

**Matilda Sanders**

**From:** Woods, Vickie [Vickie.Woods2@bellsouth.com]  
**Sent:** Friday, April 27, 2007 3:33 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 060822-TL AT&T's Petition Requesting Hearing Pursuant to Section 120.57, FL Statutes and Protest of Proposed Agency Action  
**Attachments:** 060822-T.pdf; LEGAL-#675113-v2-060822-TL\_Petition\_Requesting\_Hearing\_Pursuant\_to\_Section\_120\_57\_\_Florida\_Statutes\_\_and\_Protest\_of.DOC

**ORIGINAL**

A. Vickie Woods  
Legal Secretary to James Meza III and Manuel A. Gurdian  
AT&T Florida  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5560  
[vickie.woods2@bellsouth.com](mailto:vickie.woods2@bellsouth.com)

B. Docket No.: 060822-TL

Petition of BellSouth Telecommunications, Inc. for Relief from Carrier-of-Last Resort (COLR) Obligations Pursuant to Florida Statutes §364.025(6)(d) for two private subdivisions in Nocatee development

C. AT&T Florida  
on behalf of Manuel A. Gurdian

D. 15 pages total (includes letter, pleading and Certificate of Service) .pdf  
13 word doc. (includes pleading)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Petition Requesting Hearing Pursuant to Section 120.57, Florida Statutes and Protest of Proposed Agency Action

.pdf .word version

<<060822-T.pdf>> <<LEGAL-#675113-v2-060822-TL\_Petition\_Requesting\_Hearing\_Pursuant\_to\_Section\_120\_57\_\_Florida\_Statutes\_\_and\_Protest\_of.DOC>>

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DOCUMENT NUMBER-DATE

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4/27/2007

FPSC-COMMISSION CLERK

Manuel A. Gurdian  
Attorney

AT&T Florida  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5561

ORIGINAL

April 27, 2007

Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: **Docket No.: 060822-TL**  
**Petition of BellSouth Telecommunications, Inc. for Relief from**  
**Carrier-of-Last-Resort Obligations (COLR) Pursuant to Florida**  
**Statutes §364.025(6)(d) for two private subdivisions in Nocatee**  
**development**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Petition Requesting Hearing Pursuant to Section 120.57, Florida Statutes and Protest of Proposed Agency Action, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Manuel A. Gurdian

Enclosures

cc: All Parties of Record  
Jerry D. Hendrix  
E. Earl Edenfield, Jr.  
James Meza III

DOCUMENT NUMBER-DATE

03605 APR 27 5

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**  
**060822-TL**

I HEREBY CERTIFY that a true and correct copy was served via (\*) Electronic  
Mail and First Class U. S. Mail this 27th day of April, 2007 to the following:

***Florida Public Service Commission***

Patrick Wiggins, Staff Counsel (\*)  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
(850) 413-6212  
[pwiggins@psc.state.fl.us](mailto:pwiggins@psc.state.fl.us)

***Nocatee Development Company***

Attention: Richard T. Ray  
4314 Pablo Oaks Court  
Jacksonville, Florida 32224

Anne T. Klinepeter, Registered Agent  
4314 Pablo Oaks Court  
Jacksonville, FL 32224

***The Parc Group, Inc.***

Attention: Richard T. Ray  
4314 Pablo Oaks Court  
Jacksonville, Florida 32224

Anne T. Klinepeter, Registered Agent  
4314 Pablo Oaks Court  
Jacksonville, FL 32224

***SONOC Company, LLC***

Attention: Richard T. Ray  
4310 Pablo Oaks Court  
Jacksonville, Florida 32224

DDI, Inc., Registered Agent  
4310 Pablo Oaks Court  
Jacksonville, FL 32224

***Toll Jacksonville Limited Partnership***

250 Gibraltar Road  
Horsham, PA 19044

CT Corporation System, Registered Agent  
1200 South Pine Island Road  
Plantation, FL 33324

***Pulte Home Corporation***

100 Bloomfield Hills Parkway  
Suite 300  
Bloomfield Hills, MI 48304

CT Corporation System, Registered Agent  
1200 South Pine Island Road  
Plantation, FL 33324

***Nocatee Development  
Company/SONOC Company LLC***

M. Lynn Papas (\*)  
c/o Papas Law Firm  
245 Riverside Avenue, Suite 400  
Jacksonville, FL 32202  
Tel. No. (904) 353-1980  
Fax No. (904) 353-5217  
[lpapas@papnet.com](mailto:lpapas@papnet.com)

Floyd R. Self (\*)  
Messer Capareello & Self, P.A.  
Regional Center Office Park  
2618 Centennial Place  
P.O. Box 15579 (32317)  
Tallahassee, FL 32308  
Tel. No. (850) 222-0720  
Fax. No. (850) 224-4359  
[fself@lawfla.com](mailto:fself@lawfla.com)  
Represents Nocatee

  
Manuel A. Gurdian

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: )  
 ) Docket No. 060822-TL  
Petition of BellSouth Telecommunications, )  
Inc. for Relief from Carrier-of-Last-Resort )  
Obligations Pursuant to Florida Statutes )  
§364.025(6)(d). ) Filed: April 27, 2007  
\_\_\_\_\_ )

**PETITION REQUESTING HEARING PURSUANT TO SECTION 120.57,  
FLORIDA STATUTES AND PROTEST OF PROPOSED AGENCY ACTION**

Pursuant to Rules 25-22.029 and 28-106.201, Florida Administrative Code, BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") files this Petition to Protest Order No. PSC-07-0296-PAA-TL ("Order") issued on April 6, 2007, and requests an evidentiary hearing under Section 120.57, Florida Statutes. In support of its Petition and Protest, AT&T Florida states the following:

1. AT&T Florida is a local exchange telecommunications company lawfully doing business in the State of Florida whose regulated operations in Florida are subject to the jurisdiction of the Florida Public Service Commission ("Commission") pursuant to Chapter 364, Florida Statutes.

2. AT&T Florida's principal place of business is 675 W. Peachtree St., NE, Suite 4500, Atlanta, GA 30375. Pleadings and process may be served upon:

DOCUMENT NUMBER-DATE

03605 APR 27 5

FPSC-COMMISSION CLERK

James Meza III<sup>1</sup>  
Tracy W. Hatch  
Manuel A. Gurdian  
c/o Nancy H. Sims  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558  
(850) 222-8640 (fax)

3. The name and address of the agency affected is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850. The Commission's file or identification number is Docket No. 060822-TL.

### **BACKGROUND**

4. On December 22, 2006, AT&T Florida filed its Petition for relief from its carrier-of-last-resort ("COLR") obligations pursuant to Section 364.025(6)(d), Florida Statutes, to provide service at Coastal Oaks, Riverwood, and any other private communities in the development known as Nocatee in Duval and St. Johns Counties.

5. The basis for AT&T Florida's Petition for COLR relief is that pursuant to Section 364.025(6)(d), Florida Statutes, good cause exists to relieve AT&T Florida of its COLR obligations because, *inter alia*: (1) Comcast has the exclusive right to provide video and data services within the property; (2) Comcast has an exclusive marketing agreement for voice services within the property; (3) AT&T Florida will be contractually prohibited from providing any service other than voice service at the property; and (4) AT&T Florida will be forced to expend at least \$1.6 million to deploy duplicative

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<sup>1</sup> The undersigned is licensed in Louisiana only, is certified by the Florida Bar as Authorized House Counsel (No. 464260) per Rule 17 of the Rules Regulating the Florida Bar, and has been granted qualified representative status by the Commission in Order No. PSC-07-0211-FOF-OT.

facilities when it will be unable to recoup its investment for a substantial period of time, if ever.

6. On March 13, 2007, the Commission held an agenda conference on AT&T Florida's Petition for COLR relief and it issued its Order on April 6, 2007.

7. On or about April 6, 2007, AT&T Florida received notice of the Commission's decision by downloading a copy of the Order from the Commission's web site.

### **ARGUMENT**

8. During the 2006 session, the Florida Legislature enacted legislation<sup>2</sup> that, in certain instances, provides relief for a local exchange carrier ("LEC") from COLR obligations. The COLR statute provides two avenues for a LEC to obtain COLR relief.

9. The first avenue<sup>3</sup> provides for automatic relief in four specific scenarios generally applicable when property owners or developers have entered into some type of arrangement with a communications services provider, as defined in § 364.025(6)(a)(3), Florida Statutes, other than the LEC.

10. The second avenue<sup>4</sup> applies only when none of those four specific automatic relief scenarios are present. In that situation, the LEC may petition the Commission for COLR relief, which shall be granted upon good cause shown:

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

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<sup>2</sup> § 364.025(6), Florida Statutes.

<sup>3</sup> § 364.025(6)(b)(1)-(4), Florida Statutes.

<sup>4</sup> § 364.025(6)(d), Florida Statutes.

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.

§364.025(6)(d). It is this second avenue that serves as the basis for AT&T Florida's Petition and Protest for relief of its carrier-of-last-resort obligations.

11. In today's highly-competitive communications environment, property owners and developers in greenfield areas frequently select, well in advance of the first resident moving in, the communications company that will provide the suite of services to residents at the property. For instance, developers or property owners enter into different types of agreements with alternative providers, including those that (1) restrict the ability of the LEC (or other providers) to provision service or bundles of services to customers, due to exclusive arrangements with the alternative provider; or (2) essentially eliminate customer requests for the LEC's services due to "bulk" arrangements with the alternative provider, wherein the developer or a homeowners association contracts for services from the alternative provider and the customers receive the services in return for payment of their rent or association fees.

12. These decisions by developers or property owners are driven, at least in part, by which provider makes the most lucrative financial offer to the property owner or developer, typically in the form of "door fees" paid to the developer by the provider. Thus, in return for these "door fees" or other forms of financial consideration, the developer or property owner enters into agreements with the alternative provider that ban, restrict, or make it economically disadvantageous for other companies to provide services to the residents of that development.

13. Additionally, in an attempt to avoid automatic COLR relief for the LEC as set forth in the new law, upon information and belief, the more savvy property owners and developers limit their restrictive or exclusive agreements with alternative providers to data and video services, thereby prohibiting or effectively prohibiting the LEC from providing anything other than traditional voice services to residents. And, even in that scenario, the alternative provider generally also has the capability or will be providing voice service to residents (in addition to data and video that the LEC is prohibited from providing or for which the alternate provider has been granted preferential rights, such as bulk rights or marketing rights). Accordingly, LECs, unlike the alternative providers, are competitively disadvantaged from the start, because they are nearly or completely prohibited from providing certain services or bundles that consumers expect.

14. In its Petition for relief of its COLR obligations, AT&T Florida does not address the propriety of developers and property owners making these competitive choices on behalf of future residents; however, in some instances, these decisions will have a direct adverse economic impact on a LEC if the LEC is required to serve the property with these arbitrary restrictions. This is particularly true where the property owner or developer is demanding that the LEC provide voice service - and only voice service -- pursuant to the LEC's COLR obligation even though the alternative provider at the property/development is capable of providing voice service to residents. In those situations, it is highly speculative as to whether the LEC will ever see an adequate return, if any at all, on its facilities' investment. And, having made a business decision that economically benefits them, developers or property owners should not be able to hijack COLR to force a LEC to make uneconomic business decisions.



15. Former Commissioner Deason echoed these same sentiments at the December 19, 2006 agenda conference, wherein the Commission adopted proposed rules to implement the new COLR legislation and he stated: "'I believe that requiring uneconomic interest under 'carrier of last resort' is wasteful,'" former Commissioner Terry Deason said. "' And if there are viable alternatives to customers and they have service, that is the primary requirement.'"

16. Similarly, Commissioner McMurrian at the March 13, 2007 agenda conference stated as follows:

And I guess the reason I struggle with it is because it seems like the circumstances we have here to me justifies good cause. And maybe it's just one of those things I have to disagree, but in this case you have a developer who has entered into an exclusive service arrangement for data and video, and I realize that that is not what the statute is about, it's about voice. But as I said earlier, I think it contributes to the recoupment of investment to provide voice issue.

You have a service provider who's willing and able to also provide a voice replacement service, you have other voice replacement alternatives out there, such as wireless, like we have talked about; and at least you have some demonstration on behalf of the carrier to say that it is uneconomic. (Tr. p. 25, lines 12-24).

\* \* \*

And I'm trying to get my arms around what is the likelihood of AT&T Florida being chosen by a customer that comes in if they already have the video and broadband. And we have said how important - - repeatedly in our comp reports we have said how important that triple play is. People like to get one bill. (Tr. p. 43, lines 9-14).

17. Moreover, Commissioner McMurrian, with regard to whether AT&T Florida had shown "good cause", stated as follows:

But to me it seems like just at first blush, recognizing it is PAA, to me you are leading up to a situation where I think good cause has been shown. (Tr. p. 26, lines 4-7).

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<sup>5</sup> *BellSouth Customer Surcharge Approved*, THE PALM BEACH POST (Dec. 20, 2006).

\* \* \*

And to me, I just think the circumstances here constitute good cause. (Tr. p. 29, lines 2-3).

\* \* \*

And I think that, of course, they left the good cause there to give us some discretion to decide when we thought the circumstances met the good cause standard. And in my opinion I think they do in this case. (Tr. p. 29, lines 11-14).

\* \* \*

I don't believe - - I can't really come up with a situation where you are going to have more factors that point you to the conclusion of good cause, and I think it is there for some reason. (Tr. p. 40, lines 13-16).

\* \* \*

I feel like that the circumstances with this case when you take them all into consideration together, it's not that they just have an exclusive agreement with data and video, it is not that there is just someone else out there, one or two or three, it is not any of those things alone. I think when you put them together I think it constitutes good cause. (Tr. p. 53, lines 19-25).

\* \* \*

But I don't know that we have to say that the prima facie case for good cause has not been made here, but I guess that was my question. But if we have to say one way or other, we think this is it or this is not it, I think this is it. (Tr. p. 54, lines 5-9).

18. In the Order issued as a result of the March 13, 2007 agenda conference, the Commission denied AT&T Florida's Petition for relief of its COLR obligations to the Riverwood and Coastal Oaks subdivisions in the Nocatee development, on the basis that AT&T Florida had not made a prima facie case for good cause.

19. The Commission stated that "[i]t appears that a voice replacement service will be available to the residents in the Riverwood and Coastal Oaks subdivisions" in that

Comcast will offer its VoIP Digital Voice Service to the Nocatee development. In addition, the Commission noted that Section 364.025(6)(a)(3), Florida Statutes, defines “communications service” as “voice service or voice replacement service through the use of any technology” and that the plain reading of “through the use of any technology” would encompass VoIP provided through the use of broadband. Further, the Order stated that “in determining whether there is sufficient ‘good cause’ to waive the COLR obligation, this Commission must determine whether there is other ‘communications service’ available.”

20. Moreover, in its Order, the Commission stated that AT&T Florida is restricted from providing broadband and video service bundled with its voice service and because it cannot sell its bundled services, it is unlikely that homeowners will choose AT&T Florida’s voice service over Comcast’s Digital Voice Service bundled with Comcast’s Triple Play offering. The Commission noted that AT&T Florida is uncertain if it will be able to obtain the number of customers necessary to generate enough revenue over time to payback the cost of installing its network facilities. The Commission agreed that there is some level of economic risk based on the uncertainty of obtaining customers.

21. The Commission indicated in its Order that AT&T Florida contended that complying with its COLR obligation would be uneconomical because of its inability to offer other services and that standing alone, this was insufficient to relieve AT&T Florida of its COLR obligation. AT&T Florida protests the Order for the following reasons:

22. First, AT&T Florida has shown “good cause” under Section 364.025(6)(d), Florida Statutes, for the Commission to relieve AT&T Florida of its COLR obligations for the provision of basic local telecommunications service to the

Riverwood and Coastal Oaks subdivisions based upon the following facts and circumstances:

a. The form of easement proposed by Nocatee for the Riverwood and Coastal Oaks subdivisions restricts AT&T Florida to providing “voice-only” services.

b. As a result of the restricted “voice-only” easement, AT&T Florida will not be able to offer subscribers in the Riverwood and Coastal Oaks subdivisions AT&T Florida’s full panoply of services that exist today or will be offered in the future, including data and video services.

c. The restricted “voice-only” easement will result in (1) reduced revenue opportunities for AT&T Florida that create an extreme uncertainty as to whether AT&T Florida can ever recover the cost of its facilities’ investment, (2) the inability of AT&T Florida to offer subscribers discounts obtainable when purchasing a bundle of voice and data services, (3) AT&T Florida incurring costs to modify its front-end ordering and provisioning systems to comply with the “voice-only” restriction, and (4) AT&T Florida being forced to advise potential customers that, while it can provide voice service, it is prohibited by the developer from providing data, video, or other services that consumers expect, this, in turn, making AT&T Florida the “messenger” of the fact that consumers in the development do not have a choice, resulting in a negative perception of AT&T Florida and, thus, damaging its reputation and brand because of the business decision of a developer.

d. Upon information and belief, Comcast has compensated Nocatee for the rights to be the exclusive provider of data and video services in Nocatee. Upon

information and belief, Comcast also has an exclusive marketing arrangement for voice services within Nocatee.

e. Comcast offers voice service in the Jacksonville and St. Augustine areas and will offer voice service to residents in the Riverwood and Coastal Oaks subdivisions.

f. Because of the exclusive service arrangements and exclusive marketing arrangements with Comcast, and the attendant service restrictions on AT&T Florida, there will be an anticipated low demand, if any, for AT&T Florida's voice services in the Riverwood and Coastal Oaks subdivisions, and in other private subdivisions where exclusive arrangements with Comcast are present.

g. AT&T Florida estimates that it will cost a minimum of \$1.6 million to deploy facilities to serve the Riverwood and Coastal Oaks subdivisions in Nocatee.

h. AT&T Florida has entered into negotiations with Nocatee for payment of the special construction charges associated with serving the development; however, to date, Nocatee has been unwilling to reimburse AT&T Florida for the cost of deploying facilities to Nocatee.

23. Second, if AT&T Florida is not relieved of its carrier-of-last resort obligations for the provision of basic local telecommunications service to the Riverwood and Coastal Oaks subdivisions it will be forced to expend at least \$1.6 million to deploy facilities when it will be unable to recoup its investment for a substantial period of time, if ever.

24. Third, AT&T Florida respectfully submits that the Commission erred in denying AT&T Florida's Petition for relief of its COLR obligations for the provision of basic local telecommunications service to the Riverwood and Coastal Oaks subdivisions based upon the above-referenced facts and circumstances and, thus, the provisions of Section 364.025(6)(d), Florida Statutes, require reversal of the Commission's decision.

25. Under the standard set forth in *Agrico Chemical Co. v. Dept. of Environmental Regulation*, 406 So. 2d 478 (Fla. 1<sup>st</sup> DCA 1981), a party establishes standing when it shows that: (1) they will suffer injury in fact that is of sufficient immediacy to entitle the petitioner to a Section 120.57 hearing, and (2) the substantial injury is of a type or nature that the proceeding is designed to protect.

26. Based upon the foregoing facts and circumstances, it is clear that the Order and its denial of AT&T Florida's Petition for relief of its COLR obligations will cause AT&T Florida real and immediate injury entitling it to a Section 120.57 hearing as AT&T Florida will be forced to expend at least \$1.6 million to deploy facilities in Nocatee.

27. Under the provisions of Section 364.025(6)(d), Florida Statutes, AT&T Florida "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". Based upon the fact that the Commission in its Order denied AT&T Florida's Petition for waiver of its COLR obligations under Section 364.025(6)(d), Florida Statutes, the substantial interests of AT&T Florida are affected by the Order and "is of a type or nature that the proceeding is designed to protect".

28. AT&T Florida submits the following disputed issues of material fact, policy, and law for resolution in a hearing conducted under Section 120.57, Florida Statutes:

a. Has AT&T Florida demonstrated good cause under Section 364.025(6)(d), Florida Statutes, for the Commission to grant a waiver of AT&T Florida's carrier-of-last-resort obligation to the Riverwood and Coastal Oaks subdivisions in the Nocatee development?

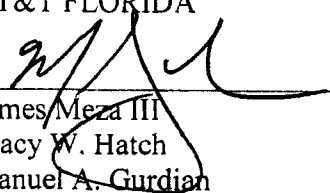
b. Should AT&T Florida be required to provide basic local telecommunications service to the Nocatee development despite the fact that (1) Comcast has the exclusive right to provide video and data services within the property; (2) Comcast has an exclusive marketing agreement for voice services within the property; and (3) AT&T Florida will be contractually prohibited from providing any service other than voice service at the property?

29. AT&T Florida is entitled to relief under Chapters 120, 350 and 364, Florida Statutes, and Chapters 25-22 and 28-106, Florida Administrative Code.

WHEREFORE, AT&T Florida protests the Order discussed herein, requests that a hearing be held on this issue pursuant to Section 120.57, Florida Statutes, and further requests that the Commission grant such other relief as is necessary and proper under the circumstances.

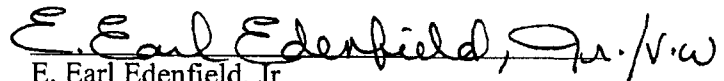
Respectfully submitted this 27<sup>th</sup> day of April, 2007.

AT&T FLORIDA



James Meza III  
Tracy W. Hatch  
Manuel A. Gurdian

c/o Nancy H. Sims  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558



E. Earl Edenfield, Jr. /v.w.

E. Earl Edenfield, Jr.  
AT&T Southeast  
675 West Peachtree Street, Suite 4300  
Atlanta, Georgia  
(404) 335-0763

675113v2