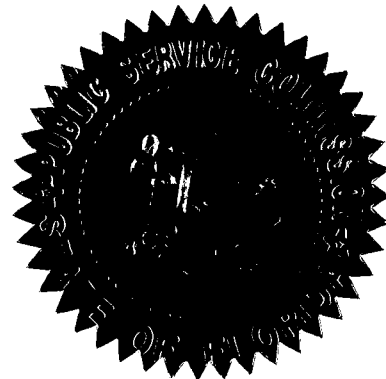


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060822-TL

In the Matter of:

PETITION FOR RELIEF FROM CARRIER-OF-
LAST-RESORT (COLR) OBLIGATIONS PURSUANT
TO FLORIDA STATUTES 364.025(6)(D) FOR
TWO PRIVATE SUBDIVISIONS IN NOCATEE
DEVELOPMENT, BY BELLSOUTH
TELECOMMUNICATIONS, INC.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA
 ITEM NO. 5

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

DATE: Tuesday, September 25, 2007

TIME: Commenced at 9:57 a.m.
 Concluded at 10:38 p.m.

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

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

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

08958 OCT-15

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 MICHAEL COOKE, GENERAL COUNSEL; H. F. RICK MANN,
3 ESQUIRE; DALE BUYS and SUE OLLILA, representing the Florida
4 Public Service Commission Staff.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2 CHAIRMAN EDGAR: And that will bring us to Item 5.
3 Thank you. And we will give our staff a moment to switch out.
4 And I'll note for the record, of course, that Item 5 is a
5 posthearing decision; participation limited to Commissioners
6 and staff.

7 Okay. We're ready when you are.

8 MR. BUYS: Good morning, Commissioners. Dale Buys
9 with Commission staff.

10 Item 5 is staff's posthearing recommendation in
11 Docket Number 060822-TL, AT&T's petition for relief from its
12 carrier-of-last-resort obligation pursuant to Florida Statutes
13 364.025(6)(d).

14 In this item there are two issues to consider. In
15 Issue 1a, has AT&T shown good cause to be relieved of its COLR
16 obligation to provide voice service at the Coastal Oaks and
17 Riverwood subdivisions in the Nocatee development?

18 And Issue 1b, is AT&T entitled to seek financial
19 consideration from Nocatee to recover a portion of its cost for
20 the extension of facilities, pursuant to Rule 25-4.607, and
21 AT&T's special construction tariff prior to installing its
22 facilities in those subdivisions?

23 For Issue 1a staff's recommendation is, no, AT&T has
24 not shown good cause to be relieved of its COLR obligation.

25 For Issue 1b staff's recommendation is also, no, Rule

1 25-4.067 and AT&T's special construction tariff do not apply in
2 this case.

3 Staff is available to respond to any questions the
4 Commissioners may have.

5 CHAIRMAN EDGAR: Thank you.

6 Commissioner McMurrrian.

7 COMMISSIONER McMURRIAN: Chairman, I don't have
8 questions.

9 CHAIRMAN EDGAR: Oh.

10 COMMISSIONER McMURRIAN: But I did have some
11 comments, if that's appropriate now.

12 CHAIRMAN EDGAR: Okay. Well, let's start with
13 questions and then we'll move to the comments, if that's okay.
14 To my left, Commissioner Argenziano.

15 COMMISSIONER ARGENZIANO: Thank you. I guess I'm
16 having a hard time, and maybe staff could help me walk through
17 this. You have a developer who has struck up a deal I guess
18 with some other entity about providing Internet services and
19 broadband services and other services, and then you have AT&T
20 who's being asked by the developer to lay these lines for the
21 last resort provisions and the developer does not want to pay
22 AT&T to do that.

23 The problem I'm having is when I look at the statute,
24 and I look at, I guess it's 364.025 under universal service and
25 then go down to (6)(3), (6)(3)(b) -- let me make sure. No.

1 No. I'm sorry. (3), "Communication service means voice
2 service or voice replacement service through the use of any
3 technology." And that seems to relieve AT&T of the, to me, the
4 last resort provisions because the developer has someone with
5 "any other technology" that can relieve -- you know, the reason
6 we want that last resort provision in there. So I'm not sure
7 why staff doesn't see that as being acceptable for the, for
8 that provision. Does that, does that -- I don't know if I
9 articulated that enough, but it just seems to me that AT&T
10 shouldn't be responsible for being the last, you know, the
11 COLR.

12 MR. BUYS: I believe that, and legal may correct me,
13 that the communication service in that context refers to the
14 first four automatic waivers. And in this case I believe we're
15 basing the decision on the, recommendation on the good cause
16 section, the (6)(d) section.

17 COMMISSIONER ARGENZIANO: Madam Chair, if I may.

18 CHAIRMAN EDGAR: Commissioner Argenziano, yes.

19 COMMISSIONER ARGENZIANO: But isn't it good cause if
20 you have -- if I'm AT&T, I'm going to say, well, I have good
21 cause because there is somebody who's going to provide this
22 "any other technology."

23 MR. BUYS: That could be one of the factors. If the
24 Commission chooses to decide that, that could be one of the
25 factors that constitutes good cause. Yes.

1 COMMISSIONER ARGENZIANO: Okay. Thank you.

2 CHAIRMAN EDGAR: Commissioner McMurrrian.

3 COMMISSIONER McMURRIAN: Actually I --

4 CHAIRMAN EDGAR: Would you like to speak?

5 COMMISSIONER McMURRIAN: I can. If there are
6 questions still, if you want to wait, because I think that --

7 CHAIRMAN EDGAR: Okay. Commissioner Skop, you had
8 questions.

9 COMMISSIONER SKOP: Yes, Madam Chair. Thank you.

10 I have two questions of staff, and I just want to
11 make sure that I clearly, as well as my colleagues clearly
12 understand some of the ramifications. Because I was reading
13 the staff recommendation, and on Page 19, this one is pretty
14 straightforward, but I just want to make sure that I understand
15 it. On Page 19, second to the last paragraph, I think what
16 that's stating is that if the Commission were to grant the
17 waiver for good cause contra to staff's recommendation on 1a,
18 then Issue 1b would be moot. Is that correct?

19 MS. OLLILA: Excuse me. Sue Ollila for Commission
20 staff. Yes, in the sense that we believe if the Commission
21 grants the waiver, the tariff, neither the rule nor the tariff
22 no longer apply.

23 COMMISSIONER SKOP: Okay. Thank you. And, Madam
24 Chair, a second question.

25 With respect to the last paragraph on Page 20 where

1 it speaks to should the facts and circumstances change, I had a
2 little bit of discussion with staff on this. And with respect
3 to Florida Statutes 365.025(6)(d), staff states about changing
4 facts and circumstances. But, again, I would defer to
5 Commissioner Argenziano on this, but it seems that the
6 legislative branch left determination of good cause to the
7 equitable discretion of the Commission. But under that it also
8 seems that if the waiver for good cause were granted, then
9 unlike the four express provisions under which a carrier may be
10 relieved of its obligation but has to step back into the shoes
11 as a COLR perhaps later if circumstances change, I'm not
12 exactly sure that that's the case in this section of granting a
13 waiver for good cause.

14 So, again, I just want to have this dialogue with,
15 with staff because I think that this is a little bit of a
16 wrinkle or a loophole in the statute to the extent that it's
17 not expressly stated. If you grant the waiver, AT&T is
18 completely released with no further obligation. And I think
19 that staff may have some opinions that there may be some sort
20 of implied authority upon the Commission if we choose to go in
21 that direction to impose certain conditions. I'm not exactly
22 sure that the statute expressly speaks to that, so I would like
23 to get staff to flesh that out a little bit more in relation to
24 their last paragraph on Page 20, because I do think that's a
25 very, very, a very, very important point to consider. And then

1 I also have a follow-up question to Mr. Cooke, Madam Chair.

2 CHAIRMAN EDGAR: Mr. Mann, would you like to try --
3 and I guess in keeping with Commissioner Skop's question also,
4 as you work through that, for my benefit if you'd speak
5 specifically about the potential of changing facts and
6 circumstances and the Commission's role, if indeed that were to
7 occur.

8 MR. MANN: Yes, Commissioner. Certainly I'll take a
9 shot at it.

10 Staff believes that, that the underlying intent of
11 this statute, which is the universal service statute, is to
12 ensure that any customer who needs service has that service
13 available to her. And our concern is in granting a waiver, if
14 the Commission were to decide to grant this waiver petition,
15 that would be for good cause shown based on the facts and
16 circumstances at this time, at the time provided at the
17 hearing.

18 If those facts and circumstances were to change --
19 for instance, Comcast is the, the alternate provider in this
20 instance. Comcast is not regulated by this Commission, is not
21 obligated as a COLR, is not regulated to provide quality
22 service. If Comcast were to leave for whatever reason, for
23 instance, as a hypothesis, then staff believes that
24 inferentially in this statute, (6)(d), the Commission has the
25 authority to grant that waiver and can come with that authority

1 to grant the waiver based on the facts and circumstances; that
2 the Commission also has the right to either condition that
3 waiver based on future occurrences such as changed, material
4 changed circumstances or to revoke that waiver in the future.

5 COMMISSIONER ARGENZIANO: Madam Chair.

6 CHAIRMAN EDGAR: Commissioner Argenziano.

7 COMMISSIONER ARGENZIANO: When the statute was
8 created or the intent, of course, it's exactly as you say, to
9 make sure that the customer has these services that are
10 provided, they didn't envision what's happening today, and that
11 is developers who are, you know, cutting deals or getting deals
12 with other companies to provide services. And I would -- I
13 mean, I don't want to see the community doing without services
14 if Comcast, let's say it was Comcast or whoever it was, decided
15 to go away. But that's the deal the developer is cutting for
16 the people who are buying in that community, and I'm not sure
17 that any other company, either AT&T or anybody else should be
18 penalized in case Comcast or the deal breaks through.

19 I'm almost thinking that there needs to be a policy
20 change from the Legislature to cover the new circumstances
21 because we don't want that to occur. But at the same time,
22 it's like between a rock and a hard place. You don't want that
23 to happen, but yet when I read that, you know, if any other
24 technology is available, well, it is available in that
25 community. So how do I -- I feel like I'm penalizing then AT&T

1 and hoping at the same time that Comcast doesn't go away
2 because then we're stuck with another situation later on. So I
3 understand your dilemma, staff, as to how do we look at this to
4 ensure that that service is provided. But I think we're stuck
5 with a dilemma also as to, you know, there is another provider
6 there right now, and maybe the Legislature needs to address a
7 policy change.

8 CHAIRMAN EDGAR: Just a quick question. Refresh my
9 memory, but is there cell phone service available in this area?

10 MR. BUYS: I believe it is, yes, Commissioner.

11 CHAIRMAN EDGAR: And that's reflected in the record?

12 MR. BUYS: Yes. There was testimony to that fact.

13 CHAIRMAN EDGAR: Commissioner Skop.

14 COMMISSIONER SKOP: Thank you, Madam Chair.

15 And just as a follow-up to Mr. Cooke on that
16 question. Again, I think there is perhaps somewhat of a
17 limited unintended consequence that just the Commission needs
18 to be aware of by virtue of if we move towards that direction
19 of granting the waiver to the extent that expressly under the
20 statute AT&T is released forever, although staff, legal staff
21 has opined that there may be some implicit authority of the
22 Commission to grant some sort of conditions upon that to the
23 extent more similar of the four expressed exemptions (phonetic)
24 where they would have to step into the COLR's shoes at some
25 later point in time if the alternate provider were to disappear

1 to protect consumers. And, again, I'm equally torn on that
2 because currently there is an alternate provider. However,
3 this convoluted arrangement, and I won't get into all the
4 specifics, I have it here in the contract. I reviewed the
5 contract. Very, very, very convoluted. So, again, we're
6 between a rock and a hard place, as Commissioner Argenziano has
7 mentioned.

8 But my question directed to Mr. Cooke, I'm equally
9 torn by staff's assertion that they have the, the Commission
10 has the inherent authority to impose restrictions because I'm
11 worried that if we were to do so, again, if we went in that
12 direction and tried to craft it for good cause subject to
13 stepping back into the shoes of the COLR if circumstances
14 changed, I'm worried about unilaterally doing that to the
15 extent that it may be viewed as usurping the legislative power
16 to the extent that we're importing more meaning into the
17 existing statute that doesn't expressly speak to this. So in
18 that regard to Mr. Cooke I would ask whether he would be
19 comfortable with that or whether he'd be more comfortable in
20 getting a stipulation of the parties if an additional
21 requirement were imposed if the waiver were per se granted.

22 MR. COOKE: Commissioner, first of all, I think that
23 the position that Mr. Mann outlined is a reasonable
24 interpretation of the statute, which I think has two aspects to
25 it. One is we probably could impose conditions based on the

1 idea of looking at good cause. I recognize what you're saying,
2 however, that it's not express in the statute, so it creates a
3 possibility that our interpretation if we go in that direction
4 would be subject to a successful challenge. And it's really
5 difficult to say one way or the other. But I would be
6 comfortable with this Commission if they wanted to grant the
7 waiver, grant it with conditions being imposed.

8 I also think sort of one aspect of that is, as Mr.
9 Mann was also explaining, this Commission, if it's granting the
10 waiver, is doing it based on the facts and circumstances that
11 have been outlined during the hearing process. And if there
12 were a material change in those conditions, those situations,
13 for example, if Comcast did go away and there was no
14 alternative service of voice of any kind, then I think, subject
15 to our concept of administrative finality, this Commission can
16 go back and look at that whether there's a condition in there
17 or not.

18 And then I guess the third part of that is if we had
19 a stipulation, that might make it even clearer. I'm not sure
20 how we would craft that condition. And we also have the --
21 we're in the posture of being in a posthearing situation, so
22 the record is closed, and we'd have to talk about how we could
23 possibly get that in place if we wanted to do that.

24 CHAIRMAN EDGAR: Commissioner Skop, follow-up.

25 COMMISSIONER SKOP: Yes, Madam Chairman. Thank you.

1 And that's what I just wanted to articulate to see if
2 a stipulation were obtained whether the whole issue would be
3 moot with respect to the administrative finality. But, again,
4 I'm comfortable with Mr. Mann's position equally. It's just
5 that there is some gray area there. So, again, the stipulation
6 would make it moot; however, I do feel that comfort level. So
7 thank you.

8 CHAIRMAN EDGAR: Thank you.

9 Commissioner McMurrin, you had a question?

10 COMMISSIONER McMURRIAN: Yeah. I guess I'd just
11 start out by saying I do think we should be worried about
12 unilaterally doing something that may not be exactly
13 consistent, but I understand the concern and I think it's a
14 good one that's been brought up.

15 But I guess in some respects I think we're getting a
16 little bit ahead of ourselves in that, A, I really don't think
17 we'll be down the road and Comcast will have either, I don't
18 know, gone bankrupt or just decided they weren't interested in
19 serving a development of this magnitude. So I really don't
20 think it will happen, but I do think we do have to ask the
21 question about what would we do if it did happen. And then
22 we -- I think because there will be other facts in place at the
23 time, there may be several more cellular providers and things
24 like that, I think that we can't really put a condition on it
25 now because we don't know what will come. And it seems like --

1 and let me ask it this way, I guess. Can't we leave it up to
2 any party that's affected at that time to come in and make a
3 case to us why we should relook at it? I mean, wouldn't we be
4 able to do that or at least at the time consider whether or not
5 the statutes allow us to do that? I think that maybe was what
6 you were saying, but.

7 MR. COOKE: That is essentially what I was saying.
8 Either the Commission on its own, because it has recognized
9 that there are changed circumstances -- and, again, all of this
10 is subject to this concept of administrative finality which
11 we've talked about in other contexts. That there has to be
12 something fairly material going on that has changed and there
13 has to be, you know, an important public interest that needs to
14 be served, and that would allow the Commission under those
15 circumstances to go back and revisit a prior order.

16 CHAIRMAN EDGAR: Commissioner Argenziano.

17 COMMISSIONER ARGENZIANO: Mr. Cooke, wouldn't that
18 just bring us back to the beginning? I mean, if there's no
19 communication services there, then that would just start the
20 whole ball rolling again as far as a COLR?

21 MR. COOKE: I would think so. I would think that if
22 the voice goes away --

23 COMMISSIONER ARGENZIANO: Right.

24 MR. COOKE: -- and there's none of it, then I think
25 that's a material change. And I think it's, you know, as the

1 statute points out, the important public interest is to make
2 sure that there is local service available, voice service
3 available. So I would think we'd have a very good argument
4 that under those circumstances we could revisit.

5 CHAIRMAN EDGAR: And how -- I'm sorry. Mr. Cooke,
6 how would that come -- and I realize we're dealing with some
7 hypotheticals here, so I'll state that. Hypothetically, if the
8 scenario that has kind of been discussed were to occur, how
9 would that come before the Commission? Would it need
10 to be a petition from the developer, from a potential
11 consumer/resident, from the potential provider of last resort?

12 MR. COOKE: I think we can monitor this. I think
13 staff, if it becomes aware through any of those avenues, a
14 customer, the developer or any other circumstance, could craft
15 a recommendation saying we need to revisit this prior order.
16 So it could be a petition. But I think the Commission on its
17 own would be in a position to monitor and see if that needs to
18 be changed.

19 CHAIRMAN EDGAR: Commissioner Argenziano.

20 COMMISSIONER ARGENZIANO: Madam Chair.

21 Correct me if I'm wrong, the developer could, if he
22 chose to or she chose to, pay AT&T or whatever company to, to
23 facilitate just in case. Is that -- am I correct?

24 MR. COOKE: That's my understanding of how this can
25 work. I'd defer to staff a little bit on something like that.

1 CHAIRMAN EDGAR: Commissioner Carter, did you have a
2 question?

3 COMMISSIONER CARTER: Thank you, Madam Chairman.

4 I think that, you know, the fact that the Legislature
5 gave us the opportunity to make a determination on good cause,
6 that doesn't give me heartburn. I mean, I think that based
7 upon the facts of what Commissioner Argenziano read to you
8 about telecommunication services, that's fairly clear. And
9 it's not like the people would not have any service, but it
10 does get to the point -- and I was trying to be quiet because
11 we had gone on about this COLR requirement being waived at some
12 time earlier. But here you have an opportunity where there are
13 clearly alternative sources there, telecommunication services
14 there. And I think that if, if going forward there's a
15 problem, the Legislature will change it.

16 But at this point in time what's before us is a
17 situation where I think that there is alternative services
18 available there. You know, one thing is that AT&T has a COLR
19 requirement versus the other telecommunications service
20 provider doesn't have that requirement, and we don't even have
21 jurisdiction over Comcast. So it seems to me that we probably
22 should deal with what's before us. And I just want to say that
23 this is a situation where you have clearly an alternative
24 provider. And like I say, it doesn't give me heartburn because
25 those are some of the kind of things that we should look at

1 when we're determining good cause. Is there an alternative
2 telecommunications services provider there? In this case, yes.
3 Based upon the facts and circumstances of this case, I think
4 it's there. I think it's within the confines, and I don't
5 really have any heartburn just because the Legislature left it
6 up to us to use our discretion to define what's good cause.
7 I'm comfortable with that. Thank you, Madam Chair.

8 CHAIRMAN EDGAR: Thank you, Commissioner Carter.

9 And from -- my understanding is that there is more
10 than one choice available to the consumers, and that being
11 either the service, the voice service that can be provided by
12 Comcast or at least one cell phone provider and potentially
13 more probably.

14 Were you implying that perhaps the Legislature should
15 give us regulatory authority over Comcast?

16 (Laughter.)

17 Just thought I'd spice it up there a little bit.

18 Commissioner Skop.

19 COMMISSIONER SKOP: Thank you, Madam Chair.

20 And on that same note, I guess the developer hasn't
21 restricted wireless, so you are correct that there's more than
22 one alternative for alternate providers.

23 But to Commissioner McMurrin's point, and, again,
24 Mr. Cooke's point also, having read the contract, I'm a little
25 concerned about the ability for the Commission to protect the

1 consumer while the agreement is in place, again, because we
2 don't regulate the cable provider. But also too it seems like
3 the private right of the consumer may be intertwined or
4 intermingled with the easement and the contract and everything
5 that's going on behind the scenes here. So it's a very, a very
6 intertwined situation, to say the least.

7 So, again, I question whether, you know, if there
8 were a private citizen that wanted to do a change or something
9 or was dissatisfied with the quality of service, whether -- I
10 wonder whether they have effectively waived any rights. But,
11 again, that's a separate and distinct issue. And, again, while
12 I'm wanting to protect the consumer, equally the buyer needs to
13 undertake some of this risk in what's going on here.

14 So, again, noting that there's an alternate provider,
15 as Commissioner McMurrian has pointed out and as Commissioner
16 Argenziano has noted about the, I believe it's the
17 telecommunications provider, and I think I mentioned that in
18 the hearing also, I drew attention to that, it does seem that
19 at least under the totality of the circumstances and limited to
20 this specific fact pattern alone, not drawing any other
21 inferences, that perhaps AT&T has the, has shown good cause for
22 relief of its COLR obligation. But bounding that, I just, my
23 concern is if, if they're released under the statute, they have
24 no obligation to come back and they're free to negotiate at
25 arm's length and get anything they want if they ever had to be

1 drawn back into that situation. Because there is under the
2 existing statute and my interpretation no express obligation
3 for them to step back into the COLR's shoes.

4 So, again, I just think that's an important point in
5 passing to understand as opposed to the express provisions
6 which make them step back into the shoes of the COLR, but they
7 get the difference between what it costs now to install and
8 what their obligation would have been. So, again, that's a
9 real subtle fine point. But certainly I think my colleagues
10 have had a lot of similar views on this matter as I do, and I'm
11 just trying to find out what the right thing to do is because
12 there is, at least under the statute, no express language. So
13 if you release them, they're off the hook completely.

14 COMMISSIONER ARGENZIANO: Madam Chair.

15 CHAIRMAN EDGAR: Commissioner Argenziano.

16 COMMISSIONER ARGENZIANO: If I could to that point,
17 because that's a concern of mine also. Another concern is does
18 the consumer get quality of care, which we -- quality of
19 care -- get quality service. That's the healthcare stuff I'm
20 going back to. Quality service. And, of course, that's a
21 concern.

22 But, but with the language that I read I feel like I
23 have no choice. But that's where I say a policy call is
24 needed, and that's from the policymakers, the Legislature. And
25 perhaps we may want to as a Commission bring that up as a

1 concern of ours and let them have to handle that. Because now
2 it's out of our hands as far as quality of service if it's out
3 of what we regulate.

4 But to the point, Mr. Cooke, that Commissioner Skop
5 makes about them being released, there's nothing expressly
6 stated the other way either that says that once you're, you
7 know -- and the legislative process intent means a lot, and the
8 intent, I think, has been expressed here many times. I'm not
9 sure it means the same thing here at the Commission. That it's
10 understood that if there is no service at some point, to me it
11 goes back to ground one. And I'd like to maybe see if that's
12 the case or are we releasing them forever? And that's not the
13 intent here, at least not my intent.

14 MR. COOKE: I think what Commissioner Skop is
15 focusing on is the fact that in the automatic provisions there
16 is express language that says they have to go back in if those
17 circumstances change; whereas, in the good cause it doesn't
18 have that language. So it creates an issue of statutory
19 interpretation that suggests that if the Legislature wanted
20 them to go back in afterwards, they would have said that in the
21 good cause provision. But I also think we have a reasonable
22 argument otherwise. I think the bottom line is, however,
23 again, subject to administrative finality, we are basing this
24 decision on the facts that were raised during the course of
25 this proceeding.

1 COMMISSIONER ARGENZIANO: Exactly.

2 MR. COOKE: And if those circumstances change, I
3 believe we have, subject to administrative finality, the
4 ability to go back and revisit and order those issued by this
5 Commission where there's been a material change and where the
6 interest of the public is such that it rises to the level where
7 we need to revisit what we've done before. It's not -- I can't
8 guarantee that we'd be able to win that case, but we'd
9 certainly have a good argument, I believe.

10 CHAIRMAN EDGAR: Commissioner Carter.

11 COMMISSIONER CARTER: Thank you, Madam Chairman.

12 I was just saying for the sake of consistency all of
13 the other provisions have, all the other parameters of the
14 statute have that provision in it. And with us finding good
15 cause, it would be symmetry for us to put that same provision
16 in our finding. Do you understand what I'm saying?

17 MR. COOKE: I think you're asking whether we could
18 put that in our order, and I believe we could perhaps craft
19 language that says that. Yes.

20 COMMISSIONER CARTER: Thank you.

21 CHAIRMAN EDGAR: Commissioner Skop.

22 COMMISSIONER SKOP: Thank you, Madam Chair.

23 And, Commissioner Carter, again, that's, that's an
24 excellent point because that's one that I raised with staff on
25 similar provisions. And, again, I'm equally torn because I

1 think Commissioner Argenziano has raised a good point about
2 legislative intent. I think Chairman Edgar has raised an
3 excellent point about not only is there one alternate service
4 provider but there is wireless. So, again, the consumers at
5 least in the near term are well protected.

6 Where I'm a little bit torn, and this is, again, a
7 very, very sticky situation for all practical purposes that
8 we're faced with dealing with, but where I'm torn by this is
9 granting relief and letting someone completely off the hook
10 under the statute, the express provision versus the
11 administrative finality and the ability to go back in and
12 review things under extraordinary circumstances, which I think
13 is under the Richter case or referenced in the Richter case
14 that we had brought up before.

15 But I'm equally torn by Commissioner Argenziano's
16 correct assertion that if circumstances change, if Comcast
17 pulls out of the voice part only, then we're back in a current
18 COLR situation. And then there are some underlying
19 circumstances that still seem to suggest that this is somewhat
20 inherently unfair under the agreements. So, you know, I'm
21 equally torn between protecting the consumer and not forcing
22 somebody to go back in a situation which for all practical
23 purposes may be viewed as anticompetitive. So, again, it's a
24 very tenuous position that we're in here. Because, again, I
25 respect the statute, I respect that there is no express

1 language, I respect the argument that there is some implicit
2 authority, there is administrative finality where the
3 Commission has the authority to amend final orders under
4 extraordinary circumstances. But, again, I'm just trying to
5 find the best solution as to what's fair. And I think each of
6 my colleagues have raised some excellent points here and
7 excellent concerns.

8 And I do think that we could, as Commissioner Carter
9 suggested and the staff has probably suggested, import some of
10 the requirements from the, the express provisions into the
11 order, and I think that that would put everything on an equal
12 playing field. But, again, the overarching concern is is that
13 still ultimately fair under the totality of the circumstances,
14 and do we need some legislative change, and will COLR even be
15 around because there is a sunset provision in a couple of
16 years? So, again, those are all factors to consider. And I
17 think I've said enough, but I think this has been a good, good
18 open discussion.

19 CHAIRMAN EDGAR: Thank you. Commissioner McMurrin,
20 did you have some comments?

21 COMMISSIONER McMURRIAN: I guess I had a question
22 about that. Are we talking about -- if we're at the point
23 where we're talking about possibly what to put in the order,
24 assuming we're going down the road that I think we're going
25 down, but are we talking about putting some kind of conditions

1 in the order or are we talking about just some kind of
2 statement as to what our understanding is that to the extent
3 circumstances change, some affected party, whoever that might
4 be, might be able to come back and try to make a case with us
5 or we might be able to raise it ourselves if we thought --
6 again, I really think this is sort of a farfetched thing. I
7 really think, as the Chairman pointed out, that you've got
8 wireless providers. I think you've also -- there's evidence in
9 the record about over the top VoIP providers. So to the extent
10 Comcast, for instance, stays in with their data product, I
11 think you're still going to have the ability to have some kind
12 of VoIP provider over that data product. So I think there's
13 going to remain several options even if Comcast were to pull
14 out of their voice.

15 But that said, what kind of language are we talking
16 about putting in there? Because I would be more comfortable
17 with some kind of general statement but not conditions, I
18 guess. I think we're going to have a hard time coming up with
19 conditions, not knowing what we're going to see in the future.

20 MR. COOKE: Commissioner, I think we're talking about
21 something more generic. And basically what we would do is
22 restate what our understanding of our authority is anyway
23 subject to administrative finality. And staff actually has
24 come up with some possible language which I could read to you,
25 if you want to listen to that.

1 CHAIRMAN EDGAR: Absolutely.

2 MR. COOKE: Okay. "If the PSC believes material
3 changes in the facts and circumstances have occurred such that
4 the waiver is not in the public interest, the PSC may reinstate
5 AT&T's COLR obligation."

6 COMMISSIONER CARTER: I like it. It's -- excuse me.

7 CHAIRMAN EDGAR: Commissioner Carter.

8 COMMISSIONER CARTER: I think it answers our concern
9 and that what we're doing is we're making a finding based upon
10 good cause, and this is a statement based upon our finding.
11 And I think that it's general enough to where we can say the
12 basis for that. It's not so specific where we've got to drill
13 down and say if this, if that, if this. It gives us the
14 authority. Because this is an area that the Commission has
15 discretion in. So as we exercise our discretion, this gives us
16 a basis for that. So I think that the language is, is, is
17 great in its symmetry and simplicity. I think that's what we
18 need for that.

19 CHAIRMAN EDGAR: Thank you, Commissioner Carter.
20 And, Mr. Cooke, the last part of that statement that you just
21 shared with us was basically if circumstances change, then the
22 Commission may reinstate COLR obligation. Did I get that
23 right?

24 MR. COOKE: Correct.

25 CHAIRMAN EDGAR: Okay.

1 Commissioner Skop.

2 COMMISSIONER SKOP: Thank you, Madam Chair.

3 And, again, I think Mr. Cooke's suggestion is, is
4 very well-taken and very appropriate. I would just also ask
5 that any order, depending upon which way we go, and, again, I
6 think we'll get there in a second, reflect a finding if we were
7 to determine good cause was based on the totality of the
8 circumstances and limited to this specific fact pattern.
9 Because, again, I don't think there's a blanket statement, I
10 don't think it should be misconstrued to apply to any
11 situation. But, again, I think that this, this particular fact
12 pattern -- and, again, these cases are very, very fact
13 intensive and specific -- lends itself well to a determination
14 based on the specific facts of this case alone.

15 So, Madam Chair, at the appropriate time I would like
16 to make a motion to basically grant AT&T's petition to be
17 relieved of its COLR obligation, subject to the limiting
18 language that Mr. Cooke has mentioned.

19 COMMISSIONER CARTER: Second. Oh.

20 CHAIRMAN EDGAR: You got a little bit ahead of me.

21 COMMISSIONER CARTER: I'll hold off. Just hold that
22 second in abeyance.

23 (Laughter.)

24 CHAIRMAN EDGAR: The phrase "at the appropriate
25 time." And I just -- I'm -- we can move ahead, but

1 Commissioner McMurrin had asked for the opportunity to make
2 some comments, I think, before we got to that point and I
3 didn't want to blow right by that. So, Commissioner, would you
4 like to take advantage of that opportunity?

5 COMMISSIONER McMURRIAN: Sure. Although I think they
6 got ahead of me too, so it doesn't seem as important now, I
7 guess.

8 I am in agreement with the motion. Obviously we've
9 talked about this a lot in the past and y'all have seen me
10 struggle with I think we're close, not quite sure. I think
11 that I've finally satisfied myself that we can stabilize this
12 moving target some. I think that the stakeholders are in need
13 of some reasonable degree of certainty on these issues and I
14 think we're at that point, and it seems like some of you agree
15 with me.

16 But I did want to say as an aside, to me it's
17 unfortunate we're even having to decide the case. And maybe I
18 don't need to say this, but I'm going to say it anyway. I
19 don't think either ILECs or cable companies should be
20 restricted from providing voice, video or data to residents.
21 And I understand that developers have that right to contract
22 with either or both of them for some of these services, and I
23 understand what the developers are trying to go for. They want
24 the best panoply of voice, video and data services to their
25 homes, to make their homes more attractive to buyers, and

1 possibly the ability to get financial incentives for those.

2 But it seems to me that when one of them succeeds in
3 providing all three services or when the developer grants both
4 parties competitive access, we wouldn't see any of these
5 parties here. They wouldn't be bringing this to us. But in
6 this case we don't have competitive, let the best man win
7 access. And while it's the developer's right, as I said
8 before, to prohibit that, I think we should also recognize that
9 it's a problem of the developer's own making is the way I see
10 it. I would just prefer that the individual residents be
11 allowed to choose which service provider they prefer, and I
12 think a lot of people have said that. But, again, we are where
13 we are. We have this petition before us and we have an
14 obligation to decide it.

15 And I want to talk a little bit about good cause for
16 that reason. I know there were -- I know in the staff rec the
17 staff went through how AT&T saw good cause, and I think that I
18 agree with those criteria that they've laid out. I wanted to
19 state sort of how I saw it a little bit more simply, and I
20 don't know if it helps or hurts or -- but essentially when I
21 was -- I've been struggling with trying to come up with what I
22 think to be good cause and then trying to hold these petitions
23 up to that standard, and what I've come up with is essentially,
24 one, that the petitioning ILEC must demonstrate the presence of
25 at least one alternative voice or voice replacement provider

1 with the ability to provide service to residents. And I think
2 here, of course, we've had that. We've talked about that
3 already. As Commissioner Carter said, we do have a
4 replacement, voice replacement service available with Comcast
5 digital voice. And as the Chairman pointed out, there are
6 cellular providers, and also on the record there was discussion
7 about over the top VoIP providers such as Vonage, and so I
8 think we've satisfied that.

9 And then number two would be the uneconomic finding.
10 And to me in that we have to recognize that we must necessarily
11 deal with estimates, and I think that's what's been tough for
12 us all. But it is what it is. The only way to really know
13 what the numbers are is to have AT&T go and invest the
14 facilities and see how many customers take them up on it. And
15 I just don't -- we're not in a position to do that or else the
16 Legislature wouldn't have put this good cause in place. It was
17 to determine it on the front end.

18 So, again, my number two would be recognizing that we
19 must necessarily deal with estimates, the petitioning ILEC must
20 demonstrate that its provision of telephone service to the
21 development would be uneconomic, and in my opinion they have
22 demonstrated that as well. So I agree with the motion and the
23 second, and would support a finding for AT&T that they have met
24 the good cause and should be relieved of the COLR, COLR
25 obligation.

1 Thank you, Chairman.

2 CHAIRMAN EDGAR: Thank you.

3 Commissioners, any additional comments before we move
4 into a motion and a vote?

5 Commissioner Skop.

6 COMMISSIONER SKOP: Thank you, Madam Chair.

7 And I'd like to thank Commissioner McMurrin for her
8 comments because some of those were right along the lines of
9 what I was thinking but had failed to say.

10 Again, I think those are two great factors to
11 consider with respect to granting relief for good cause. I
12 don't, I don't necessarily know whether they should be
13 dispositive. Again, I think that it should be based on a
14 specific fact pattern and at the discretion of the Commission.
15 But I also don't believe -- again, the line of what
16 Commissioner McMurrin mentioned, that it's unfortunate that
17 we're being called upon to decide this case because I don't
18 believe the statutory provision, I think Commissioner Carter
19 has mentioned this in the past, but I don't believe the
20 statutory provision should be hijacked to obtain a strategic
21 competitive advantage in the field. That's kind of what's
22 going on here.

23 So, again, if it's appropriate, Madam Chair, I would
24 like to make the motion to approve AT&T's request to be
25 relieved from its COLR obligation, subject to the limiting

1 language that Mr. Cooke had mentioned. And, Mr. Cooke, would
2 it be appropriate to read that additional language again?

3 MR. COOKE: Happy to. And staff did a good job
4 coming up with this.

5 "If the PSC believes material changes in the facts
6 and circumstances have occurred such that the waiver is not in
7 the public interest, the PSC may reinstate AT&T's COLR
8 obligation."

9 CHAIRMAN EDGAR: Thank you.

10 Okay. Commissioner Skop has given us a motion to
11 address, and I'll -- given us a motion as an alternative to the
12 recommendation from staff on Issue 1a.

13 COMMISSIONER CARTER: Second.

14 CHAIRMAN EDGAR: Commissioner Carter has offered a
15 second. Commissioner Carter seconds. Is there discussion?

16 Commissioner McMurrin.

17 COMMISSIONER McMURRIAN: As I'm just thinking about
18 what, what our general counsel just said, I just wondered if,
19 and I just throw this out, instead of saying "believes," change
20 it to "finds." I mean, it seems like to me before we obligate
21 them to be the COLR again we would need to have a finding.

22 MR. COOKE: I'd be comfortable with that. We'd have
23 to do some sort of proceeding before we could make this change
24 and reimpose the obligation.

25 COMMISSIONER McMURRIAN: So I offer that as a

1 friendly amendment.

2 CHAIRMAN EDGAR: Commissioner Skop.

3 COMMISSIONER SKOP: Thank you, Madam Chair. And I
4 accept that as a friendly amendment.

5 CHAIRMAN EDGAR: And Commissioner Carter nods in the
6 affirmative. And, Commissioner McMurrin, I think that's a
7 good catch. I appreciate that.

8 Okay. So all in favor of the motion, say aye.

9 (Unanimous affirmative vote.)

10 Opposed? Show it adopted.

11 And then I'll look to staff, but that would make
12 Issue 1b moot. And then we would need a motion to -- do we
13 close the docket? A motion to close the docket.

14 COMMISSIONER CARTER: So move.

15 COMMISSIONER SKOP: Second.

16 CHAIRMAN EDGAR: All in favor, say aye.

17 (Unanimous affirmative vote.)

18 Show it adopted. Thank you.

19 (Agenda Item 5 concluded at 10:38 a.m.)

20

21

22

23

24

25

1 STATE OF FLORIDA)
 :
 2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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

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

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

DATED THIS 15th day of October, 2007.

Linda Boles

 LINDA BOLES, RPR, CRR
 FPSC Official Commission Reporter
 (850) 413-6734