State of Florida

Public Service Commission

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

DATE: September 13, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Buys, Kennedy, Mailhot, Moses, Ollila)
Office of the General Counsel (Mann, Wiggins)

RE: Docket No. 060822-TL – Petition for relief from carrier-of-last-resort (COLR) obligations pursuant to Florida Statutes 364.025(6)(d) for two private subdivisions in Nocatee development, by BellSouth Telecommunications, Inc.

AGENDA: 09/25/07 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\060822.PHD.RCM.DOC

Case Background

On December 22, 2006, BellSouth Telecommunications, Inc. d/b/a AT&T of the Southeast d/b/a AT&T Florida (AT&T) filed its Petition for relief from its carrier-of-last-resort (COLR) obligations pursuant to Section 364.025(6)(d), Florida Statutes (F.S.), to provide service at Coastal Oaks, Riverwood, and any other private communities in the development known as Nocatee located in Duval and St. Johns counties.

In this case, AT&T Florida is seeking a waiver of its COLR obligations pursuant to Section 364.025(6)(d), F. S., which states:

> 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.

On January 16, 2007, Nocatee Development Company, for itself and SONOC Company, LLC, Toll Jacksonville Limited Partnership, Pulte Home Corporation, and Parc Group, Inc. (collectively "Nocatee") filed its Response in Opposition to AT&T's Petition for relief from its COLR obligations.

On April 6, 2007, the Commission issued Proposed Agency Action (PAA) Order No. PSC-07-0296-PAA-TL denying AT&T's petition for relief from its COLR obligation to provide basic local telecommunications service at the private communities (collectively the Riverwood and Coastal Oaks subdivisions).

On April 27, 2007, AT&T filed its petition requesting a hearing pursuant to Section 120.57, F.S., and protesting the Commission's PAA Order.

Order No. PSC-07-0473-PCO-TL establishing procedure was issued on June 01, 2007. Subsequently, Order No. PSC-07-0518-PCO-TL, modifying the Order Establishing Procedure (Order No. PSC-07-0473-PCO-TL) was issued on June 18, 2007, and Order No. PSC-07-0523-PCO-TL, again modifying procedure, was issued on June 21, 2007. On July 23, 2007, the Commission issued Prehearing Order No. PSC-07-0596-PHO-TL, and on July 24, 2007, the Commission held its hearing on this matter.

Although Prehearing Order No. PSC-07-0596-PHO-TL, issued July 23, 2007, identifies only a single issue for this case, in their post hearing briefs, both AT&T and Nocatee identified two fundamental issues that need to be addressed. The first issue is whether AT&T has demonstrated good cause to be relieved from its COLR obligation to provide voice service to the residents in the private subdivisions in the Nocatee development pursuant to Section 364.025(6)(d), F.S. The second issue is whether the developer must pay financial consideration to AT&T prior to AT&T installing its network facilities, pursuant to Rule 25-4.067, Florida Administrative Code (F.A.C.), and AT&T's tariffs, regardless of the Commission's decision on the first issue, and if so, what is the amount payable from Nocatee to AT&T.

In this recommendation, there are three questions that must be answered: (1) what is the definition of good cause as it relates to Section 364.025, F.S.; (2) has AT&T shown good cause to be relieved of its COLR obligation; and (3) is Rule 25-4.067, F.A.C., applicable in this case, and if so, what is the amount payable by Nocatee to AT&T Florida. The first two questions are addressed in Issue 1a and the third question is addressed in Issue 1b.

The Commission has jurisdiction over this matter pursuant to Sections 364.01 and 364.025, F.S.

Discussion of Issues

Issue 1a: Under Section 364.025(6)(d), Florida Statutes, has AT&T 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?

Recommendation: No. AT&T has not shown good cause to be relieved of its COLR obligation to provide basic local exchange telephone service to the residents of the Coastal Oaks and Riverwood subdivisions in the Nocatee development located in Duval and St. Johns Counties. **(D. Buys, Ollila, R. Mann, R. Moses, Wiggins)**

Issue 1b: Is AT&T entitled to seek recovery of a portion of its cost for the extension of facilities pursuant to Rule 25-4.067, F.A.C., and AT&T's tariff prior to installing its facilities in the private subdivisions in Nocatee?

Recommendation: No. Rule 25-4.067, F.A.C, and AT&T's tariff do not apply in this case. **(D. Buys, Ollila, Mailhot, R. Mann, Wiggins)**

POSITION OF THE PARTIES

AT&T: Yes. AT&T has established good cause to be relieved of its COLR obligation for the Private Subdivisions. Alternatively, and in the event the Commission finds otherwise, AT&T has no obligation to install facilities in the Private Subdivisions until the developer pays special construction charges.

Nocatee: No. AT&T has not shown good cause to be relieved of its COLR obligations – there are no limitations on AT&T's ability to provide telephone service or on a customer's ability to choose AT&T. There is no basis for any financial compensation to AT&T for building its network within the private communities.

PARTIES' ARGUMENTS

AT&T

1. AT&T believes it has established "good cause" to be relieved from its COLR obligations at the Coastal Oaks and Riverwood subdivisions (collectively referred to as "private subdivisions"). (AT&T BR at 9-10; Shiroishi TR 64)

2. Nocatee has provided Comcast with the exclusive right to provide data and video service in the private subdivisions. (AT&T BR at 12-13, 15; Shiroishi TR 72, 97, 152)

3. Nocatee is only allowing AT&T to provide voice service in the private subdivisions. (AT&T BR at 15; Shiroishi TR 72)

4. Residents in the private subdivisions will be able to receive voice services from other providers. (AT&T BR at 16; Shiroishi TR 67)

5. Providing only voice service to the private subdivisions is uneconomic for AT&T. (AT&T BR at 17; Bishop TR 29, 34-34, 39, 40; Shiroishi 72-74, 76; EXH 28)

6. Public policy supports a finding of good cause. (AT&T BR at 21; Shiroishi TR 62-63)

NOCATEE

1. AT&T has not shown good cause to be relieved of its COLR obligations within any part of Nocatee. (Nocatee BR at 2-3)

2. AT&T has failed to meet its burden of proof to demonstrate good cause for relief from its COLR obligation and has also failed to substantiate its demand for financial compensation to construct a ubiquitous telephone network within the Nocatee private communities. (Nocatee BR at 3, 8-9)

3. Section 364.025, F.S., does not support COLR relief. (Nocatee BR at 9-15)

4. There is no evidentiary basis for the Commission to grant AT&T a COLR waiver. (Nocatee BR at 16-18)

5. There are several fundamental problems with AT&T's claim that it is uneconomic to build a telephone exchange network in Nocatee. (Nocatee BR at 22-24)

6. There is no basis for any financial compensation from Nocatee to AT&T pursuant to AT&T's tariff. (Nocatee BR at 25-32)

Staff Analysis:

LEGAL FRAMEWORK

Section 364.025(6)(d), F.S., provides in pertinent part that "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."

Meaning of "Good Cause"

The statute does not define "good cause." As reflected in the briefs of the parties, "good cause" is typically defined to mean "legally sufficient ground or reason." *Black's Law Dictionary* (6th ed.). In this case, "good cause" means "legally sufficient ground or reason" to conclude that a waiver of a local exchange company's (LEC's) COLR obligation is in the public interest in keeping with the legislative intent generally reflected throughout Chapter 364, F.S., and specifically, that reflected in Section 364.025(6), F.S.

The parties argue two opposite approaches to determining "good cause." AT&T believes that this case is about the developer's decision to prevent AT&T from providing video and data service to approximately 2,000 single-family homes in two private subdivisions in the Nocatee

development. (AT&T BR at 2) AT&T sees Section 364.025(6), F.S., as primarily addressing the problems the COLR now faces in triple-play[1] competition, including being forced into uneconomic investment in distribution facilities.

On the other hand, Nocatee believes that the statute addresses the obligation to provide voice service:

> AT&T has not shown good cause to be relieved of its COLR obligations within any part of Nocatee. The essence of this case is that AT&T is seeking to be relieved of its obligation to provide telephone service because it can only provide telephone service within the private communities. Since AT&T is not limited in its ability to provide voice telephone service, and customers are not limited or incentivized to choose one telephone provider over another, there is no good cause shown. If the waiver is granted, some 2,000 Nocatee homes, representing several thousand individuals, will be denied voice services, and the precedent here could serve to deny telephone service to 5,000 to 7,000 homes that are later to be built in the later private subdivisions. (Nocatee BR at 2)

For Nocatee, Section 364.025(6), F.S., reflects the continuing legislative intent to preserve to the extent practical the provision of voice service at reasonable rates to consumers by a carrier that has the obligation to serve and is accountable for its behavior.

Section 364.025(6), F.S., grants to the Commission the discretion to determine whether approving a petition for waiver of COLR obligations would best serve the public interest in light of the legislative intent of the statute. Staff believes that either of the parties' approaches here is legally defensible.

TECHNICAL ANALYSIS - ISSUE 1a

The parties present two different and opposing approaches for the Commission's consideration. AT&T sees Section 364.025(6), F.S., as addressing the problems the carrier of last resort faces in triple-play competition. These problems include the imposition of unnecessary burdens, perpetuation of asymmetrical entry and exit conditions on competitors, and the forcing of uneconomic investments in distribution facilities. In pre-filed testimony, AT&T witness Shiroishi testifies that:

> The overriding policy question in this case is whether developers can manipulate Florida's COLR statute to force traditional phone companies to make uneconomic investment where consumers have access to voice services from other providers while also stifling consumer choice for the suite of communications and entertainment services that residents expect. . . . AT&T Florida has invested, and will continue to invest, hundreds of millions of dollars in Florida to be able to offer consumers meaningful video, data, and voice competition. And that is exactly why we take such issue with the current situation in Nocatee. We want to

[1] Triple-play refers to the bundled service offering of video, broadband Internet, and voice from a single service provider.

> use our investment dollars wisely to bring Florida residents all of our advanced services instead of using those dollars to bring a single, unnecessarily duplicative service. . . . Although the Commission does not have regulatory authority over developers, or over broadband data and video service, the Commission is in a position to influence the outcome of this situation. By granting COLR relief under this particular set of facts, the Commission sends a message to developers that using the COLR obligation to force redundant, uneconomic investments is not in the best interest of the public. (TR 62-63)

AT&T believes it should be relieved from its COLR obligation for two primary reasons: (1) the residents of Nocatee can obtain voice service from other alternative providers, including but not limited to Comcast; and (2) because the developer has restricted residents' choice by granting Comcast the exclusive right to provide service or market its services in the development, serving Nocatee with voice service only results in an uneconomic investment for AT&T Florida and effectively denies advanced services to even more Florida consumers. (Shiroishi TR 64)

For Nocatee, Section 364.025(6), F.S., reflects the continuing legislative intent to preserve to the extent practical, the provision of universal voice service at reasonable rates to consumers, by a carrier that has the statutory obligation to serve. In its brief, Nocatee states:

> The starting point for an analysis of AT&T's waiver request must begin with its preexisting legal duty under Florida law to provide "universal service" under Section 364.025. In Section 364.025(1), the Legislature has said that it is important that consumers have access to telecommunications services at "just, reasonable, and affordable rates" and that these "universal service objectives be maintained after the local exchange market is opened to competitively provided services." In this context, the term "service" carries the definition from Section 364.02(13), F.S., which specifically excludes broadband service and voice-over-Internet protocol service. (Nocatee BR at 9-10)

Nocatee asserts that, "for purposes of carrier-of-last-resort relief, the term 'service' means only voice or voice replacement services, which by definition would exclude video and broadband." (Nocatee BR at 10) Nocatee contends that, "The language of the statute gives no indication that services beyond voice telephone service are to be considered when determining if the "good cause" standard has been met." (Nocatee BR at 13)

Nocatee argues that the premise of the four automatic waiver provisions included in Section 364.025(6)(b), F.S., is the existence of some kind of arrangement whereby the local exchange company is either excluded from the property, or otherwise restricted or limited in its access to the property, or the customers already pay for the service to another carrier through some type of bulk service arrangement. (Nocatee BR at 12) Nocatee contends that "AT&T is being asked to provide voice telephone services, and there are no restrictions on the telephone services or bundling of voice services it may offer. The presence of competitive alternatives, standing alone, whether wireless or Comcast's VoIP telephone service, does not establish a basis for a COLR waiver." (Nocatee BR at 13; Shiroishi TR 133)

Staff agrees with Nocatee that the statute is fundamentally concerned with the provision of voice service, not services other than voice. Staff believes that the carrier-of-last-resort obligations only apply to voice service. Further, staff is concerned that absent a service provider subject to carrier-of-last-resort obligations, residents could be without guaranteed access to basic local telecommunications service[2] pursuant to Section 364.025(1), F.S., which states:

> 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.

If the Commission determines that the four conditions presented by AT&T constitute valid grounds for COLR relief, the Commission then should decide if all of the conditions in fact are satisfied. In its brief, AT&T contends good cause or valid grounds for COLR relief exist when: (1) a developer has entered into an exclusive or near exclusive agreement for video and data services with an alternative provider; (2) a developer expressly or effectively restricts the local exchange company (LEC) to providing voice service only; (3) providers other than the LEC will be or will have the capability of providing voice or voice replacement service to residents; and (4) the provision of voice service by the LEC is uneconomic. (AT&T BR at 9-10)

Looking at AT&T's first condition for good cause, the record reflects that Nocatee has entered into an agreement with Comcast that effectively makes Comcast the exclusive provider for cable video and data services in the private subdivisions. Although Nocatee denies that the agreement with Comcast is exclusive (EXH 6, p. 392), the record shows that Nocatee has entered into a compensation agreement with Comcast wherein Comcast will provide Nocatee with financial consideration in exchange for Nocatee restricting other providers, such as AT&T, from providing cable/video and data services in the private subdivisions. (EXH 6, Compensation Agreement, p. 306; Installation Agreement, p. 284) If Nocatee allows AT&T to provide video and data services over its network, Comcast has the option to terminate the financial consideration that will be paid to Nocatee. (EXH 12, pp. 65-66) The record shows that Nocatee will receive a percentage of Comcast's recurring revenue from the provision of voice, data, and video service. (EXH 12, p. 60; EXH 4, pp. 300-303) The record also shows that Nocatee is not

[2] "Basic local telecommunications service" as defined in Section 364.02, F.S., Definitions, means voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing.

willing to forego the financial compensation it will receive from Comcast in return for allowing AT&T to provide video and data services in the private subdivisions. In his deposition, Mr. Richard T. Ray stated, "As long as the agreement that we have right now with Comcast is active, then AT&T will be restricted from providing data and video services. I can't speak to what might happen in the future." (EXH 12, p. 57) Thus, the record establishes that Nocatee has entered into an agreement whereby Comcast will, in effect, be the only provider for wired cable and data services in the private subdivisions.

Concerning AT&T's second condition, the record reflects that Nocatee has effectively restricted AT&T to providing only voice services in the two private subdivisions by means of a voice-only easement. The easement demonstrates that the rights granted to AT&T specifically exclude delivery of Internet/data services, video/television services, or telecommunications services other than voice service at this time. (EXH 2, p. 39) Additionally, Nocatee admits that the rights granted to AT&T, by the form of easement proposed by Nocatee, are limited to voice service. (EXH 6, p. 393)

As to AT&T's third condition, the record reflects that service providers other than AT&T will be or will have the capability of providing voice or voice replacement service to residents. Nocatee admits that Comcast will be installing its own network to provide voice, data, and video services within the private subdivisions and admits that Comcast has a VoIP service that Comcast intends to offer. (EXH 6, p. 395) Additionally, Comcast's price list for Jacksonville, Orange Park, Fleming Island, and St. John's County includes Comcast Digital Voice Service. (EXH 4, p. 357) AT&T witness Shiroishi testified that so long as a resident has a broadband connection, he or she could have access to over-the-top VoIP service providers such as Vonage, Skype, or AT&T's CallVantage. (TR 153) Further, there is no dispute that residents will have access to wireless service within the Nocatee area. As such, the record shows that there will be alternative voice service choices in the private subdivisions.

Whether AT&T's fourth condition is satisfied, that the provision of AT&T's voice service to the private communities is uneconomic, is questionable. AT&T suggests that uneconomic provision of service is dependent on at least two factors: the cost to install AT&T's network, and the amount of revenue AT&T will receive from its customers based on an estimated take rate.

AT&T contends that it will cost $2.3 million to deploy a fiber-to-the-curb (FTTC) architecture to provide voice service to all the homes in Riverwood and Coastal Oaks. (Bishop TR 38) AT&T also asserts that it will not be able to attract a sufficient number of customers to recover its costs to install its network facilities as a result of Nocatee's restriction on AT&T's ability to provide video and data services to the residents in the private subdivisions. (Bishop TR 14-15) Based on the build-out schedule provided by the developers/builders for the two private subdivisions, AT&T estimates that the initial cost to deploy its facilities is $278,889 for Riverwood (Areas 1-4) and $332,712 for Coastal Oaks (Phases 1 & 2a), a total of $611,601. (Bishop TR 29) AT&T explains the initial phases in both private subdivisions will consist of a total of 488 homes.

AT&T asserts that pursuant to Rule 25-4.067, F.A.C., and AT&T's Tariff – Section A5, Nocatee is responsible for $443,935 for the deployment of facilities to provide voice service to the initial phases of Riverwood and Coastal Oaks. (Bishop TR 34) AT&T estimates that its five times annual exchange revenue for the initial phases is approximately $167,666. (Bishop TR 34) AT&T states that the amount requested from the developer was determined by subtracting the projected five times annual exchange revenue from the estimated build-out costs. (Bishop TR 35; EXH 28) Nocatee has not agreed to pay the special construction charges requested by AT&T Florida, and no counteroffer has been presented. (Bishop TR 39)

AT&T has changed its cost estimates three times through the course of this proceeding. In its initial petition, filed on December 22, 2006, AT&T submitted the Affidavit of Larry Bishop as Exhibit G. In his Affidavit, Mr. Bishop attested that the cost to deploy facilities amounts to $1.6 million. Specifically, Mr. Bishop affirmed:

> I have also reviewed the estimated costs for the network deployment to Coastal Oaks and Riverwood, which amount to approximately $1.6 million (approximately $500,000 for Coastal Oaks and approximately $1.1 million for Riverwood). Based on my experience, this cost estimate encompasses the necessary and reasonable work required for network deployment to Coastal Oaks and Riverwood.

Subsequently, in his pre-filed direct testimony, witness Bishop increased the estimate and testified that "AT&T Florida estimates that in order to serve all the phases of Riverwood and Coastal Oaks, it will be required to spend at least $1.8 million." (TR 28) Again, witness Bishop testified:

> I have reviewed the estimated costs provided by the local Network organization and I concur that these costs encompass the necessary and reasonable work required for AT&T Florida to deploy facilities to Riverwood and Coastal Oaks. Further, the methodology used by AT&T Florida to calculate its costs is consistent with AT&T Florida's policies and procedures for determining cost estimates pursuant to Section A5 of AT&T Florida's Tariff. (TR 32-33)

Section A5 of AT&T's Tariff is titled, Charges Applicable Under Special Construction, and states under Section A5.1.1, Contents, "Section A5. contains the regulations, rates and charges applicable to the provision of Company services which require special construction." (EXH 14, p. 2 of 24) AT&T's new estimated cost was calculated for the purpose of charging Nocatee special construction charges. Witness Bishop testified that the difference between the estimated costs provided in AT&T's Petition and the estimated costs presented in his pre-filed direct testimony is attributed to AT&T now using a detailed design requirement specific to the Riverwood and Coastal Oaks subdivisions and, in addition, the placement costs of buried service drops, network interface units, and overhead amounts were not included in the original estimate. (TR 33)

In witness Bishop's summary of his testimony during the hearing, he increased the estimate again and stated that, "the estimated cost to serve the ultimate number of units in Riverwood and Costal Oaks is approximately $2.3 million." (TR 38) In staff's cross

examination, witness Bishop was asked about the increase. In response, witness Bishop testified, "Well, the $1.8 million cost figure in the testimony does not include the overhead charge." (TR 40) Witness Bishop's statement in his testimony contradicts the information included in confidential Exhibit 24 (witness Bishop's Exhibit LB-10). Exhibit 24 is a spreadsheet that supports AT&T's cost estimate. The spreadsheet summarizes the projected costs for both Riverwood and Coastal Oaks. The table specifically includes a line item that adds overhead to the materials cost and the labor cost as a component of the total cost of $1.8 million. Thus, the record indicates AT&T's estimated cost in the amount of $1.8 million does include overhead amounts, contrary to witness Bishop's testimony during the hearing. As such, AT&T's new amount of $2.3 million is not supported and should be disregarded.

Further, there is a large difference in AT&T's cost estimate on a per home basis between its initial estimate filed in its petition and the second estimate in witness Bishop's pre-filed direct testimony. In its initial petition, AT&T cited that there would be 3,072 homes in the private communities and estimated a total cost of $1.6 million. (AT&T Petition, p. 8, and Exhibit G) In AT&T's confidential responses to Staff Data Request Item No. 7, AT&T provided a spreadsheet titled, "Nocatee Private Communities Cost." The spreadsheet summarizes the itemized costs for the total build-out of both Riverwood and Coastal Oaks and shows that the cost estimate is based on 3,072 total units. The initial estimated total cost equates to about $520 per home ($1.6 million ⁄ 3,072 homes). In his pre-filed direct testimony, however, witness Bishop testified that based on new information from the builders of Riverwood and Coastal Oaks, there now would be a total of 1,919 single-family homes in the two subdivisions, and the subdivisions would be built in phases. The initial phases will consist of a total of 488 homes. (TR 23) Witness Bishop testified that AT&T estimates that in order to serve all phases of Riverwood and Coastal Oaks it will be required to expend at least $1.8 million. (TR 28) The second estimated total cost equates to about $940 per home ($1.8 million / 1,919 homes). As an explanation for the difference in these two cost estimates, witness Bishop stated that:

> The original cost estimate used in AT&T Florida's petition was developed using an average cost per living unit determined by analysis of costs to deploy a similar network at similar subdivisions. The updated cost estimate provided in the pre-filed testimony was developed using detailed design requirements specific to Riverwood and Coastal Oaks subdivisions. (TR 33)

Staff believes that AT&T's various methods used to estimate its cost to install its network facilities in the two private subdivisions, combined with witness Bishop's inconsistent testimony, create uncertainty about the reliability of these cost estimates. The record is unclear as to which cost, if any, is appropriate. First, the cost was stated as $1.6 million to serve 3,072 homes; then the cost increased to $1.8 million to serve 1,919 homes; and finally, at the hearing, the cost increased to $2.3 million.

The other factor AT&T uses to determine if the investment is uneconomic is its anticipated five times annual exchange revenue. The anticipated revenue is itself based on two factors: AT&T's expected take rate, and its estimated average revenue per unit. (Bishop TR 34, 35; EXH 28) The average revenue per unit is considered confidential by AT&T and the amount is not in dispute. AT&T contends that its expected take rate is 20% based on experience in another development. Witness Shiroishi testified that "based on AT&T's recent experience in

another single-family development where AT&T can only provide voice service, AT&T believes that its 'take rate' for its voice only services in Riverwood and Coastal Oaks will be 20% or less." (TR 73)

AT&T is estimating that only twenty percent of the residents in the private subdivisions of Nocatee will subscribe to AT&T's voice service based on its experience in the Avalon, Phase I, development located north of Tampa in Hernando County, Florida. (Shirioshi TR 76) In her pre-filed testimony, witness Shiroishi explained that:

> A similar take rate can be expected in Nocatee because (1) both developments consist of single-family homes; (2) both developments, through easements, are limiting AT&T to providing voice service only; (3) both developments have entered into contractual arrangements with alternative providers for the provision of voice, data, and video service. (TR 76)

In its response to Nocatee's Interrogatory No. 9, AT&T concedes that it has not been permitted by Avalon's developer to review Avalon's contractual arrangements, but that based on information and belief, the developer has entered into an exclusive and bulk agreement with an alternative provider for video and data services. (EXH 8, pp. 457-459) During staff's cross examination, staff asked witness Shiroishi, "Is it because of the similarities you see between Nocatee and Avalon that you assume a take rate for approximately 20 percent?" (TR 115) Witness Shiroishi responded, "Correct. . . . And since they are both single-family units, single-family homes, we felt that was a very good proxy." (TR 115) However, when asked in cross examination if she reviewed the contracts between the developers in Avalon and the alternative providers for voice service in Avalon, witness Shiroishi confirmed that she had not reviewed them. (TR 115) During cross examination, witness Shiroishi also admitted that she has no first hand knowledge of whether or not the charges for the provision of video and data services for the residents of Avalon are paid through homeowners' dues. (TR 116) Consequently, the record shows that although AT&T is using Avalon, Phase I, as a proxy to estimate the take rate in Nocatee, AT&T admits that it does not know for certain the actual arrangements between Avalon's developer and the alternative service providers.

Finally, during cross examination, the following exchange took place with witness Shiroishi:

> Staff -- "I think in your testimony you've used the word "uncertainty," that there's uncertainty in penetration rates. . . . one of AT&T Florida's positions is that it's very difficult in this new and fluid environment to project what exactly the take rates will be and what your revenue flows will be. Is that a fair characterization?" Witness Shiroishi -- "Yes. . . . there's no hard and fast data that would help us to know, and certainly Avalon Phase I is the most concrete that we have." (TR 124-125)

In its brief, Nocatee argues the penetration rate could be higher than twenty percent based on Richard T. Ray's deposition testimony. (Nocatee BR at 23) In his deposition, Richard T. Ray stated because Riverwood "is the age-restricted, active adult community, we had

internally projected that the penetration would be approximately 50-50 for both services [Comcast verses AT&T]." (EXH 12, p. 48)

AT&T's calculation of its five times annual anticipated exchange revenue from both private subdivisions amounts to $167,666. (Bishop TR 34; Shirioshi TR 73) AT&T's method takes into account its assumed 20% take rate, and that not all of the homes will be built within the first five years. AT&T uses an occupancy forecast based on when homes are expected to be occupied based upon developer-provided construction schedules. (Bishop TR 35; EXH 28) AT&T's calculations appear to be accurate for an assumed take rate of 20%, and if one interprets "five times the annual exchange revenue" as stated in Rule 25-4.067, F.A.C., to mean "the total annual exchange revenue obtained in the first five years." However, that is not what the rule provides.

Rule 25-4.067(2), F.A.C., provides:

> This line extension policy shall have a uniform application and shall provide the proportion of construction expense to be borne by the utility in serving the immediate applicant shall be not less than five times the annual exchange revenue of the applicants.

The plain meaning of Rule 25-4.067(2), F.A.C., is that five times the annual exchange revenue is five times the annual exchange revenue from all the applicants. Rule 25-4.067(3), F.A.C., in pertinent part provides that "the excess cost may be distributed equitably among all subscribers initially served by the extension." Further, Rule 25-4.067(4), F.A.C., provides that "Line extension tariffs shall also contain provisions designed to require that all subscribers served by a line extension during the first five years after it is constructed shall pay their pro rata share of the costs assignable to them." Therefore, AT&T did not correctly apply Rule 25-4.067, F.A.C., when calculating the five times the annual exchange revenue of the applicants.

Staff believes AT&T's claim that it is uneconomic to serve Nocatee is based on assumptions that may be considered subjective. Use of a different methodology to determine if AT&T's investment is economic may yield a different result. For example, if one were to take the average cost per home to serve the two private subdivisions in its entirety ($940) and multiply that amount by the total number of homes for which AT&T is planning to first install facilities (488), the estimated cost for the initial phases calculates to be $458,720. Also, given Richard Ray's deposition testimony (EXH 12, p. 48), which is no more subjective than AT&T's 20%, if one assumes a 50% take rate of 488 homes (244), and calculates the five times the annual exchange revenue as the total anticipated annual exchange revenue from all 244 homes, multiplied by five, the resulting calculation places the break even point at approximately five years. The point here is not to say that AT&T is incorrect in its calculations, but to demonstrate that using an alternative methodology and assuming a higher take rate, since the 20% used by AT&T lacks foundation, would yield a much different result.

In its post-hearing brief, Nocatee questions AT&T's proposed deployment design. Nocatee argues that if AT&T truly believes its take rate would be only 20%, why would it incur the cost to build out its network to serve 100% of the residents? Nocatee concedes that it is unknown as to which customers would choose AT&T's voice service, but Nocatee contends that

AT&T could reduce some of the cost of its facilities by economizing in the use of its Optical Network Units[3] and using fewer fibers to connect its facilities to the private communities. (Nocatee BR at 24) Moreover, staff would note that AT&T implicitly assumes the appropriate cost recovery period for the investment made to serve Riverwood and Coastal Oaks is five years pursuant to Rule 25-4.067, F.A.C. However, the useful life of these assets is likely longer than five years. (Shirioshi TR 91)

The record indicates that AT&T did consider an alternative deployment design that included more copper cable and less optical fiber. During cross examination, AT&T witness Bishop testified that:

> We actually performed an analysis of several developments within the surrounding areas of Nocatee. Some of the developments were served by copper facilities, some of them were served by fiber facilities. In our analysis, the copper distribution was actually a more expensive alternative. . . . So we did the analysis and fiber-to-the-curb is the cheapest alternative no matter what services we're able to provide. (TR 42)

Also in cross examination, witness Bishop stated that a lot of the incurred costs of the network do not change no matter how many customers subscribe. Witness Bishop stated that the costs of the remote serving terminal that would be placed to serve the private communities are incurred no matter what the take rate is within the development. (TR 44, 45) Witness Bishop further stated that "you don't know which of the living units will actually see your take rate, so you can't plan, you know, which legs of the cable you're going to place now versus later. You have to plan as if you're going to service each one of those living units because you don't know which ones will actually take your service." (TR 45) Hence, while the record shows that AT&T did consider an alternative network design using copper in place of fiber, and that the fiber alternative was less costly, the record also indicates that AT&T did not consider other possibilities, such as using fewer components and fibers as suggested by Nocatee.

In summary, staff does not believe AT&T has demonstrated that it is uneconomic to provide only voice service to the private subdivisions. First, AT&T's estimate of its cost to install its facilities is ambiguous. Second, the underlying assumptions AT&T uses to estimate its take rate are subjective and lack appropriate foundation. Third, AT&T incorrectly applied Rule 25-4.067, F.A.C., when calculating its anticipated five year annual exchange revenue. For these reasons, staff believes AT&T has not demonstrated it is uneconomic to provide voice service.

[3] Optical Network Units. An optical network unit is provided in the subscriber neighborhood for terminating the optical fiber transmission line and for providing electrical signals over metallic lines to the subscribers. The unit functions to convert the optical signal to an electrical signal.

Nocatee argues that AT&T has not shown good cause to be relieved of its COLR obligations within any part of Nocatee. (Nocatee BR at 2)

In its post-hearing brief, Nocatee asserts:

> The essence of this case is that AT&T is seeking to be relieved of its obligation to provide telephone service because it can only provide telephone service within the private communities. Since AT&T is not limited in its ability to provide voice telephone service, and customers are not limited or incentivized to choose one telephone provider over another, there is no good cause shown. . . . Given AT&T's tariff language, building a local exchange network to serve thousands of people over the next 20 years does not constitute "special construction" for which AT&T can seek compensation. Thus, 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. (Nocatee BR at 2-3)

In its post-hearing brief, Nocatee reasons that:

> From the cases decided by the courts,[4] it can be extrapolated that, although "good cause" does carry with it an element of discretion in an agency to determine good cause on a factual, case-by-case basis, the reason used to support allowing or disallowing an otherwise required service or action must be related to purposes of the statutory or regulatory requirements. As applied to this case, AT&T is seeking to avoid its obligation to provide COLR telephone service to the two private Nocatee subdivisions. The "good cause" claimed by AT&T is that it is uneconomic to serve because Nocatee has a marketing agreement with Comcast that limits AT&T's ability to provide video and broadband service within the two private communities. But the issue is not video and data services, which is not only not related to the statutory purpose of universal service but which is specifically exempted from Commission jurisdiction. The issue is whether there are limits on AT&T's ability to build its network and sell telephone service and whether there are limitations on the ability of customers to choose AT&T's telephone service. Nocatee contends that there are no limitations on AT&T or on the customers. Thus, AT&T has failed to demonstrate "good cause" sufficient to relieve it of its statutory obligation to ensure availability of telecommunications service to Florida citizens that are unable to procure such service elsewhere. (Nocatee BR at 8-9)

[4] Department of Transportation v. J.W.C., Inc., 396 So.2d 778, 788 (Fla. 1st DCA 1981); Westerheide v. State, 888 So.2d 702, 705 (Fla. 5th DCA 2004); Ratley v. Batchelor, 559 So.2d 1298 (Fla. 1st DCA 1991); Standard Distributing Co. (of Pensacola, Fla.) v. Florida Dept. of Business Regulations, 473 So.2d 216 (Fla. 1st DCA 1985); Sherburne v. School Bd. Of Suwannee County, 455 So.2d 1057 (Fla. 1st DCA 1984); School Board of Osceola County v. UCP of Cent. Florida, 905 So.2d 909 (Fla. 5th DCA 2005); Florida West Realty Partners, LLC v. MDG Lake Trafford, LLC__So.2d__, 2007 WL 1988843 (Fla. 2nd DCA 2007).

Nocatee also points out that none of the Comcast services are bundled into other services and, most critically, there are no bulk agreements or other contractual obligations whereby the homeowners pay for any Comcast service. Nocatee contends that homeowners are not paying for telephone services, or video or broadband services either, through homeowners' fees or any other fees. (Nocatee BR at 18)

In its brief, Nocatee asserts that since there are no limitations on customer choice, and no incentives for customers to choose Comcast services, AT&T focuses on the Comcast Compensation Agreement and Marketing Support Addendum with Nocatee. (Nocatee BR at 19) Nocatee contends:

> The Comcast documents only provide that Nocatee will instruct its developers to make available to potential homebuyers certain Comcast marketing materials. Hearing Exh. 12, at 57-59. This availability or presentation of marketing materials does not incentivize or reward homebuyers who choose Comcast. . . . While Comcast does have a marketing advantage with customers through the availability of marketing materials to potential home buyers, these materials are hardly dispositive of the question and certainly do not constitute competent substantial evidence of record to support a COLR waiver. (Nocatee BR at 19)

Staff agrees with Nocatee that since AT&T is not limited in its ability to provide voice service, and customers are not limited or incentivized to choose one telephone provider over another, there is no good cause shown. Further, staff believes AT&T's inability to provide video and data service is not sufficient, on a stand-alone basis, to demonstrate good cause for a waiver. As such, staff agrees with Nocatee that AT&T has failed to demonstrate good cause sufficient to relieve it of its statutory COLR obligation.

TECHNICAL ANALYSIS - ISSUE 1b

AT&T began the practice of charging developers a portion of its cost for installing its network facilities in new developments after the Commission issued PAA Order No. PSC-07-0296-PAA-TL in this docket on April 6, 2007. The Commission's PAA Order, which AT&T protested on April 27, 2007, stated:

> This decision, however, does not preclude BellSouth, as the carrier-of-last-resort, from using the tools that may be available to it in addressing the problem of providing uneconomic service to the identified locations. For example, BellSouth may seek recovery of a portion of its costs for the extension of facilities pursuant to Rule 25-4.067, F.A.C., and the line extension provisions set forth in its tariffs.

During cross examination, witness Shiroishi testified that AT&T began applying special construction charges to developers after the Legislature amended the COLR statute in 2006, and after the Commission issued its PAA Order. Witness Shiroishi testified that "we started looking at that and decided that that was an appropriate avenue. So that's when the developer angle for line extension charges or what we sometimes refer to as special construction charges came in." (TR 86) Witness Shiroishi also testified that she was not aware of any situations prior to the COLR waiver statute amendment where AT&T required developers to pay for the installation of the network. (TR 134) Further, in his deposition, witness Bishop was asked if AT&T's response

to Interrogatory No. 27 (EXH 2, pp. 161 and 241) "means that as far as AT&T can determine, it never assessed line extension charges to developers in Florida before the 2006 changes to Section 364.025?" Witness Bishop responded, "Although I'm not an expert on the application of special construction charges in all cases, I can say that the application of special construction charges with respect to Nocatee and some similar developments has occurred because of the PSC guidance provided in the March – and I forget the date, but a ruling that came out in March regarding the Nocatee case." (EXH 10, p. 482) The record shows that prior to this case, AT&T had not applied special construction charges to developers.

Rule 25-4.067, F.A.C. Extension of Facilities – Contributions in Aid of Construction provides in pertinent part:

> (1) Each telecommunications company shall make reasonable extensions to its lines and service and shall include in its tariffs filed with the Commission a statement of its standard extension policy setting forth the terms and conditions under which its facilities will be extended to serve applicants for service within its certificated area.
>
> * * *
>
> (3) If the cost which the servicing utility must bear under subsection (2) above (or has provided in its tariff) equals or exceeds the estimated cost of the proposed extension, the utility shall construct it without cost to the subscribers initially served. If the estimated cost of the proposed extension exceeds the amount which the utility is required to bear, the excess cost may be distributed equitably among all subscribers initially served by the extension. However, no portion of construction shall be assessed to the applicant for the provision of new plant where the new plant parallels and reinforces existing plant or is constructed on or along any public road or highway and is to be used to serve subscribers in general except in those instances where the applicant requests that facilities be constructed by other than the normal serving method. The company's tariffs shall provide that such excess may be paid in cash in a lump sum or as a surcharge over a period of five years or such lesser period as the subscriber and company may mutually agree upon.

Since the rule is implemented through the LEC's tariff, staff evaluated Nocatee's analysis of AT&T's tariff. Nocatee's primary argument is that the Special Construction tariff does not apply because "the language of the tariff is clear that facilities to serve subscribers in general is not special construction." (Nocatee BR at 32) Staff notes that Nocatee excluded a sentence, in sections A5.2.4.A and A5.2.5.A of the tariff, which places a condition on the sentence it quoted (i.e., if the FPSC determines the provision of the facilities is unreasonable, then special construction applies). However, staff believes that the definition of "subscriber" or "customer" is key to determining whether this tariff is applicable in this proceeding.

Section A5.2.1.B.1 of the tariff, "Conditions Requiring Special Construction," begins with, "[S]pecial construction is required when suitable facilities are not available to meet a customer's order for service and/or a mutually agreed upon facility forecast. . . ." Staff notes that

the tariff uses the terms "customer," "individual subscriber," "subscriber," and "subscribers in general":

- The Special Construction tariff does not define "customer;" although Section A5.1.2, "Explanation of Terms," includes the term "Subscribers in General." According to the tariff, subscribers in general "as used in this Tariff, is to be interpreted to include those cases where new construction is required to serve two or more customers."
- The term "subscribers in general" is used in two locations, Section A5.2.4.A, "Construction On Public Highways or Public Rights-of-Way" as well as Section A5.2.5.A, "Construction on Private Property Across Which Rights-of-Way and Easements Satisfactory to the Company are Provided Without Cost to the Company." This term is used in the same sentence in both sections, "No special construction is applicable for the reasonable provision of new network distribution facilities where the facilities are used for subscribers in general."
- Section A1 of the tariff, "Definition of Terms," defines "subscriber" as "[A]ny person, firm, partnership, corporation, municipality, cooperative organization or governmental agency furnished communication service by the Company under the provisions and regulations of its tariff."
- Staff found additional information concerning the definition of "subscriber" in Section A2.2, "Limitations and Use of Service." Specifically, Section A2.2.1A states "[T]elephone equipment, facilities, and services are furnished to the subscriber for use by the subscriber."
- The term "individual subscriber" is used in Section A5.2.5.A, "Construction on Private Property Across Which Rights-of-Way and Easements Satisfactory to the Company are Provided Without Cost to the Company." The sentence begins, "[W]hen facilities are used to serve an individual subscriber, the subscriber will be required to pay recurring and/or non-recurring construction charges under the following conditions . . . ."

Staff believes Nocatee does not qualify as a customer in this case because it is not purchasing telephone service on behalf of itself or its homeowners. Therefore, staff believes that in this instance, Nocatee's request to install facilities does not constitute a "customer's order for service and/or a mutually agreed upon facility forecast" under Section A5.2.1.B.1 of AT&T's tariff. On this basis alone, staff believes that special construction charges would not apply.

There may be situations, however, where a developer such as Nocatee could qualify as a customer within the meaning of the rule. For example, if the developer, provider, and homeowners' association entered into agreements under which telecommunications service was provided under bulk arrangements, the developer might be viewed as standing in the shoes of the customer. Staff is not prejudging this arrangement, but rather mentions it to emphasize that the applicability of the rule and the ILEC's tariff is case-specific and that there may be situations where a developer would qualify as a customer under Rule 25-4.067, "Extension of Facilities – Contributions in Aid of Construction," F.A.C.

Staff notes that if Nocatee were to be considered AT&T's customer, then further conditions in Section A5.2.1.B.1 of AT&T's special construction tariff would become relevant. Section A5.2.1.B.1, "Conditions Requiring Special Construction," states in its entirety:

> 1. Special construction is required when suitable facilities are not available to meet a customer's order for service and/or a mutually agreed upon facility forecast and one or more of the following conditions exist:
>
> - The Company [AT&T] has no other requirement for the facilities constructed at the customer's request;
> - The customer requests that service be furnished using a type of facility, or via a route, other than that which the Company would otherwise utilize in furnishing the requested service;
> - The customer requests the construction of more facilities than required to satisfy his initial order for service; and submits a mutually agreed upon facility forecast;
> - The customer requests construction be expedited resulting in added cost to the Company;
> - The customer requests that temporary facilities be constructed;
> - The cost to construct line extension facilities for an individual subscriber when the cost exceeds the estimated five year exchange revenue;
> - The term "customer" as used in the preceding context also includes those entities/businesses which, due to the nature of their business operations, may create a requirement to terminate a concentration of network facilities at said entities' operational centers. Such facilities may be individually ordered by and billed to separate customers who are patrons of the entities and typically utilize the facilities to avail themselves of the entities' services. Examples of such entities or businesses include, but are not limited to Telephone Answering Services, Alarm Central Terminal Locations and Specialized Mobile Radio Systems and Radio Common Carriers.
> - Service wire (drop wire) that exceeds seventy-five (75) feet and or requires placement through, around, or under encumbrances and placement of transmission enhancers such as load coils, extenders, etc.

While staff believes that Nocatee argues convincingly in its brief that the last seven conditions of AT&T's tariff Section A5.2.1.B.1 do not exist in this instance, the first condition is more difficult to evaluate. The first condition states that "[T]he Company has no other requirement for the facilities constructed at the customer's request." This condition is subject to interpretation, which complicates the evaluation. Nocatee takes the position that if AT&T is not relieved of its COLR obligation, AT&T will have a legal requirement to install facilities. According to Nocatee, this legal requirement means that AT&T does have another requirement for the facilities. Staff does not find Nocatee's argument particularly convincing. An alternative interpretation is that the term "requirement" may be meant only to imply "need" or "use" in a practical sense. Under this alternative interpretation, the first condition might appear to be

satisfied if one believes that AT&T currently would have no other use for the facilities constructed, but for providing service to the Coastal Oaks and Riverwood subdivisions. Staff believes, however, that this view, taken to its ultimate conclusion, would imply that every facility installation could be considered special construction because AT&T would have no other requirement or need for telecommunications facilities to be constructed at the time. In staff's opinion, such a conclusion is illogical and could not have been intended in the context of a new subdivision. Accordingly, and by necessary implication, staff concludes the first condition does not exist in the instant case. Although reached in a different manner, this conclusion also coincides with the one reached by Nocatee.

However, if the Commission weighs these considerations differently and determines that AT&T's Special Construction tariff applies, staff has calculated an amount for which Nocatee would be responsible. Staff previously discussed several discrepancies and problems in AT&T's projected revenues and expenses used in its calculation of the $443,935 which it believes Nocatee is responsible for due to the deployment of facilities to provide voice service to the initial phases of Riverwood and Coastal Oaks. Based on staff's review and modifications to AT&T's assumptions, staff believes that the most appropriate amount for Nocatee to pay is $183,488. In its calculation of projected revenues, staff has used a slightly higher estimated take rate for service[5] and has used five times the annual exchange revenue of each customer**,** consistent with staff's prior analysis. Also, in its calculation of projected costs, staff has used an average cost per home to serve the two private subdivisions in their entirety. This calculation has been made to determine the developer's share of AT&T's costs, for use in the event the Commission weighs the various considerations differently than staff and concludes that while AT&T's petition for COLR waiver should be denied, AT&T's Special Construction tariff does apply in this situation.

If the Commission finds that AT&T's petition for a COLR waiver should be granted, staff believes that neither Rule 25-4.067, F.A.C., nor AT&T's Special Construction tariff would apply because AT&T would not be obligated to provide facilities for the developer. If this occurs, Nocatee would need to negotiate facility installation, including any compensation, with AT&T.

If the Commission finds that AT&T's petition for COLR waiver should be denied, staff believes a thorough review of the salient provisions in AT&T's Special Construction tariff weighs in favor of concluding that the tariff does not apply. Under staff's recommended interpretation, the developer is not the customer, which precludes application of AT&T's Special Construction tariff. Even if the developer is the customer, staff's evaluation of the eight conditions in AT&T's tariff Section A5.2.1.B.1 leads to the conclusion that none of these conditions, which would trigger application of special construction charges, has been shown to exist in the instant case.[6]

[5] The record supports use of any take rate from 20 percent (AT&T's estimate, Bishop TR 35, Shiroishi TR 73) through 50 percent (Nocatee's estimate, EXH 12, p. 48).

[6] Staff notes that there is an additional statutory basis for reaching the same conclusion. Pursuant to Section 364.025(6)(e), F.S., if the conditions justifying an automatic waiver of the LEC's COLR obligation cease to exist, the LEC shall again be the COLR and may require the owner or developer to pay the increase in costs incurred to construct facilities later rather than initially. This payment of only the cost increase over time is conceptually at odds with applying special construction charges pursuant to tariff in the case of facilities constructed initially.

In summary, staff believes that there is no basis for AT&T to demand any financial compensation from Nocatee pursuant to AT&T's tariff and that there is no precedent nor historical situation supporting the application of Rule 25-4.067, F.A.C., to developers in this situation. Moreover, AT&T admits that it is not aware of any instance prior to this docket that AT&T charged a developer for special construction charges. (Shirioshi TR 86, 134; EXH 10, p. 482)

Conclusion

AT&T argues that it should be relieved from its COLR obligation because it cannot provide video and data services in the private subdivisions, and because of this restriction, AT&T believes it will not recover the cost of its investment within five years. AT&T asserts it should not be forced pursuant to its COLR obligation to provide service where there are other alternative voice services available and it is uneconomic for it to provide only voice service.

Staff believes that the carrier-of-last-resort obligations only apply to voice service. The fact AT&T cannot provide video and data services and is restricted to providing only voice service is not sufficient for AT&T to be relieved from its statutory obligation to provide voice service. Moreover, AT&T did not provide competent evidence that its provision of voice service at the two private subdivisions in Nocatee development is uneconomic. First, the discrepancy in witness Bishop's testimony, combined with the three different cost estimates proposed by AT&T, cast doubt on the validity of the estimated costs of providing service. Second, the underlying assumptions AT&T uses to calculate its anticipated five times the annual exchange revenue are subjective and lack appropriate foundation. For these reasons, staff does not believe that AT&T has demonstrated "good cause" to be relieved of its COLR obligation in this case.

Further, based on the record and an analysis of AT&T's tariff, the installation of AT&T's facilities to provide local exchange voice service to the private subdivisions in the Nocatee development does not fit any of the definitions of special construction; hence, the developer has no obligation to pay AT&T special construction charges.

Accordingly, staff recommends that the Commission find that AT&T has not shown good cause to be relieved of its COLR obligation to provide basic local telecommunications service to the residents of the Coastal Oaks and Riverwood subdivisions in the Nocatee development located in Duval and St. Johns Counties. Staff also recommends that the Commission find that Rule 25-4.067, F.A.C., and AT&T's tariff do not apply in this case.

However, if the Commission finds that AT&T has shown good cause to be relieved of its COLR obligation and AT&T's petition is granted, staff believes that in the future, should the facts and circumstances change, and the developer requests AT&T to install its network facilities to serve the private subdivisions in Nocatee, the facts and circumstances at that time should be used to determine whether AT&T is obligated to provide service as the carrier-of-last-resort.

Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed upon issuance of the final order. **(R. Mann, Wiggins)**

Staff Analysis: Because there are no outstanding issues in this docket, the docket should be closed upon issuance of the final order.