COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
MATTHEW M. CARTER II
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA

OFFICE OF THE GENERAL COUNSEL
MICHAEL G. COOKE
GENERAL COUNSEL
(850) 413-6189

Public Service Commission

October 23, 2007

VIA ELECTRONIC FILING

The Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **CC Docket No. 96-98, WT Docket No. 99-217**, Promotion of Competitive Networks in Local Telecommunications Markets
MB Docket No. 07-51, Exclusive Service Contracts for Provision of Video Services In Multiple Dwelling Units and Other Real Estate Developments

Dear Ms. Dortch:

Forwarded herewith are *ex parte* comments of a majority of the Florida Public Service Commissioners in the above dockets with regard to exclusive contracts for provision of video services in multiple dwelling units and with regard to competitive networks.

Greg Shafer at (850) 413-6958 and Kevin Bloom at (850) 413-6526 are the primary staff contacts on these comments.

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:tf
cc: Brad Ramsay, NARUC

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-98
Promotion of Competitive Networks in Local Telecommunications Markets	)	WT Docket No. 99-217
Exclusive Service Contracts for Provision of Video Services In Multiple Dwelling Units and Other Real Estate Developments	)	MB Docket No. 07-51

EX PARTE COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

SUBMITTED BY

COMMISSIONER MATTHEW M. CARTER II

COMMISSIONER KATRINA J. MCMURRIAN

COMMISSIONER NANCY ARGENZIANO

COMMISSIONER NATHAN A. SKOP

CHAIRMAN LISA POLAK EDGAR DOES NOT CONCUR WITH THE SUBMISSION OF THESE EX PARTE COMMENTS

Introduction

The Florida Public Service Commission (FPSC) submits the following ex parte comments in response to the Federal Communications Commission's (FCC) invitation to refresh the record in WT Docket No. 99-217; CC Docket No. 96-98, Regarding Promotion of Competitive Networks in Local Telecommunications Markets. Specifically, the FPSC directs its comments to the aspect of the notice seeking comments "in light of marketplace and industry developments" (Federal Register/Vol 72, No. 103, May 30, 2007).

In its notice of proposed rulemaking, (page 33, paragraph 61) the FCC writes, "We seek comment on the extent to which, and under what circumstances, the ability to enter into exclusive contracts materially advances the ability of competitive carriers to serve customers in multiple tenant environments. We also seek comment on whether end users may benefit from a property owner's ability to enter into exclusive contracts, for example by negotiating a discount with the carrier."

Federal and Florida Law

Under the 1996 Act, incumbent local exchange carriers (ILECs) have been designated as eligible telecommunications carriers (ETCs) and thus have an obligation to provide supported services[1] throughout their service territory. Supported services make up the essential components of what is referred to in Florida law as basic local service.[2] In addition, Florida local exchange telecommunications companies have an obligation to provide basic local service to any person requesting it in a reasonable time period.[3] Florida law also provides relief to local exchange telecommunications companies from the obligation to serve in certain multitenant

[1] Under Federal rules supported services include the following: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multifrequency signaling; (4) single-party service; (5) access to 911 or E911 emergency service; (6) access to operator services; (7) access to interexchange (long distance) service; (8) access to directory service; and (9) toll limitation or blocking for qualifying low-income customers.
[2] See Section 364.021(1), Florida Statutes.
[3] See Section 364.025(1), Florida Statutes.

business and residential developments that meet specific conditions. The Florida law also provides for the FPSC to grant relief from the obligation to serve if it is deemed that good cause has been shown.[4]

Florida Public Service Commission Experience

Some developers and property owners in the Florida market have negotiated exclusive contracts for video and data services with cable providers and have relied on the ILEC's obligation to serve in order to secure telecommunications service for particular developments. In situations where developers, property managers, or building owners have secured exclusive contracts for video and data services from alternative providers and requested voice service from ILECs, ILECs have argued that it is uneconomic for them to provide voice only services and therefore they should be relieved of the obligation to serve.

Since July 1, 2006, the FPSC has had the responsibility of ruling on petitions from ILECs that wish to be relieved of carrier-of-last-resort obligations in multitenant businesses or residential properties pursuant to Section 364.025, Florida Statutes. The statute outlines certain conditions under which an ILEC may receive an exemption from its obligation to serve and also provides for a lifting of the obligations "for good cause shown," the discretion for which rests entirely with the FPSC. In each petition brought before the FPSC under the "good cause shown" provision of Section 364.025, Florida Statutes, the ILECs contend they have been denied the opportunity to offer video and data services to residential customers because of exclusive contracts between developers and non-ILEC providers. In these circumstances, ILECs argue, the financial return on the infrastructure investment necessary to provide voice service cannot be justified economically, but must be made because of carrier-of-last-resort obligations. Further, the ILECs have contended, the existence of exclusive contracts between property owners and

[4] See Section 364.025(6), Florida Statutes

non-ILEC video and data services providers denies tenants or residents the opportunity to choose a service provider.

Attached are copies of two orders issued by the Florida Public Service Commission, one denying a petition for relief, the second granting relief from COLR obligations, each involving disputes revolving around the existence of exclusive contracts for data and video services. On September 25, 2007, the FPSC granted a petition for COLR relief but as of the filing date for these comments, a final order has not been issued.

Conclusions and Observations

The FPSC takes no position at this time on whether exclusive contracts for video, data, and voice services are appropriate. While the result of exclusive contracts for multitenant environments and new developments may result in discounts for end users, exclusive contracts may also have repercussions beyond discounted rates. The Florida experience indicates the use of exclusive contracts for video and data have served to expose differences between separate regulatory frameworks governing cable video providers and telecommunications providers. These differences have created negotiating imbalances, and ultimately may limit consumer choice for telecommunications, video and data services.

In comments filed in MB Docket No. 07-51, Lennar Corporation argues that exclusive contracts serve as a means of attracting investment to new developments and allow developers to avoid unreasonable terms and conditions to obtain necessary infrastructure. In a footnote, Lennar suggests that without exclusive contracts, each incumbent cable provider and incumbent telecommunications provider would be inclined to restrict its investment if the other was present, based on lower projected penetration rates. While Lennar is concerned about the inability to attract service providers without the use of exclusive contracts, the Florida experience has

revealed an equally troubling outcome: In situations where neither service provider is able to offer voice, video, and data, the presence of an obligation to provide voice services creates an unbalanced negotiating scenario. Developers and property owners seeking exclusive service arrangements for video and data services are able to rely on the ILECs' obligation to provide voice services for their residents. Cable providers, while contractually obligated by build-out requirements, have no statutory obligation to serve, analogous to the carrier-of-last-resort (COLR) obligation imposed on ILECs.

Without commenting on the merits of any previous petition ruled on by the FPSC or any pending petitions filed pursuant to Section 364.025(6), Florida Statutes, the FPSC offers the following observations:

> The market for video, data, and telecommunications services is developing in an asymmetrical manner with regard to entry as a result of the use of exclusive contracts. A cable provider with an economically viable exclusive contract to provide video and data services in a multitenant environment or a development may lack the incentive or the ability to offer a voice product as part of its service package.
>
> The use of exclusive contracts in multitenant environments and residential communities potentially limits consumer choice and competition. While property owners may negotiate lower end user fees for tenants or residents through exclusive contracts, the collateral effect may be to prohibit or economically discourage consumers from seeking alternative service providers.

Respectfully Submitted,

/ s /

Cindy B. Miller, Senior Attorney
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dated: October 23, 2007

Attachment A

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for waiver of carrier of last resort obligations for multitenant property in Collier County known as Treviso Bay, by Embarq Florida, Inc.	DOCKET NO. 060763-TL ORDER NO. PSC-07-0635-FOF-TL ISSUED: August 3, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER DENYING RECONSIDERATION

BY THE COMMISSION:

I. Case Background

On November 20, 2006, pursuant to Section 364.025(6)(d), Florida Statutes, Embarq Florida, Inc. ("Embarq") filed its Petition for Waiver of its carrier-of-last-resort ("COLR") obligations in the Treviso Bay subdivision ("Development") in Collier County. Embarq's petition was opposed by the developer, Treviso Bay Development, LLC ("Treviso Bay").

On February 14, 2007, we conducted a hearing on Embarq's petition. On March 13, 2007, at our regularly scheduled agenda conference, we voted to deny the petition. On April 12, 2007, the Commission issued Order No. PSC-07-0311-FOF-TL denying the petition ("Final Order").

On April 27, 2007, Embarq filed its "Motion for Reconsideration of Order No. PSC-07-0311-FOF-TL." On May 4, 2007, Treviso Bay filed its "Response To Embarq's Motion For Reconsideration" ("Response").

II. Embarq's Motion for Reconsideration

A. Issues Involved

Embarq requests that we reconsider our negative decisions on the following three issues as identified and framed by the parties:

> **Issue 2:** Has Treviso Bay entered into any agreements, or done anything else, that would restrict or limit Embarq's ability to provide the requested communications service?;
>
> **Issue 3**: Do Treviso Bay's existing agreements make it uneconomic for Embarq to provide the requested communications service to the customers of Treviso Bay?; and
>
> **Issue 5**: Has Embarq demonstrated "good cause" under Section 364.025(6)(d) for a waiver of its carrier-of-last-resort obligation in Treviso Bay?

With respect to Issue 2, Embarq argues that we improperly narrowed the scope of the issue. With respect to Issue 3, Embarq argues that we overlooked or ignored key facts. And with respect to Issue 5, Embarq argues that because of the fundamental mistakes in determining Issues 2 and 3, we are required to reconsider our decision on Issue 5.

B. Embarq's Theory of the Case

Embarq's legal theory of the case is straightforward and shapes its motion for reconsideration. Embarq argues a "two-prong" test for determining under the statute that "good cause" exists for relief of the COLR obligation. Specifically, Embarq argues that "good cause" is demonstrated when the ILEC can show *both* of the following:

1. provision of voice service to the area would be "uneconomic"; and

2. mandated provision of voice services by the COLR is "unnecessary" because "voice or voice replacement service will be available."

Embarq believes that it has proven the above two propositions. It argues that no one disputes that "voice or voice replacement service will be available." (Motion at 2) Next, Embarq argues that "construction of facilities to provide voice only services is uneconomic and unnecessary" because of Treviso Bay's agreements with Comcast and, implicitly, contrary conclusions are simply unrealistic. (Motion at 2)

C. Issue 2 - Scope of the Issue

Embarq states that we "apparently narrowed the scope of the issue to address only whether Treviso Bay had entered into any agreements that physically restrict Embarq's placement of the facilities necessary to provide voice communications to residents of Treviso Bay. (March 13, 2007 Agenda Conference Transcript at page 22)." (Motion at 3) Embarq says this is erroneous because in doing so "the Commission failed to consider or overlooked the plain language of the statement of the issue." (Id.) which in turn led to our overlooking the alleged projected adverse effect of Treviso Bay agreements on Embarq's future market penetration at Treviso Bay.

D. Issue 3 - Uneconomic Argument

Embarq argues that "(i)n concluding that Embarq failed to meet its burden of proof the Commission overlooked, failed to consider or fundamentally misunderstood the evidence offered by Embarq on several key points . . ." (Motion at 6). Four of these are addressed below.

1. *Net Present Value.* Embarq argues that we committed fundamental error in rejecting its Net Present Value ("NPV") computations. According to Embarq, we used unrealistic inputs to the model and failed to consider evidence that the "Commission's unrealistic penetration assumptions do not generate positive NPV well beyond any reasonable time frame for concluding that an Embarq investment of $1.3M in capital would be considered economic." (Motion at 7)

With respect to the alleged unrealistic penetration assumptions, Embarq argues that "(t)he Commission's characterization that only minor changes to the penetration and per customer revenue assumptions produces a positive NPV result is not supported by the record." Basically, Embarq argues that the "minor changes" contemplated by us involved significant percentage increases. Thus, for example, a "67% increase in customers taking service" and "185% increase in the customers taking bundled services" are not "minor'' as characterized by us. (March 13, 2007 Agenda). (Id.)

2. *Significance of Penetration Rate to NPV Analysis*. We concluded that Embarq's projected market penetration rates "lacked supporting evidence." Our conclusion was based on the record and the testimony of the witnesses. In reviewing the testimony of Messrs. DeChellis and Dickerson, Embarq's two witnesses, we observed that there was some inconsistency in Mr. Dickerson's testimony with respect to the significance of Mr. DeChellis' initial projections. Embarq argues that "the Commission appeared to determine that this 'inconsistency' impaired the evidentiary value of Mr. Dickerson's testimony supporting the penetration rate." (Motion at 10) In reaching this conclusion, we allegedly overlooked or failed to consider the focus of Mr. Dickerson's Direct Testimony on the penetration rate as a key component of the NPV analysis where he allowed that the penetration rate used in the NPV analysis was "optimistic at best.'' (citation omitted) (Id.)

3. *Devcon Wireless Rider*. Embarq argues that we also misunderstood the scope and meaning of the rider to the Devcon alarm monitoring agreement relating to wireless monitoring. (Hearing Exhibit No. 5 at page 263) Moreover, Embarq states that we overlooked or failed to consider that Comcast's digital voice service is not a wireless service. Partly as a consequence, we embraced penetration rates that are allegedly too high. (Motion at 11- 13) Embarq argues as follows:

> Notably, the Waiver Order is inconsistent in its representations of the language and meaning of the wireless rider. In the discussion regarding the rider under Issue 2, the Order correctly reflects that the rider applies to "wireless communications via VoIP" rather than to VoIP as a stand alone service (Waiver Order at page 8) In contrast, in the discussion of the rider under Issue 3, the Order incorrectly reflects that the rider applies to wireless or VoIP services, separately. (Motion at 12)

4. *Market Share Studies*. Embarq also alleges that "The Commission overlooked or failed to consider factors relating to the market share analyses provided by Embarq that support, rather than contradict, Embarq's projected penetration rate." (Motion at 13) For example, Embarq argues that "the Commission overlooked that Comcast digital voice service will be available to Treviso Bay residents on day one, unlike the majority of the developments in the market share analyses, where cable voice services, in general, became available after Embarq began providing services to the developments." We also allegedly failed to consider that the penetration rates for other developments served by Embarq would result in a positive NPV only after 20 years. (Motion at 14)

E. Issue 5 - The "Fallout" or Ultimate Issue of Good Cause

Embarq seeks reconsideration of our decision with respect to the ultimate issue in this docket, i.e., whether Embarq had established good cause for waiving its COLR obligation. The Final Order explains our decision as follows:

> Issue 5 is a fall-out of Issues 1 through 4A, and only addresses whether Embarq has established "good cause" for a waiver of its COLR obligation in Treviso Bay. Having reviewed the affirmative case presented by Embarq based on the evidence adduced and arguments made under the preceding issues, we conclude that Embarq has not demonstrated "good cause" under Section 364.025(6)(d), Florida Statutes, for a waiver of its carrier-of-last-resort obligation in Treviso Bay. Therefore, we deny Embarq's petition. (Final Order at 17)

Embarq argues that due to the alleged fundamental errors identified above, we should reconsider our decision to deny the petition for waiver of the COLR obligation. Embarq summarizes its arguments as follows:

> As Embarq has demonstrated in its request for reconsideration of Issues 2 and 3, the Commission overlooked or failed to consider material evidence that contradicts its findings regarding several key points, including:
>
> - the full scope of the issue to be resolved under Issue 2;
> - the lack of record evidence to support the "minor" changes to penetration and per-customer revenue factors, upon which the Commission based its conclusion that Embarq's provision of service to Treviso Bay could produce a positive cash flow;
> - the length of time it would take for Embarq's NPV to turn positive even considering upward revisions to the penetration and revenue assumptions;
> - the meaning and scope of the wireless rider to the alarm monitoring contract and the nature of Comcast's digital voice service; and
> - important facets of the market share studies Embarq introduced to support its penetration assumptions.

> Based on these critical issues of fact that the Commission overlooked or failed to consider in reaching its decision to deny Embarq's request for a waiver, the Commission erred in determining that Embarq had failed to meet its burden of proof and should reconsider its decision and grant Embarq's request. (Motion at 15)

III. Treviso Bay's Response

A. General Response

Treviso Bay raises general objections to Embarq's motion for reconsideration. For example, Treviso Bay argues that the Final Order reflects thorough consideration of the testimony of Embarq's witnesses as well as Embarq's legal brief. Treviso Bay then argues as follows:

> Embarq is thus effectively arguing that the Commission, having considered everything that it specifically mentioned in the Order Denying COLR Waiver, "overlooked or failed to consider" a raft of other information that Embarq provided. In fact, the opposite – and far more reasonable – inference should be drawn: that the Commission considered all evidence in the record, but, quite naturally, only recited and referred to what it deemed most important in its Order Denying COLR Waiver. (TB Response at 3, footnote omitted)

Treviso Bay further emphasizes that discretionary omission of some facts from the discussion in a final order does not render it infirm. Treviso Bay argues in essence that the Final Order appropriately served its purpose to reflect "the fundamental holding of the case is that Embarq has not demonstrated 'good cause' to justify relief from its COLR obligations." (TB Response at 5)

B. Issue 2 - Scope of the Issue

In its Response, Treviso Bay counters that "(t)he key words in this issue statement are 'restrict,' 'limit,' and 'ability'." Treviso Bay then provides definitions of these words from Webster's Ninth New Collegiate Dictionary, as follows:

- "Restrict" means "to confine within bounds; to place under restrictions as to use or distribution."
- "Limit" means "to assign certain limits to; to restrict to set bounds or limits."
- "Ability" means "the quality or state of being able; *esp.*: physical, mental, or legal power to perform."

(TB Response at 6) Treviso Bay thus argues that we did not narrow the scope of the issue, but rather used the ordinary meaning of the words to properly define the scope.

C. Issue 3 - Uneconomic Argument

Treviso Bay responds generally by emphasizing that Embarq reargues the merits - that Embarq has not identified anything that we overlooked, ignored, or misapprehended. Treviso Bay then responds to Embarq's more specific arguments. For each, Treviso Bay reviews the record and the Final Order's treatment of the record to demonstrate that we did not overlook, ignore, or misapprehend any evidence in finding Embarq's case unpersuasive. Treviso Bay stresses throughout its Response that the rejection of an argument about the significance of a fact or about the reliability of projected results is not the same thing as overlooking, ignoring or misapprehending the argument, the facts, or the projections.

For example, in addressing Embarq's criticisms of our handling of market share information, Treviso Bay concludes as follows:

> Thus, the Commission explicitly considered the evidence that Embarq suggests it overlooked, as well as Embarq's witness's testimony on this point, and even recognized that this evidence affords some validity to Embarq's position. However, the Commission remained unconvinced by the totality of the evidence. Again, in spite of the Commission's consideration of Embarq's evidence on this point, which was explicitly articulated in the Order Denying COLR Waiver, Embarq doesn't like the way that the Commission weighed all the evidence. This is insufficient to support reconsideration: the Commission considered the evidence, and the Commission should accordingly deny Embarq's Motion. (TB Response at 17)

D. Issue 5 - The "Fallout" or Ultimate Issue of Good Cause

Treviso Bay argues that Embarq did not meet the high burden necessary to be relieved of its COLR obligations and cannot accept that we are simply unpersuaded. Treviso Bay reiterates that "Embarq's argument for reconsideration is really just re-argument of the evidence." (TB Response at 18)

Treviso Bay then falls into rearguing the merits, reiterating its central argument that under the applicable statute, the COLR may be relieved of its COLR obligations for good cause *only* when the alterative provider(s) provide "basic local exchange service." Treviso Bay argues that once it was established that the alternative provider of voice service was a VoIP provider, Embarq's petition should have been denied. (TB Response at 19)

IV. Analysis and Discussion

A. Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering the Final Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st

DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959), citing State ex rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc., 294 So. 2d at 317.

B. Issue 2 - Scope of the Issue

Embarq's justification for reconsideration on Issue 2 is without merit; the issue was not narrowed, unjustly or otherwise. First, we agree with Treviso Bay that we did not overlook or fail to consider the plain language of the issue, but rather adhered to the generally accepted meaning of the words "limit" and "restrict" and "ability".

Second, Embarq's approach would inject economic arguments directly into Issue 2. These are addressed in Issue 3. There is no reason to read Issue 2 to provide for redundant consideration of Embarq's argument that provision of local service at Treviso Bay will be uneconomic.

Third, it is Embarq's approach that would narrow the inquiry, not our approach. As noted earlier, Embarq argues a "two-prong" test for establishing good cause for relief from the COLR obligation. Embarq believes that under the statute "good cause" for relief from the COLR obligation under the statute is demonstrated when the ILEC can show that: (1) provision of voice service to the area would be "uneconomic"; and (2) mandated provision of voice services by the COLR is "unnecessary" because "voice or voice replacement service will be available." From Embarq's perspective *every* issue relates to either "uneconomic" provision of service or availability of "voice or voice replacement service."

Embarq's "two-prong" approach narrows our field of vision in a case of first impression. There are other interpretations of this statute and other possibilities not contemplated in Embarq's simple "two-prong" test. It is possible that a developer could enter into agreements, either with the ILEC itself or the cable competitor that do not bar physical access to the property but in some way contractually restrict or limit the ILEC from provision of service. As framed and properly decided by us, Issue 2 clarifies that these other factors were not involved.

C. Issue 3 – Uneconomic claim

Embarq's affirmative case under Issue 3 is a simple one. Embarq argues that because of Treviso Bay's agreements with Comcast it will be uneconomic to provide the requested communications service to the customers of Treviso Bay. In support of that basic proposition, Embarq advances two sub-propositions: (1) the customers will be few in number; and (2) the average revenue per customer will be low. Assuming that both sub-propositions are true, the total revenues from projected customers would be so low that it is unrealistic to believe that the provision of service will ever turn a profit. This is Embarq's "uneconomic" justification in a nutshell.

In the Final Order we address some of the deficiencies in Embarq's case. For example, with respect to Embarq's projection of too few customers, the Commission noted that Embarq's assumed penetration rate "lacks supporting evidence." (Final Order at 13) And with respect to the per-household revenue projection advanced by Embarq, the Commission observed that Embarq "based this amount on unweighted averages for customers in the Naples market." (Id.) Based on the record, we concluded:

> Some economic risk does exist for Embarq in Treviso Bay as a result of the bulk agreement for data and video services with Comcast, ***but we do not believe evidence presented by Embarq witnesses DeChellis and Dickerson is sufficiently rooted in objective statistical or fiscal analysis to be dispositive.*** (Emphasis added) (Final Order at 12)

In short, we found the evidence presented by Embarq to be unpersuasive. We did recognize, however, that Treviso Bay's arrangements with Comcast would have some adverse effect on penetration rates and average per household revenues; we simply were not persuaded that Embarq's future was as bleak as Embarq contends. Waiving the COLR obligation is a serious decision and requires serious justification.

In concluding that Embarq's basic case was unpersuasive, we addressed some perceived weaknesses in the building blocks of Embarq's case. For example, we identified some specific problems with Embarq's projected penetration rates, its projected average revenues per household, and its net present value computations (which form the basis of its "uneconomic" provision of service claim). As noted above in Section II D., Embarq's Motion for Reconsideration argues that the criticisms of its proof are wrong, and result from the Commission overlooking, ignoring, or misapprehending critical information. We now respond to Embarq's arguments for reconsideration on four key items.

1. *Net Present Value*. We changed some of the inputs to Embarq's NPV model to test that model's reliability. We characterized these input changes as "minor." Embarq objects, arguing that the "percentage" changes are significant. (See page 4, infra) The record reflects that the input changes are minor when stated as a percentage of total number of potential households. Moreover, the percentage increases that Embarq uses to portray the changes as substantial actually suggest that Embarq's original projected take rates are unreasonably low. In any event, the purpose of using varying inputs was to determine whether Embarq's predictive model was *robust,* i.e., whether it is able to cope well with variations without losing its predictive functionality.

In this context, the NPV produced substantial swings in outcomes based on changes in inputs. From the perspective of proof, this suggests that the NPV model is not reliable. We reasonably concluded, that given the record, the NPV was not reliable for the purpose of demonstrating that provision of service would be uneconomic as Embarq projects. In doing so, we considered all of the evidence.

2. *Significance of Penetration Rate to NPV Analysis*. Embarq argues that we overlooked the central thrust of Mr. Dickerson's testimony while addressing inconsistency between his testimony and that of Mr. DeChellis. In a sense, Embarq is arguing that we looked at the testimony of its witnesses too closely – that we apparently seized on a trivial point and missed the significance and import of the testimony of its witnesses. This view of our treatment of the testimony is not consistent with the careful or objective treatment given the testimonies in the Final Order. A neutral reading of the Final Order reflects that we did not misapprehend Mr. Dickerson's testimony in either theme or in detail.

3. *Devcon Wireless Rider:* As reflected above, Embarq argues that we failed to recognize distinctions between wireless VoIP versus wireline and cable VoIP in considering the Devcon Wireless Rider. Embarq's arguments are again without merit.

We reasonably concluded based on the record that "it is possible that the agreement between Treviso Bay and Devcon for security system monitoring services will increase the likelihood that more residents will subscribe to Embarq's wireline telephone service." With respect to the rider, we noted that it recommends that each subscriber to Devcon's monitoring service employ an additional method of communication, such as standard telephone service, if monitoring is being provided via a wireless form of communication. As the Final Order observes, Embarq's own witness acknowledged that in light of the language of the rider, a prudent customer would consider obtaining standard telephone service for the alarm system in addition to VoIP service. We did not misunderstand the rider. We simply concluded that on balance, within the context of the Treviso Bay developments, the Devcon Wireless Rider would tend to encourage residents to subscribe to Embarq's wireline telephone service.

E. Issue 5 - The "Fallout" or Ultimate Issue of Good Cause

In Final Order PSC-07-0311-FOF-TL, we ruled that "Embarq has not demonstrated 'good cause' under Section 364.025(6)(d), Florida Statutes, for a waiver of its carrier-of-last-resort obligation in Treviso Bay," and thus denied Embarq's petition. (Final Order at 17). Embarq now argues that due to the previously discussed errors, we should reconsider our decision. We disagree. As fully addressed above, Embarq has not demonstrated that when addressing the issues in this docket, we overlooked, ignored, or misapprehended a point of fact or law in rendering our decision.

V. Conclusion

Embarq's motion for reconsideration is without merit. In rendering our decision, we considered, either explicitly or implicitly, each of the items on Embarq's list of perceived oversights and misapprehensions. In the many pages of its motion, Embarq does not point out any evidence that we overlooked, failed to consider, or fundamentally misunderstood. Rather, Embarq takes issue with how we evaluated the evidence, and consequently simply reargues the merits, although inferentially. This is not a proper basis for reconsideration and thus Embarq's motion is denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Embarq Florida, Inc.'s Motion for Reconsideration of Order No. PSC-07-0311-FOF-TL is *denied*. It is further

ORDERED, that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 3rd day of August, 2007.

	/s/ Ann Cole
	ANN COLE Commission Clerk

This is an electronic transmission. A copy of the original signature is available from the Commission's website, www.floridapsc.com, or by faxing a request to the Office of Commission Clerk at 1-850-413-7118.

(S E A L)

PKW

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Attachment B

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for relief from carrier-of-last-resort (COLR) obligations pursuant to Florida Statutes 364.025(6)(d) for Cabana South Beach Apartments, Phase II, in Alachua County, by BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast.	DOCKET NO. 070357-TL ORDER NO. PSC-07-0785-PAA-TL ISSUED: September 26, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING AT&T FLORIDA'S PETITION FOR RELIEF FROM CARRIER-OF-LAST-RESORT OBLIGATIONS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On June 4, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) filed its petition for relief from its carrier-of-last-resort (COLR) obligation pursuant to Section 364.025(6)(d), Florida Statutes, for the property known as Cabana South Beach Apartments (Cabana), Phase II, located in Alachua County, Florida.

On July 30, 2007, AT&T Florida filed Exhibit Nos. 1, 2, and 3 in support of its Petition. The exhibits consist of AT&T Florida's cost estimates for deployment of its network facilities in Cabana, Phase II, and calculations of its anticipated five times annual exchange revenue that are used to determine the special construction charges AT&T Florida requested that FortGroup

Development Corporation (FortGroup) pay prior to AT&T Florida installing its network facilities. On August 8, 2007, AT&T Florida submitted its responses to Staff's First Data Request in this docket.

Cabana, Phase II, which is the property subject to AT&T Florida's petition, contains approximately 252 apartment units, totaling some 696 individual bedrooms. The property is planned for rental to college students, with each student renting an individual bedroom with its own communications terminals for voice, data, and video.

AT&T Florida stated that FortGroup has entered into bulk agreements with Gainesville Regional Utilities for the provision of data services, and Cox Communications, Inc. (Cox) for the provision of video services, to all units within both Phase I and Phase II. The payment for those services is included as part of each tenant's rent. Cox also offers a digital voice product to its subscribers within the Gainesville area, but payment for its voice service is not included in the tenants' rent.

FortGroup is a Florida for-profit corporation located in St. Augustine, Florida. David H. Fort and Claudia A. Fort are the Chief Executive Officer and Secretary/Treasurer, respectively. FortGroup was incorporated on April 25, 2005, for the purpose of developing multi-family real estate projects.

Gainesville Regional Utilities (GRUCom) is a multi-service utility owned by the City of Gainesville and is the fifth largest municipal electric utility in Florida. Gainesville Regional Utilities provides electric, natural gas, water, wastewater and telecommunications services to approximately 89,000 retail and wholesale customers in Gainesville and surrounding unincorporated areas. Gainesville Regional Utilities provides high-speed Ethernet Internet service under the name GRUCom over its own fiber-to-the-premises network.

Cox Communications Inc., headquartered in Atlanta, Georgia, is the third-largest cable provider in the nation with more than 6 million residential and commercial customers and over 22,000 employees. Cox is a full-service provider of telecommunications products offering an array of advanced digital video, high-speed Internet, and telephony services over its own nationwide IP network, as well as integrated wireless services in partnership with Sprint.

FortGroup decided not to officially participate in this proceeding. FortGroup indicated that the construction phase for Cabana, Phase II, is complete, and FortGroup has determined that Cox would be able to provide voice service at Cabana, Phase II. At this time, FortGroup is not prepared to allow AT&T Florida access to its property to install its network infrastructure. Initially, FortGroup did request that AT&T Florida install its infrastructure and provide service in Cabana, Phase II; however, AT&T Florida delayed the installation of its network infrastructure until late in the construction process.

Section 364.025(6)(b), Florida Statutes, permits a local exchange company (LEC) to be automatically relieved of its COLR obligation 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 subparagraph (d).

In this case, AT&T Florida is seeking a waiver of its COLR obligation for the Cabana South Beach Apartments, Phase II, pursuant to Section 364.025(6)(d), Florida Statutes, which provides:

> 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 pursuant to Sections 364.01 and 364.025, F.S.

Analysis

AT&T Florida's Petition

AT&T Florida is asking to be relieved from its COLR obligation pursuant to Section 364.025(6)(d), Florida Statutes, for the provision of basic telephone service to the residents in Phase II of the development known as Cabana South Beach Apartments, located in Alachua County. In its Petition, AT&T Florida claims the following circumstances and conditions constitute good cause.

1. FortGroup has entered into bulk arrangements with alternative providers wherein data and video/cable services will be included as part of each resident's rent payment.

2. FortGroup has entered into a bulk agreement with GRUCom for the provision of data services to all units within the development.

3. FortGroup has entered into a bulk agreement with Cox for the provision of cable television services to all units within the development.

4. FortGroup has entered into an arrangement with Cox, where Cox will also be providing voice service to the residents of Cabana, Phase II.

5. As a result of the service arrangements with GRUCom and Cox, there is an incredible amount of uncertainty as to the anticipated demand for AT&T Florida's voice services in Cabana, Phase II, because residents will be able to order voice service from many different providers over their data connection or order voice service from Cox.

6. AT&T Florida estimates the take rate for its voice services in Cabana, Phase II, will be low due to FortGroup's arrangements with other providers for the entire suite of services for residents in Cabana, Phase II, and because payment for the alternative providers' video and data services is included in the residents' rent.

7. AT&T Florida anticipates the take rate for voice service in Cabana, Phase II, will be no more than 3%, considering that the take rate for voice service in Cabana, Phase I, is approximately 2%.

8. AT&T Florida contends that VoIP and/or wireless substitution are significant reasons why AT&T Florida's anticipated take rate for Cabana, Phase II, will be extremely low.

9. AT&T Florida estimates the cost of installing its network facilities in Cabana, Phase II, will amount to approximately $122,340.

10. In accordance with Rule 25-4.067(3), Florida Administrative Code, AT&T Florida calculated its anticipated five times annual exchange revenue at Cabana, Phase II to be approximately $42,395.

11. On April 30, 2007, AT&T Florida requested that FortGroup pay to AT&T Florida the amount of $79,945 prior to installing its facilities. The requested amount is the difference between the amount of the cost to install its network facilities and the amount of its anticipated five times annual exchange revenue.

12. To date, FortGroup has not paid the requested amount to AT&T Florida.

13. AT&T Florida believes it should not be forced, pursuant to COLR, to install duplicative facilities when the unrefuted evidence based on an identical property and the demographics of Cabana, Phase II, clearly establish that AT&T Florida will be economically disadvantaged in serving this development.

14. AT&T Florida contends that the COLR statute was not enacted to countenance such an inefficient economic result, especially where data, video and voice providers have (a) entered into arrangements with a developer to provide said services, (b) are installing their own networks, (c) have the technical capability to offer voice services to residents, and the anticipated take rate for AT&T Florida's services will be extremely low. AT&T Florida also contends that in this scenario, FortGroup is attempting to expand AT&T Florida's COLR obligations beyond its traditional and intended purposes for its own economic interest.

In support of its petition, AT&T included six Exhibits labeled "A" through "F."

- Exhibit "A" is a December 6, 2006, Multi-Housing News magazine article describing the Cabana development.

- Exhibit "B" is a copy of a webpage from the website used to market Cabana South Beach Apartments, www.thecabanaapartments.com, that lists cable television and high-speed Internet as being included in the lease.
- Exhibit "C" is a copy of the May 17, 2007, letter from FortGroup to AT&T Florida informing AT&T Florida that FortGroup does not intend to pay the requested amount for AT&T Florida's line extension.
- Exhibit "D" is the Affidavit of Larry Bishop attesting to AT&T Florida's amount of investment necessary to install its facilities, its anticipated take rate, and the anticipated five times annual exchange revenue.
- Exhibit "E" is a copy of the April 30, 2007, letter from AT&T Florida to Jay Brawley notifying FortGroup that AT&T Florida is requesting payment prior to extending its lines into Cabana, Phase II.
- Exhibit "F" is a copy of the May 18, 2007, letter from AT&T Florida to Jay Brawley notifying FortGroup that AT&T Florida believes it is relieved of its COLR obligation to serve the property.

AT&T Florida also filed Exhibit Nos. 1, 2, and 3 (under Notice of Intent to Request Specified Confidential Classification) wherein it provided an estimate of the amount of its cost necessary to install its network facilities in Cabana, Phase II, and its calculations of its anticipated five times annual exchange revenue. The exhibits show how AT&T Florida determined the amount of special construction charges that AT&T Florida requested FortGroup pay prior to AT&T Florida installing its network facilities.

FortGroup's Response to AT&T Florida's Petition

Mr. Jay Brawley, Director of Development for FortGroup, informed our staff that FortGroup did not intend to officially respond or participate in this proceeding and did not appear at the Commission's Agenda Conference on August 28, 2007. Mr. Brawley indicated that the construction of Phase II of Cabana South is complete, and units are available for rent. At this stage in the construction phase, it is too late for AT&T Florida to install its network facilities to provide voice service in Phase II. In his letter of May 17, 2007, to AT&T Florida, Mr. Brawley did respond to AT&T Florida's request for payment in the amount of $79,945 to extend its lines to serve Cabana, Phase II. In his letter, Mr. Brawley explains:

- FortGroup disagrees with AT&T Florida's request to pay almost $80,000 to provide service for the continuation of the project.

- FortGroup considers the amount an improper and discriminatory charge for infrastructure.

- Cabana Phase I is served by AT&T Florida, and the project is legally and technically one project, under management by one entity.

- One half of the project will be served by AT&T Florida and the remainder by another provider.

- FortGroup did request AT&T Florida to provide service as its first choice and now has no choice except to consider other providers.

- There is no demarcation line in the finished project, and FortGroup will have to resolve issues with tenants regarding who can and cannot subscribe to AT&T Florida's services.

- Installation of AT&T Florida's infrastructure has been in dispute since late 2006, and AT&T Florida's letter of April 30, 2007, requesting payment for line extension was so late in the construction process that FortGroup was not afforded sufficient time to consider AT&T Florida's demands.

- FortGroup does not agree that AT&T Florida's COLR obligation should be waived in this instance.

Decision

In this case, FortGroup has restricted AT&T Florida's access to Cabana, Phase II, apparently as a result of AT&T Florida's actions. Consequently, AT&T Florida will not be able to install its network facilities to serve the tenants in Cabana, Phase II. We believe this fact alone is good cause for the Commission to relieve AT&T Florida of its COLR obligation. That the developer has restricted AT&T Florida's access to the property renders the other facts and circumstances of AT&T's petition moot.

This is a case where the two contiguous subsections of a development are being built in overlapping phases. The construction of Cabana, Phase I, began in the summer of 2005. In Phase I, FortGroup requested that AT&T Florida install its network facilities to provide voice service pursuant to its COLR obligation and AT&T Florida complied. However, before construction began on Phase II, the Legislature amended the COLR statute to allow AT&T Florida to petition the Commission for a COLR waiver. AT&T Florida's apparent decision to provide no voice service to Phase II placed FortGroup in the dilemma of not having a provider for voice service.

FortGroup maintains that AT&T Florida was its first choice to be the provider of voice services in both phases of the development. When FortGroup began construction of the development in the summer of 2005, Cox had yet to offer its digital voice product to its customers in Gainesville.[5] Hence, it seems likely that FortGroup had not considered any providers other than AT&T Florida for voice service at the inception of the development. It appears that only after AT&T Florida requested that FortGroup pay for the extension of its lines to Cabana, Phase II, did FortGroup decide to pursue another option for a voice service provider

[5] An August 1, 2005, press release from Cox announced that Cox will launch Cox Digital Telephone in Central Florida (including Gainesville) before the end of 2005.

at Cabana, Phase II.[6] FortGroup then contacted Cox and requested that it make its digital voice product available to the tenants. Cox already had installed its communications facilities to provide cable television service to the tenants; thus, Cox did not have to install its outside plant after construction was completed, unlike AT&T Florida.

We disagree with AT&T Florida's premise that the motivation for FortGroup to enter into the agreements with Cox and GRUCom was to generate revenue streams from telecommunications, video, and data services. There is no evidence in this docket that indicates FortGroup received compensation for entering into the arrangements with Cox and GRUCom. The decision by FortGroup to include video and data services in the rent appears to be market driven, not the desire to generate additional revenue at the expense of AT&T Florida. The inclusion of cable television service and broadband Internet service as part of the tenants' rent is a standard amenity in the college student housing market.[7] The rent also includes all furnishings and appliances, a 32-inch television, washer and dryer, water/sewer, pest control, and an allotment of either $30 or $35 for electric service.

According to Mr. Brawley's letter of May 17, 2007, to AT&T Florida, FortGroup considers both Phase I and Phase II as one project under management by one entity. The development does not have a demarcation line separating Phase I from Phase II. Mr. Brawley also indicated that the installation of AT&T Florida's infrastructure in Phase II was in dispute since late 2006. AT&T Florida contends that it had many discussions, not disputes, with FortGroup that began in October of 2005 for both Phase I and Phase II.[8] AT&T Florida contends it was not until April 17, 2007, that FortGroup first requested AT&T Florida to provide facilities in Phase II within a specified time period.[9] AT&T Florida, however, was aware that FortGroup planned for AT&T Florida to provide its services in both Phase I and Phase II as early as October 2005.[10] In fact, on November 11, 2005, the BellSouth Building Industry Consulting Service delivered its recommended structure specifications package for Phase I and Phase II.[11] Based on this sequence of events, it appears that AT&T Florida was aware that FortGroup planned and requested AT&T Florida to install its network facilities in Phase II well in advance of the start of construction.

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[6] AT&T Florida's Response to Staff's First Data Request, Item No. 11(c).

[7] AT&T Florida's Response to Staff's First Data Request, Item No. 6, Production of Documents, includes a chart listing seven other rental properties in the Gainesville market area. The chart indicates that all competing properties also include cable television and high speed Internet service.

[8] AT&T Florida Response to Staff's First Data Request, Item No. 11.

[9] Id.

[10] Id.

[11] Id.

On April 30, 2007, AT&T Florida sent FortGroup a letter requesting that the developer pay to AT&T Florida the amount of $79,945 before AT&T Florida would extend its lines to Phase II. FortGroup responded to AT&T Florida indicating that AT&T Florida's request for payment was so late in the construction process that FortGroup was not afforded sufficient time to consider AT&T Florida's demands. The payment AT&T Florida is requesting would be for installing its outside plant and connecting to each of the apartment buildings in Phase II. FortGroup already pre-wired the network terminating wire in all the apartment buildings as part of its construction. Copies of emails and correspondence between FortGroup and AT&T Florida filed in response to our staff's First Data Request provide more detail and further insight into AT&T Florida's conduct related to requesting payment of special construction charges. The information was filed under a Notice of Intent to Request Specified Confidential Classification, and as such, cannot be openly discussed in this order.

AT&T Florida's letter of May 18, 2007, to Mr. Brawley, indicates that on May 7, 2007, Mr. Brawley advised AT&T Florida that FortGroup would not pay the requested amount and that FortGroup was going to work with GRUCom and Cox in order to obtain the services, including voice service, for the development. AT&T Florida further indicates that on May 16, 2007, Mr. Brawley advised that FortGroup had made the decision to use another vendor to provide voice service and did not require or request AT&T Florida to provide voice service for Cabana, Phase II. In the same letter, AT&T Florida advised FortGroup that it understands that FortGroup has chosen another communications service provider to install its communications facilities at Cabana, Phase II, to the exclusion of AT&T Florida, and that AT&T Florida thus believes that it is relieved of its COLR obligation to serve the property pursuant to the provisions of Section 364.025, Florida Statutes.

AT&T Florida estimates the take rate for its voice services at Cabana, Phase II, will be low due to FortGroup's arrangements with other providers for the entire suite of services for the residents at Cabana, Phase II, and because payment for the alternative providers' video and data services are included in the residents' rent. We agree that the take rate for AT&T Florida's voice services will most likely be low, and because of the low take rate, AT&T Florida likely will not recover the amount of its investment to install its network in Cabana, Phase II, within five years. We estimate that it will take approximately fourteen years for AT&T Florida to recover its investment, given the information provided by AT&T Florida.

Cox will be providing cable television service to all of the residents at Cabana and that Cox will offer its digital voice product to the residents in Cabana, Phase II, on an individual subscriber basis. GRUCom will be providing broadband data services to all of the residents. The fees for both data and cable television services are included in each resident's rent.

Conclusion

Accordingly, we conclude that, on a going forward basis, AT&T Florida shall be relieved from its carrier-of-last-resort obligation to provide basic local telecommunications service to the tenants in Phase II of the development known as Cabana South Beach Apartments, located in Alachua County, Florida, based solely on the fact that the developer has restricted AT&T

Florida's access to the property. No other reason in the petition need be considered. In the future, should the facts and circumstances change, and the developer requests AT&T Florida to install network facilities to serve the tenants in Cabana, Phase II, the facts and circumstances existing at that time shall be used to determine whether AT&T Florida is obligated to provide service as the carrier-of-last-resort.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that on a going forward basis, AT&T Florida shall be relieved from its carrier-of-last-resort obligation to provide basic local telecommunications service to the tenants in Phase II of the development known as Cabana South Beach Apartments, located in Alachua County, Florida, based solely on the fact that the developer has restricted AT&T Florida's access to the property. In the future, should the facts and circumstances change, and the developer requests AT&T Florida to install network facilities to serve the tenants in Cabana, Phase II, the facts and circumstances existing at that time shall be used to determine whether AT&T Florida is obligated to provide service as the carrier-of-last-resort. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of September, 2007.

	/s/ Ann Cole
	ANN COLE Commission Clerk

This is an electronic transmission. A copy of the original signature is available from the Commission's website, www.floridapsc.com, or by faxing a request to the Office of Commission Clerk at 1-850-413-7118.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 17, 2007.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.