with my --
23 with what is the best procedural posture to take for resolution
24 of this issue, whether it is to move into hearing or whether
25 it's to set a clearer message or policy via proposed agency

1 action that's essentially a nonfinal order to the extent that
2 it could be appealed, but to send a clear message, as
3 Commissioner Carter stated, that if you have a vested interest
4 in requesting something and you fail to show up and you're
5 uncooperative with staff and you refuse to provide documents
6 that could be filed with this Commission under the cloak of
7 confidentiality and you refuse to do so, that, you know, the
8 message should be sent to affirmatively nip that in the bud, if
9 you will, to prevent this sort of gamesmanship from occurring
10 in the future.

11 Because, again, we need a consistent policy, but it
12 needs to be fair such that providers that are petitioning for
13 COLR relief can make their case for why they should be relieved
14 of that obligation and they shouldn't have their hands tied in
15 doing so. And staff has their hands tied in terms of advising
16 us. Looking on Page 7 of the recommendation, they clearly
17 concur with the fact that AT&T Florida has mentioned or it
18 appears that Beyond Communication will provide some sort of
19 voice services there. So to me that establishes there is a
20 dial tone available somewhere. So is a carrier-of-last-resort
21 actually necessary for AT&T to fill that need based upon all
22 the other things that are going on in this?

23 So I guess I'm just struggling, and I'd look to my
24 fellow Commissioners that have more procedural knowledge to
25 kind of vet this out and figure out what is the best

1 methodology. I mean, I'm certain someone will probably appear
2 it but -- I mean, excuse me -- appeal it if we ruled on a PAA,
3 whichever way that went. But if Avalon is not even here, you
4 know, that sends a message that maybe they're not too
5 interested or too vested in the outcome of this one way or
6 another. Thank you.

7 CHAIRMAN EDGAR: Thank you, Commissioner Skop. You
8 know, and I'd just note the comments of Mr. Wiggins earlier
9 that although it is always frustrating to have an entity not
10 before us, that it is about the statute and about the COLR
11 responsibilities and the service to be provided to the
12 end-users.

13 And, Mr. Meza, as the petitioner and as the entity
14 that has requested relief from this Commission, I will ask you
15 please to respond to some of the questions and discussions that
16 you have heard.

17 MR. MEZA: Thank you, ma'am.

18 First, I'd like to start with your question regarding
19 how this differs from some of the other cases. And without
20 getting into the specifics or the merits of those cases, I
21 think at a very high level there are, there's at least one fact
22 that separates this case from those, and that is you have a
23 very unique property and that there's two phases that are
24 adjacent to, to one another.

25 There's adjacent -- there's Phase I which we served

1 voice only pursuant to an easement because we began to deploy
2 facilities prior to the new law going into effect. So we had
3 already expended the capital. And although we didn't agree
4 with the restrictions imposed by the developer, we agreed to
5 the easement and are providing voice services only to Phase I.

6 Phase II is now being constructed, it's probably near
7 completion, and the developer, consistent with Phase I, has
8 asked us to sign a voice-only easement for Phase II. And based
9 upon the occupancy of Phase I and the take rate for our
10 voice-only services for Phase I, we know that we can expect
11 about a 15 percent take rate for our voice-only services for
12 Phase II. Staff doesn't dispute that. In fact, staff, through
13 its discovery request to Avalon, which are the developer which
14 did provide some information, established that take rate. And
15 I think that's a very important fact because when you boil this
16 case down, and there's a lot of policy questions surrounding
17 this issue, but there really aren't a lot of questions of fact.

18 There is no dispute that the developer only wants us
19 to provide voice. AT&T believes and staff believes through its
20 own investigation that there will be an alternative voice
21 provider. AT&T will incur costs to serve this property, and
22 staff doesn't dispute the allegations in the affidavit. It's
23 just not enough in their view. And that AT&T, it will take
24 AT&T, depending upon the cost amount, between eight and a half
25 or eight to ten and a half years to recover these costs.

1 Those, those facts are not being challenged by staff. And
2 that's the problem with this approach is that I don't know if
3 there are any other facts out there that we could allege or
4 prove or put in sworn testimony or documents more to establish
5 those four basic points which we believe establish good cause.

6 One of the other problems that we're experiencing is
7 that this is a fast-moving train. You know, while this
8 petition is pending we still have a COLR obligation, and if we
9 have to -- if we get a request for service from one individual
10 at Avalon, we have to provide service. And so the concept of a
11 PAA versus an evidentiary hearing, we really don't take a
12 position. We just want an answer.

13 And the problems that we've experienced so far is
14 that while you have addressed these cases on a case-specific
15 basis, you've told us what is not good cause but you haven't
16 told us what is. And so every time there's another one up we
17 find, well, here's something else you have to prove, here's
18 something else you have to allege, and it's okay if, if you
19 don't win or if you don't get the relief this time because you
20 can protest it. But that doesn't really help us because at the
21 end of that evidentiary hearing the developer has won. They've
22 refused to provide information -- and in this particular case
23 it's problematic, at least in my view, because they've entered
24 an appearance to oppose our request. They've told you don't
25 grant their request for relief, and then when staff asked them

1 to provide information they said no. And I don't think you can
2 play it both ways.

3 And one last comment, I just want to make sure
4 Mr. Wiggins is clear that I was not suggesting that staff has
5 not been diligent in this case. It's just that it's another
6 instance of we don't know what the rules are. If we knew we
7 had to provide cost data, we would have provided it, or
8 detailed cost data.

9 CHAIRMAN EDGAR: Commissioner Carter.

10 COMMISSIONER CARTER: Madam Chairman, my concern in
11 this case goes back to the original in terms of having
12 standards because these issues will come up again. The
13 Legislature has said they want us to take care of this. My
14 really major concern in this case here is the developer wants
15 to cherry pick, wants to make money selling the voice, excuse
16 me, selling the data and the video services to an exclusive
17 provider that has some voice in it but they don't want to say
18 voice and, by the same token, have a company like the present
19 company before us to put in all the infrastructure. And that
20 just kind of doesn't sit right with me.

21 I think what we have to do is that -- in releasing
22 the COLR requirement, we want to be fair to the customers so
23 that they have access to telecommunications services, but we
24 also want to be fair to the companies as well, is that no one
25 should be gaming the system, and that's what I see here. So

1 like I said earlier, Madam Chairman, and I'm going to say
2 again, I'm looking to our General Counsel on how we -- I mean,
3 because if the only way we can get to a formal hearing is to
4 deny staff on this, then maybe we should do that. I just don't
5 know. I'm -- but wherever we are is that this issue is already
6 three cases, there's going to be more, and you're going to have
7 developers doing the same thing. And not saying that I support
8 the company, but I do support fairness. And this is where I
9 see where we are now, and we need to bring this in for a
10 landing basically.

11 CHAIRMAN EDGAR: Thank you, Commissioner Carter.

12 I think that I am hearing from a number of us an
13 interest perhaps in going straight to hearing. I also
14 recognize that part of fairness is timeliness and that there --
15 you know, as, as we deliberate, the world does keep turning.
16 And the end-users, the developer and the company have an
17 interest in having some clear answers, and I recognize that and
18 that's a fair request as well.

19 So, Mr. Cooke, if you could speak to us procedurally
20 for a minute. I know that often we prefer to have a vote up or
21 down for clarity, but there have been some instances where we
22 have not done that and have elected as a Commission to go to
23 hearing in order to gain additional information in a forum more
24 appropriate for that. And so if you would speak to us about
25 those points, please.

1 MR. COOKE: The Commission can decide to set this for
2 hearing if it chooses to do that. I think the only potential
3 glitch is there is a 90-day limit on the Commission acting from
4 the date of the petition. I understand that there might have
5 been some willingness to waive that 90 days.

6 MR. WIGGINS: They've waived it.

7 MR. COOKE: They've waived it, so that's not an
8 issue. I think you can set this for hearing, if that's, if
9 that's your choice.

10 CHAIRMAN EDGAR: Commissioner McMurrrian.

11 COMMISSIONER McMURRIAN: I have one question for
12 AT&T, and that's with respect to several places throughout the
13 rec, staff, and I think you alluded to this earlier, Mr. Meza,
14 staff has said there's not supporting documentation or cost
15 data to support the claims that you've made in your petition.
16 And you pointed out that staff didn't ask you for those and we
17 had a discussion about that.

18 But can you at this point provide -- I mean, not
19 necessarily today, but are you -- is your company in a position
20 to provide that meat on the bones, so to speak, so that we have
21 that information I guess as soon as possible?

22 MR. MEZA: Yes, ma'am. And we would have -- if we
23 had known it was an issue in the front, we would have provided
24 it with the petition.

25 COMMISSIONER McMURRIAN: I guess I would suggest that

1 no matter what procedural posture we go forward in, if we do
2 set it straight for hearing, that perhaps sharing that
3 information as soon as possible rather than waiting for staff
4 to ask for it --

5 MR. MEZA: Sure.

6 COMMISSIONER McMURRIAN: -- might be a good course of
7 action. But I guess that was my only question for them.

8 I agree with Commissioner Carter. I've struggled,
9 and I know we had long discussions under Nocatee and the Embarq
10 case as well about what was good cause. And, of course,
11 several people remember I said several times I thought we were
12 pretty close, if we weren't there. And I do think that the
13 points that Mr. Meza makes in this case with respect to there
14 being a Phase I that you can look at and you see that there's
15 something less than a 20 percent take rate there, and staff has
16 even suggested that that's a reasonable take rate, I think we
17 are getting closer.

18 And I guess in my mind, I'll just go ahead and share
19 with you all, no matter what, how we go forward, and I realize
20 there are other cases, I think that good cause can be reached
21 with some sort of exclusive agreement for at least data and
22 video or some kind of substantially equivalent nonoptional
23 inclusion of that in homeowners fees. Because I think that's
24 ultimately the same thing as having an exclusive agreement.
25 Because I just don't think that many people are going to sign

1 up for another data and video provider if it's already included
2 in something that they don't have the option not to pay for. I
3 think a demonstration of the uneconomic for the ILEC to provide
4 the voice service, I think that's where we're having the
5 hardest time. I don't think we have a good standard for what
6 meets the uneconomic definition, so to speak. But, of course,
7 it would involve some kind of look at the take rate and the
8 cost to construct the facilities and the revenue per household,
9 and then I think some showing of an alternative provider that
10 has the ability to offer voice or voice replacement. I know
11 there's been some discussion about basic local exchange service
12 in the statute under universal service, but I believe that the
13 COLR statute sort of suggests that it's voice or voice
14 replacement service. And I think that's a much broader term
15 and should include facilities-based cable VoIP providers, and
16 perhaps we even should look at what cellular providers are in
17 the area. So for me, I think that those things, a
18 demonstration of those things and with the proper documentation
19 by whoever is involved would get us to good cause. That's my,
20 my belief there.

21 But I do understand the need to have the
22 documentation to sort of support the uneconomic part in
23 particular, and I'm struggling, I think, on how we best get
24 there. So with that said --

25 CHAIRMAN EDGAR: Thank you.

1 COMMISSIONER McMURRIAN: -- thank you.

2 CHAIRMAN EDGAR: Commissioners. Commissioner Carter.

3 COMMISSIONER CARTER: Madam Chairman, I would suggest
4 that at the appropriate time that we, we set this for hearing
5 and maybe expedite it. Because, as Mr. Meza says, is that once
6 there's a request, they have no obligation -- no recourse but
7 to go out and start spending money. And I think the
8 Legislature gave us this requirement and we need to implement
9 it, but we need to implement it in as fair a manner as
10 possible. And with these cases pending we need to have some
11 standard out there. So I would suggest that we do that because
12 what's going to happen is that we keep nitpicking and messing
13 around. What we really need to do is just grab the bull by the
14 horns and deal with the issue and we need to do it now. And so
15 I would hope at the appropriate time, Madam Chairman, that I
16 get some support on moving this to a formal hearing in an
17 expedited manner.

18 CHAIRMAN EDGAR: Mr. Cooke, did you have a comment?

19 MR. COOKE: If that's the direction the Commission
20 wants to go, I would just suggest a motion to keep the docket
21 open and direct staff to set this for a hearing.

22 CHAIRMAN EDGAR: Commissioner Carter, that was for
23 you.

24 COMMISSIONER CARTER: I so move.

25 CHAIRMAN EDGAR: Okay. Is there a second?

1 COMMISSIONER SKOP: Second.

2 CHAIRMAN EDGAR: Okay. I hear a motion and a second.

3 We've had full discussion. All in favor, say aye.

4 (Unanimous affirmative vote.)

5 All opposed? Show it adopted. Thank you very much.

6 (Agenda Item 6 concluded.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON)


CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12th day of July, 2007.



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