State of Florida

Public Service Commission

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

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

DATE: November 7, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Bloom, Higgins)
Office of the General Counsel (Mann)

RE: Docket No. 070126-TL – Petition for relief from carrier-of-last-resort (COLR) obligations pursuant to Section 364.025(6)(d), Florida Statutes, for Villages of Avalon, Phase II, in Hernando County, by BellSouth Telecommunications, Inc. d/b/a AT&T Florida.

AGENDA: 11/20/07 – – Regular Agenda –
Issue 1: Motion for Summary Final Order/Pre-Hearing Decision - Oral Argument Not Requested
Issue 2: Participation is limited to Commissioners and Staff only
Issue 3: Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None (Statutory Deadline Waived)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\070126.RCM.DOC

Case Background

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) is the carrier of last resort (COLR) where the development known as The Villages of Avalon is located. The Villages of Avalon is a private deed-restricted residential community consisting of approximately 796 lots under development by Avalon Development LLC (Avalon Development). The Villages of Avalon, Phase II (Avalon, Phase II), which is the property subject to AT&T Florida's petition, contains approximately 476 lots and is contiguous to

Villages of Avalon, Phase I (Avalon, Phase I). As of this time, there are no residents living in Avalon, Phase II.

Avalon Development has entered into agreements with Capital Infrastructure, LLC d/b/a Connexion Technologies (Connexion) and Beyond Communications a/k/a Baldwin County Internet/DSSI Service, LLC (Beyond Communications) to be the exclusive provider of data and video services to homes in both Avalon, Phase I, and Avalon, Phase II, communities. The Connexion website asserts that the charges for those services are paid through the homeowners' association (HOA) dues. Beyond Communications is also offering its voice service to the residents on an individual customer basis by subscription. The network facilities deployed by Connexion are capable of carrying voice, video and data service in both phases.

While Avalon, Phase I, is already populated with residential customers, Avalon, Phase II, is still in the construction phase. Staff understands that no residential customers have yet purchased and moved into any homes in Avalon, Phase II. Consequently, all of Avalon, Phase II's future customers have free choice whether to purchase or not purchase homes in Avalon, Phase II, if any limitations placed on the availability of specific communications services are disagreeable to them.

Avalon Development is requesting that AT&T Florida install its network facilities in Avalon, Phase II; however, Avalon Development is prohibiting AT&T Florida from providing video and data services to those homes by granting easements to AT&T Florida restricted to voice-only service.

On February 23, 2007, AT&T Florida filed a petition for relief from its carrier-of-last-resort obligation pursuant to Section 364.025(6)(d), Florida Statutes (2007), for Avalon, Phase II, located in Hernando County, Florida.

On March 12, 2007, Avalon Development submitted its reply to AT&T Florida's petition and requested that the Commission deny AT&T Florida's petition, deny the relief requested by AT&T Florida, and dismiss this proceeding with prejudice. Avalon Development further contends that because AT&T Florida already provides voice service to Avalon, Phase I, under a previously accepted easement, it should not be permitted by the Commission to reject the same easement or refuse to provide service to the adjacent Avalon, Phase II.

On May 8, 2007, AT&T Florida filed a letter requesting that its petition be rescheduled for consideration from the May 22, 2007, Agenda Conference to the July 10, 2007, Agenda Conference, to allow the parties time to discuss the possibility of Avalon Development paying to AT&T Florida special construction charges for the installation of AT&T Florida's network facilities at the subject property. On June 25, 2007, Avalon Development communicated with AT&T Florida by letter advising that Avalon Development would not pay special construction charges. This was reiterated in a letter of the same date to the Commission.

On July 10, 2007, at its regularly scheduled agenda conference, the Commission voted to keep this docket open and set this matter directly for an administrative hearing rather than to issue a notice of proposed agency action. Pursuant to the Commission's directive, this matter

was scheduled for an administrative hearing on September 6, 2007, by Order No. PSC-07-0606-PCO-TL (Order Establishing Procedure), issued July 30, 2007.

On July 16, 2007, by letter dated July 11, 2007, Avalon Development withdrew its formal objection to AT&T Florida's petition. In that letter, Avalon Development asserted that it would not participate in the proposed formal hearing process in this docket. No other party has intervened in this docket.

On July 31, 2007, AT&T Florida filed the prefiled testimony of its two witnesses. On August 6, 2007, AT&T Florida filed its Motion for Summary Final Order. Since August 6, 2007, AT&T Florida filed objections and responses to staff's discovery requests.

On August 14, 2007, AT&T Florida filed its Motion for Continuance. AT&T Florida requested continuance of the hearing date of September 6, 2007, as well as any remaining prehearing deadlines. On August 16, 2007, the Prehearing Officer issued Order No. PSC-07-0663-PCO-TL, granting AT&T Florida's Motion for Continuance. On October 2, 2007, AT&T Florida filed its Amended Motion for Summary Final Order.

Section 364.025(6)(b), Florida Statutes, permits a local exchange company (LEC) to be automatically relieved of its COLR obligations if any of four specific conditions is satisfied. If a LEC is not automatically relieved pursuant to any of the four conditions, a LEC may seek a waiver of its COLR obligation from the Commission for good cause shown under Section 364.025(6)(d), Florida Statutes.

In this case, AT&T Florida is seeking a "good cause" waiver of its COLR obligation for Avalon, Phase II, pursuant to Section 364.025(6)(d), Florida Statutes, 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.

The Commission has jurisdiction over this matter pursuant to Sections 364.01 and 364.025, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant AT&T Florida's Amended Motion for Summary Final Order?

Recommendation: No. The Commission should deny AT&T Florida's Amended Motion for Summary Final Order seeking relief from its COLR obligation pursuant to Section 364.025(6)(d), Florida Statutes, because AT&T Florida is not entitled to a summary final order as a matter of law. **(R. Mann)**

Staff Analysis:

STANDARD

Section 120.57(1)(h), Florida Statutes, provides that a summary final order shall be granted if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order.[1] Rule 28-106.204(4), Florida Administrative Code, states that "[a]ny party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven days of service, file a response in opposition, with or without supporting affidavits."

Under Florida law, "the party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact,"[2] and every possible inference must be drawn in favor of the party against whom a summary judgment is sought. The burden is on the movant to demonstrate that the opposing party cannot prevail.[3] "A summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law."[4] "Even where the facts are undisputed, issues as to the interpretation of such facts may be such as to preclude the award of summary judgment."[5] If the record reflects the existence of any issue of material fact, possibility of an issue, or even raises the slightest doubt that an issue might exist,

[1] In 1998, the legislature amended Chapter 120, Florida Statutes, to make summary judgment available in administrative proceedings through summary final order. Ch. 98-2000, Fla. Laws. Before this statutory change, parties before the Commission would on rare occasions file a motion for summary judgment under the Florida Rules of Civil Procedure. Thus, "summary final order" is analogous to "summary judgment," so case law and orders addressing "summary judgment" are generally applicable to "summary final order."

[2] Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993).

[3] Christian v. Overstreet Paving Co., 679 So. 2d 839 (Fla. 2nd DCA 1996).

[4] Moore v. Morris, 475 So. 2d 666, 668 (Fla. 1985). See also McCraney v. Barberi, 677 So. 2d 355 (Fla. 1st DCA 1996) (finding that summary judgment should be cautiously granted, and that if the evidence will permit different reasonable inferences, it should be submitted to the jury as a question of fact).

[5] Franklin County v. Leisure Properties, Ltd., 430 So. 2d 475, 479 (Fla. 1st DCA 1983).

summary judgment is improper.[6] However, once a movant has tendered competent evidence to support his or her motion, the opposing party must produce counter-evidence sufficient to show a genuine issue because it is not enough to merely assert that an issue exists.[7]

As stated above, under Section 120.57(1)(h), Florida Statutes, summary final order may be granted only when the movant is entitled to the relief sought as a matter of law. Additionally, however, this Commission has recognized that policy considerations should be taken into account in ruling on a motion for summary final order. By Order No. PSC-98-1538-PCO-WS,[8] this Commission stated that

> We are also aware that a decision on a motion for summary judgment is also necessarily imbued with certain policy considerations, which are even more pronounced when the decision also must take into account the public interest. Because of this Commission's duty to regulate in the public interest, the rights of not only the parties must be considered, but also the rights of the Citizens of the State of Florida are necessarily implicated, and the decision cannot be made in a vacuum. Indeed, even without the interests of the Citizens involved, the courts have recognized that
>
> > [t]he granting of a summary judgment, in most instances, brings a sudden and drastic conclusion to a lawsuit, thus foreclosing the litigant from the benefit of and right to a trial on the merits of his or her claim. Coastal Caribbean Corp. v. Rawlings, 361 So. 2d 719, 721 (Fla. 4th DCA 1978). It is for this very reason that caution must be exercised in the granting of summary judgment, and the procedural strictures inherent in the Florida Rules of Civil Procedure governing summary judgment must be observed. Page v. Staley, 226 So. 2d 129,132 (Fla. 4th DCA 1969). The procedural strictures are designed to protect the constitutional right of the litigant to a trial on the merits of his or her claim. They are not merely procedural niceties nor technicalities.

In summary, to grant AT&T Florida's motion the Commission must conclude not only that good cause exists to grant the waiver, but that there exists no genuine issue as to any material fact supporting the claim of good cause and that AT&T Florida is entitled as a matter of law to the entry of a summary final order.

---

[6] Albelo v. Southern Bell, 682 So. 2d 1126 (Fla. 4th DCA 1996).

[7] Golden Hills Golf & Turf Club, Inc. v. Spitzer, 475 So. 2d 254, 254-255 (Fla. 5th DCA 1985).

[8] Issued November 20, 1998, in Docket Nos. 970657-WS and 980261-WS, In Re: Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and Desoto Counties by Lake Suzy Utilities, Inc., and In Re: Application for Amendment of Certificates Nos. 570-W and 496-S To Add Territory in Charlotte County by Florida Water Services Corporation.

ANALYSIS

The issue of good cause to waive a LEC's COLR obligation to provide basic telecommunications service is an issue that inherently comprises both factual and policy considerations. Staff has encountered resistance in its attempts to secure from Avalon Development documents pertaining to agreements between Avalon Development and the alternative providers serving both Avalon, Phases I and II, none of whom are subject to the regulatory jurisdiction of the Commission. Nevertheless, staff has thoroughly reviewed the information available in the unique factual and procedural circumstances of this case. Based on this review, staff does not dispute the material facts upon which AT&T Florida bases its claim of good cause for COLR waiver. Nonetheless, as explained below, due to the policy considerations that must be exercised, staff believes that AT&T Florida is not entitled *as a matter of law* to a summary final order.

Under Section 364.025(6)(d), Florida Statutes, the Commission presently must exercise its policy-making discretion to weigh these material facts. The Commission must decide, on a case-by-case basis, whether it believes, in the totality of the circumstances in this matter, that good cause does exist. This decision is imbued with the Commission's statutory charge to regulate in the public interest and to consider the rights of the citizens of the State of Florida, which are necessarily implicated.[9] As this Commission stated in Order No. PSC-98-1538-PCO-WS, "this decision cannot be made in a vacuum."[10]

Accordingly, staff recommends that the Commission deny AT&T Florida's Amended Motion for Summary Final Order. As further set forth in Issue 2, below, staff recommends that the Commission reconsider its decision to set this matter directly for hearing and instead issue a notice of proposed agency action.

[9] Order No. PSC-98-1538-PCO-WS, issued November 20, 1998, in Docket Nos. 970657-WS and 980261-WS, In Re: Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and Desoto Counties by Lake Suzy Utilities, Inc., and In Re: Application for Amendment of Certificates Nos. 570-W and 496-S To Add Territory in Charlotte County by Florida Water Services Corporation.

[10] *Id.*

Issue 2: If the Commission grants staff's recommendation in Issue 1, should the Commission, on its own motion, reconsider its decision to set this matter directly for hearing?

Recommendation: Yes. Given the withdrawal of Avalon Development as a party and staff's thorough review of the evidence, a hearing appears unnecessary to determine AT&T Florida's petition for waiver. Procedurally, staff recommends that the Commission issue a notice of proposed agency action. **(R. Mann)**

Staff Analysis:

On July 10, 2007, at its regularly scheduled agenda conference, the Commission voted to set this matter directly for hearing rather than issue a notice of proposed agency action. At that time, it appeared that irrespective of the content of the proposed agency action, either AT&T Florida or Avalon Development would protest and request an evidentiary hearing. Thus, the notice of proposed agency action was not necessary to afford a clear point of entry to dispute the Commission's action. Accordingly, on July 30, 2007, the Prehearing Officer issued Order Establishing Procedure, Order No. PSC-07-0606-PCO-TL, setting this matter for formal administrative hearing on September 6, 2007.

The Commission set this matter directly for hearing in part because it appeared that a hearing was unavoidable. This rendered the proposed agency action process unnecessary and inefficient. The circumstances have changed since the July 10, 2007 agenda conference, however, and, given that staff does not dispute the material facts upon which AT&T Florida bases its claim of good cause, it now appears that a hearing is not necessary to determine AT&T Florida's petition for waiver of its COLR obligation. If AT&T Florida disagrees with the proposed agency action, it may still protest and request a hearing, as may Avalon Development or any other interested party. On July 16, 2007, Avalon Development filed a letter noticing its withdrawal as a party from the proceedings. Thus, in the interest of administrative efficiency and judicial economy, staff recommends that the Commission, on its own motion, reconsider its decision to take this matter directly to hearing. Instead, staff recommends that the Commission use the proposed agency action process, which will likely produce a final order without a hearing or further delay, as discussed in Issue 3.

Issue 3: Has AT&T Florida demonstrated "good cause" under Section 364.025(6)(d) for a waiver of its carrier-of-last-resort obligation in the Development of Avalon?

Recommendation: Yes. Staff believes that in view of the evidence and testimony presented by AT&T Florida, combined with the unwillingness of the developer of Villages of Avalon Phase II to participate or provide information in this proceeding, good cause exists under Section 364.025(6)(d) for a waiver of the carrier-of-last-resort obligation. **(Bloom, Higgins)**

Staff Analysis: As noted in the Case Background, Avalon initially contested AT&T Florida's petition for waiver and urged the Commission to deny the relief requested. Avalon Development subsequently withdrew as a party to these proceedings and withdrew its formal objection to AT&T Florida's petition. Avalon Development stated in its withdrawal that it believed AT&T Florida had an obligation to provide voice service to Avalon Phase II. As a result of Avalon's withdrawal from the proceeding, this analysis is based upon the initial petition, information presented by AT&T Florida, and discovery conducted by Commission staff.

AT&T Florida's Arguments

AT&T Florida argues good cause for relief from its carrier-of-last-resort (COLR) obligation in this case exists based on four assertions: (1) Avalon Development has entered into an exclusive agreement for video and data services with an alternative provider; (2) Avalon Development has expressly limited AT&T to the provision of voice service only; (3) Providers other than AT&T Florida will have the capability of offering voice or voice replacement service to residents of Avalon Phase II; (4) The provision of voice service by AT&T Florida is uneconomic.

In support of its first assertion that Avalon Development has entered into an exclusive agreement for video and data services with an alternative provider, AT&T Florida offers a cross promotional advertisement from the website of Connexion. In the advertisement, Connexion indicates Internet and video services will be provided by Beyond Communications in Avalon Phase II, and that these services will be "included" in the bulk service agreement. AT&T Florida states Connexion subcontracted with Beyond Communications to provide data and video services, and that fees for video and data services will be paid by all home buyers in the form of homeowner association (HOA) dues. The website advertisements submitted by AT&T Florida also contain language listing Beyond Communications as capable of providing telephone service by subscription.

AT&T Florida explains in its testimony the relationship between Connexion and Beyond Communications: "Connexion appears to be an infrastructure provider. Connexion provides the fiber optic infrastructure within a development, and then aligns with service providers who interface with the customers to provide actual service."

AT&T Florida attaches an exhibit ("Exhibit C") to its original petition, which is an advertisement from William Ryan Homes Florida, Inc., one of a number of builders involved in the development of Avalon Phase II. In the advertisement, the following language appears: "HOA fees include cable, internet service (fiber optics) and much more." AT&T Florida states

this information supports its argument that Avalon Development has assigned the exclusive video and data rights to a company other than AT&T Florida and that home buyers in Avalon Phase II will be required to pay for these two services from Beyond Communications through homeowner association dues.

AT&T Florida relies on website advertisements and its interpretation of what the advertisements convey. Avalon Development has refused staff requests for copies of agreements with other providers for the provision of voice, data and video services. Since Avalon development denied staff the information, staff had to rely on website marketing materials submitted by AT&T Florida.

The second assertion by AT&T Florida that it is restricted by Avalon to a "voice only" easement does not appear to be in dispute. Staff reviewed the easements granted to AT&T Florida by Avalon Development and concurs that AT&T Florida is restricted from providing video and data services to the residents of Avalon Phase II. According to AT&T Florida, the company does not have a proprietary video product, relying instead on a marketing agreement with DirecTV, a satellite provider whose technology is independent of the fiber networks installed in Avalon Phase II. Nonetheless, AT&T Florida appears to accurately state that it is limited to the provision of voice service exclusively in the development using wireline technology.

AT&T Florida's third assertion is that alternative voice service will be available to residents of Avalon Phase II. AT&T Florida refers to Connexion's website, which lists the Villages of Avalon as a development in which it offers services, and describes its network's capabilities. The infrastructure installed is fiber-to-the-home, according to Connexion, which it goes on to explain:

> Fiber to the Home refers to the installation of fiber optic cable directly to the home. Fiber optic wiring replaces the duplicate infrastructure that the Telephone and Cable companies have installed in the past in a neighborhood setting. Fiber has a higher bandwidth capacity and can easily transmit traditional applications like telephone, television, and internet, with plenty of capacity left over for applications in the future.

Based on its website claims, Connexion has installed a network architecture capable of providing voice grade communications to residents of Avalon Phase II. The company with whom Connexion apparently has contracted to provide service intends to offer voice service. Connexion installs fiber-to-the-home infrastructure in a development and subsequently contracts with a provider to offer services to residents. In this instance, according to AT&T Florida, the service provider is Beyond Communications, which also does business as Smart Resort. Marketing materials from Smart Resort's website contain the following claims:

> Your phone service is next generation IP telephony. The service is also plain old telephone. This means you have the ability to use any brand or type of telephone. You just walk into your unit, plug in your phone and you are ready to make a call.

Smart Resort lists itself as a provider of local calling, long distance calling and an array of supplemental features including call waiting, call forwarding, emergency 9-1-1 service and voice mail.

AT&T Florida's final claim is that provision of service to Avalon Phase II will result in an uneconomic investment. The result of the voice-only easement, AT&T Florida maintains, will be reduced revenue opportunities which, in turn, will lead to an inability to determine if and when the company will recover its infrastructure investment. The company also alleges it will incur additional costs if it is forced to serve Avalon Phase II because it will have to modify its front-end ordering system to comply with voice-only service.

AT&T Florida claims the cost to install facilities in Avalon Phase II will be $326,819. Staff has evaluated AT&T Florida's analysis and finds the methodology used reasonable and the costs employed to arrive at the $326,819 figure realistic. Through easements restrictions, AT&T Florida is prohibited from offering data and video services in Avalon Phase II, so AT&T Florida is unable to offer wireline voice, data and video discount packages. Staff notes nothing in a voice-only easement would prevent AT&T Florida from offering a package of voice services including wireline, wireless, local and long distance.

AT&T Florida suggests in its petition that it requires the flexibility to offer all services it markets to recover its network investment in an appropriate time frame. There is information in discovery responses that support the argument that the voice-only easement may defer its ability to recover its investment. AT&T Florida was asked to provide a breakdown of its Florida residential customers based on services accepted. In response, AT&T Florida provided its total number of residential telecommunications customers in the state, and of the total, how many of its customers were voice only, voice and data, voice and DirecTV, and the number of customers who relied on AT&T Florida for voice, data, and DirecTV. (Response to Staff's 2nd Set of Interrogatories, Item No. 33, page 1) The figures filed are confidential, but staff believes an inference can be made from the discovery responses that restricting AT&T Florida to voice only service may compromise the company's ability to recover its initial investment within what the company considers to be a reasonable time frame.

AT&T Florida points out that restricting the company to voice service in the 320-unit development of Avalon Phase I resulted in 15.5 percent of residents in the built and occupied homes ordering telecommunications service from AT&T Florida. AT&T Florida believes a similar take-rate can be expected in Avalon Phase II because (1) both developments consist of single-family homes; (2) both developments, through easements, are limiting AT&T Florida to providing voice service only; and (3) both developments, upon information and belief, have entered into the same or similar contractual arrangements with the same alternative provider for the provision of voice, data, and video service.

AT&T Florida believes that based on its calculations using a slightly higher take rate of 20 percent, utilizing the average revenue per unit, and the occupancy forecast for Avalon Phase II, the exchange revenues for the initial five years would amount to $155,213. Subtracting the projected revenues for the initial five years from the estimated cost of construction of $326,819, leaves $171,606, an amount AT&T Florida believes should be paid by Avalon Development as

line extension fees pursuant to Rule 25-4.067(3), Florida Administrative Code. In a letter to the Commission dated June 25, 2007, Avalon Development indicated it would not pay the requested fee.

AT&T Florida provides no information to support its contention that it will incur additional costs to modify its front-end ordering and provisioning systems if it is forced to provide service in Avalon Phase II.

Analysis

Staff believes AT&T Florida has demonstrated that the assertions raised in its petition for waiver of COLR obligations in this docket are plausible, particularly in the absence of compelling information to the contrary.

It appears from materials assembled by AT&T Florida that Avalon Development has entered into an exclusive agreement for video and data service with an alternative provider. Much of the information AT&T Florida presents to buttress its claim stems from marketing materials taken from websites. Staff notes Avalon Development was given the opportunity to provide copies of agreements that may have disputed some of AT&T Florida's assertions but refused.

The claim by AT&T Florida that it will be limited to providing voice service only in the Villages of Avalon Phase II is substantiated by a review of the easements granted. These easements were reviewed by staff in an earlier phase of this proceeding and found to confirm AT&T Florida's assertion.

Staff concurs with AT&T Florida that it appears Connexion has installed a fiber network in Villages of Avalon, Phase II, that is capable of providing voice service. Staff confirmed Connexion's subcontractor, Beyond Communications, lists the Villages of Avalon on its website as among the communities for which it provides communications service. Beyond Communications website indicates that voice service is "available" at the development. Avalon Development refused staff's request to provide copies of any agreements with other communications providers for the provision of video, data, and voice services. There is no available information to dispute AT&T Florida's assertion that voice service will be available to residents of Avalon Phase II through a provider other than AT&T Florida.

AT&T Florida's method of estimating the investment necessary to install voice-grade facilities in Avalon Phase II has been scrutinized and appears reasonable. Based on AT&T Florida's 15.5 percent take rate for voice services in Avalon Phase I, where it is limited to voice-only provisioning, it appears fair to assume a similar take rate would be the case in Avalon Phase II.

Conclusion

As noted at the outset, the facts and circumstances of this case are largely those presented by AT&T Florida and information derived from discovery conducted by staff. The lack of

participation by Avalon Development limits the nature of the available evidence. Staff is mindful that the decisions on petitions filed pursuant to Chapter 364.025(6)(d), Florida Statutes, are few in number and that each has the potential to be viewed as setting a precedent. For that reason, staff believes it relevant to emphasize the limited nature of this docket and that staff's recommendation is based on the specific facts and circumstances of this docket. With that caveat, staff believes that in view of the evidence and testimony presented by AT&T Florida, combined with the unwillingness of the developer of Villages of Avalon Phase II to participate or provide information in this proceeding, good cause exists under Section 364.025(6)(d) for a waiver of the COLR obligation.

Issue 4: Should this docket be closed?

Recommendation: If the Commission grants staff's recommendations in Issue 1 and Issue 2, the Order issued from the recommendation in Issue 3 will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, this docket should be closed administratively upon issuance of the Consummating Order. **(R. Mann)**

Staff Analysis: If the Commission grants staff's recommendations in Issue 1 and Issue 2, the Order issued from the recommendation in Issue 3 will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested this docket should be closed administratively upon issuance of the Consummating Order.