Dulaney L. O'Roark III
Vice President & General Counsel, Southeast Region
Legal Department

Six Concourse Parkway
Atlanta, Georgia 30328

Phone: 770-284-5498
Fax: 770-284-5488
de.oroark@verizon.com

October 5, 2006 – **VIA ELECTRONIC MAIL**

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 060554-TL
Proposed adoption of Rule 25-4.084, F.A.C., Carrier-of-Last-Resort; Multitenant Business and Residential Properties

Dear Ms. Bayo:

Enclosed are the Post-Workshop Comments of Verizon Florida Inc. for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 770-284-5498.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were sent via U.S. mail on October 5, 2006 to the parties on the attached list.

s/ Dulaney L. O'Roark III

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Abel Law Firm
William P. Cox
P. O. Box 49948
Sarasota, FL 34230-6948

AIMCO Property Asset Mgmt
Steven D. Ira
3504 Lake Lynda Drive
Suite 100
Orlando, FL 32817

Akerman Law Firm
Beth Keating
P. O. Box 1877
Tallahassee, FL 32302-1877

Bay Area Apt. Assoc.
Jeff Rogo
6107-B Memorial Hwy.
Tampa, FL 33615

Becker & Poliakoff
Donna D. Berger
3111 Stirling Road
Ft. Lauderdale, FL 33312

BOMA/Greater Tampa Bay
Nena Gang
4509 George Road
Tampa, FL 33634

BOMA/Jacksonville
Shanin Clayton
6254 W. Alfredo Drive
Jacksonville, FL 32244

BOMA/Miami-Dade
Carmen Vesga
Two S. Biscayne Blvd.
Suite 0204
Miami, FL 33131

BOMA/Orlando
Allyson Peters
P. O. Box 574163
Orlando, FL 32857-4163

BOMA/South Florida
Melani Schrul
7040 W. Palmetto Park Road
#4-668
Boca Raton, FL 33433

BOMA/Tallahassee
Chris M. Keena
315 S. Calhoun Street
Suite 560
Tallahassee, FL 32301

BOMA Florida
Larry Bodkin
2563 Capital Medical Blvd.
Tallahassee, FL 32308

CB Richard Ellis
Chris Prather
101 E. Kennedy Blvd., #3875
Tampa, FL 33602

Colonial Properties Trust
Bert Locke, Jr. RPA
950 Market Promenade Ave.
Suite 2200
Lake Mary, FL 32746

Comcast
Christopher McDonald
300 W. Pensacola Street
Tallahassee, FL 32301

Florida Apartment Assn.
Jodi Chase
1566 Village Square Blvd.
Suite 2
Tallahassee, FL 32309

Florida Cable Telecom. Assn.
Michael A. Gross
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303

Harrod Properties
Lynn Vilmar
777 S. Harbour Island Blvd.
Tampa, FL 33602

Int'l Council of Shopping Centers
c/o Smith Bryan & Myers
Julie S. Myers
311 E. Park Avenue
Tallahassee, FL 32301

BOMA Florida
Debra K. Mink, RPA
Sunnyvale Building
3081 E. Commercial Blvd.
Ft. Lauderdale, FL 33308

Messer Law Firm
Floyd R. Self
P. O. Box 15579
Tallahassee, FL 32317

Miller Law Firm
Gerard Lavery Lederer
1155 Connecticut Ave. N.W.
Suite 1000
Washington, DC 20036-4320

Pennington Law Firm
Howard E. Adams
P. O. Box 10095
Tallahassee, Fl 32302-2095

Time Warner Telecom of Florida
Carolyn Marek
233 Bramerton Court
Franklin, TN 37069

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed adoption of Rule 25-4.084, F.A.C., Carrier-of-Last-Resort; Multitenant Business and Residential Properties	))))	Docket No. 060554-TL Filed: October 5, 2006

POST-WORKSHOP COMMENTS OF VERIZON FLORIDA INC.

Verizon Florida Inc. ("Verizon") files these comments in compliance with Staff's instructions at the workshop held in this docket on September 14, 2006. For the reasons explained below, Verizon requests that the Commission adopt the version of proposed Rule 25-4.084 being filed today by Verizon, BellSouth Telecommunications, Inc. and Embarq Florida, Inc. (the "Local Carriers").

A. Background

Carrier-of-last-resort ("COLR") obligations were established decades ago when telephone exchange carriers were granted exclusive local territories and faced little or no competition. Then, the only way for a customer to get telephone service was to order it from the local carrier serving the territory where the customer lived or worked. If the local telephone company failed or refused to provide service to a customer in a previously unserved or high cost location, the customer would likely not have access to an alternative provider and would be left without any telephone service. Because local exchange carriers usually were the only game in town, however, they could spread the cost of serving high cost areas over their entire rate bases, increasing prices in profitable areas to cover costs in unprofitable ones. The COLR obligation thus made good sense and served the purpose of ensuring that customers had access to a

telecommunications service provider even if the customer requested service in an area that could only be served at a loss.

Times have changed. Today local exchange carriers no longer have state-protected exclusive franchises that enable them to cross-subsidize service to unprofitable locations. Instead, they must compete with a host of industry players, from cable companies to wireless carriers to broadband providers and more – all of whom are pushing the real price of telephone service down and eliminating the ability of traditional incumbents to charge some customers extra in order to support unprofitable service to others. The Local Carriers today are jointly filing in this docket the July 2006 report entitled "Intermodal Competition in Florida Telecommunications" ("Intermodal Competition Report") prepared by NERA Consulting, which explains the fundamental changes that have taken place in the Florida telecommunications market. As explained in the report, the exponential increase in competition Florida has experienced in recent years comes from many sources:

- Cable companies have deployed broadband facilities to 98 percent of their homes passed and 93 percent of the total households in Florida. Cable telephony is available to 63 percent of cable homes passed and 60 percent of total households in the State. Verizon's largest competitor, Bright House, for example, has broadband available to 100% of its homes passed and telephone service available to 99.1%.[1]
- Wireless carriers compete throughout the state. At least two wireless carriers are available to 99 percent of households in

[1] Intermodal Competition Report, pp. 3, 24.

Florida, and 99.9 percent of them have at least one wireless carrier available. The number of wireless subscribers in Florida has increased from 6.4 million in 2000 to 13.2 million in 2004. By December 2004, wireless subscribers exceeded traditional lines by almost 2 million.[2]

- Broadband providers are competing throughout the state. Every Zip Code area has at least two broadband providers with lines in service and 96 percent of Zip Codes have four or more broadband providers.[3] Once customers have broadband, they may obtain voice service from a Voice over Internet Protocol ("VoIP") provider, yet another alternative to traditional wireline service.
- Emerging technologies like Wi-Fi and WiMax will intensify the intermodal competition Florida is already experiencing. Wi-Fi is widely available in Florida, with more than 2,600 hot spots already in place, and continuing to grow.[4] WiMax, which can provide wireless broadband connections at very high speeds to an entire city, also is being rolled out in Florida and, given its capabilities, could grow to challenge established wireline DSL and cable modem services.[5]

The success of these competitive alternatives to traditional wireline services is borne out by the decline in traditional access lines that Florida has experienced, both in

[2] *Id.* at 3, 46.
[3] *Id.* at 3.
[4] *Id.* at 59.
[5] *Id.* at 65-69.

absolute and relative terms. Since 2001, the number of residential wireline access lines in Florida has decreased by 1 million lines.[6] But even this large drop fails to tell the whole story, because the decline occurred during a time when the Florida population continued to grow and the demand for telecommunications services was increasing. When that growth is taken into account, the effective access line loss has been closer to 2.5 million lines over this period.[7] This decrease is a direct result of competitors' gains. By the end of 2000, there were about 3.4 million more residential and small business (mass market) wireline access lines than total wireless subscribers and mass market high-speed broadband lines.[8] Just two years later, the balance had swung in favor of wireless subscribers and mass market high-speed broadband lines, which exceeded mass market access lines by 1.3 million.[9] By 2004 that difference had increased to 7 million.[10]

The Commission should take these dramatic and continuing changes into account when determining when, if ever, COLR obligations should apply in the new telecommunications marketplace. The prior assumptions underlying the old COLR policy are no longer valid. Long past are the days when the incumbent wireline carrier was a customer's only hope of securing telephone service. Florida customers today – and particularly those living or working in multitenant business or residential properties – typically have many types of providers competing for their business, and do not have to worry about enticing a provider to serve them. The corollary is that traditional wireline carriers are no longer free from market rate pressure and therefore cannot simply

[6] *Id.* at 3.
[7] *Id.*
[8] *Id.* at 2.
[9] *Id.*
[10] *Id.* at 3.

absorb uneconomic service costs and spread them over their rate bases. When a carrier raises prices it now risks losing customers, so price increases cannot be lightly undertaken. In short, market conditions today eliminate the need to force a carrier to make uneconomic investments to serve customers, because the customers already have other sources for their telephone service.

B. The New COLR Statute

This year the Florida legislature recognized that it was time to begin changing the old COLR regime. Florida law now provides that when an owner or developer of a multitenant business or residential property enters into one of four specified exclusive dealing arrangements for voice or voice replacement service, the COLR obligation is automatically waived.[11] The new COLR statute[12] ("COLR Statute") also recognizes that there can be other situations when it would not make sense to require the putative carrier of last resort to provide service, and accordingly permits a carrier to "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."[13] The legislature directed the Commission to implement this provision through rulemaking.[14] Verizon respectfully submits that in discharging that duty, the Commission should establish rules that take into account the new telecommunications environment that spurred the legislature to act.

[11] Fl. Stat. § 364.025(6)(b)(4).
[12] *Id.* § 364.025(6).
[13] *Id.* § 364.025(6)(d).
[14] *Id.*

The Commission should reject the clearly erroneous interpretation of the COLR Statute by the Florida Real Access Alliance ("FRAA"), which would read the "good cause" provision out of the statute. FRAA points to House Bill 817, which included a provision that would have granted relief from COLR obligations automatically when a property owner restricted (by agreement with a communications provider or otherwise) the types of service that might by offered by an eligible telecommunications carrier ("ETC"). FRAA argues that because this provision was not included in the final version of the COLR Statute, the only justification for COLR relief arises when an owner or developer denies the ETC physical access to the property or requires that tenants prepay for basic telephone service provided by another carrier.[15] This reading of the legislative history makes no sense. Had the legislature intended to preclude carriers from securing COLR relief in situations other than the four where relief is automatic, it would not have authorized carriers to petition the Commission for COLR relief in other circumstances when good cause exists. The Commission should decline the FRAA's invitation to misinterpret the statute. Instead, as discussed below, the Commission should provide guidance to the industry by describing factors it will consider when determining whether good cause exists, and specifying circumstances when good cause will be presumed.

C. Proposed Revisions to Staff's Draft of Rule 25-4.084

The revised version of Proposed Rule 25-4.084 ("Proposed Revision") being filed today by the Local Carriers includes the draft subsections previously circulated by Staff, with minor proposed revisions, and adds subsections designed to provide the industry

[15] *See* Comments of FRAA, pp. i, 6-10.

with guidance concerning how the good cause provision of the COLR Statute will be implemented. The subsections addressing procedure, factors to be considered in determining good cause, information to be provided to the LEC by the owner or developer on request, circumstances giving rise to a presumption of good cause, and the effect of a finding of good cause, are discussed below.

1. Procedural provisions: Subsections (1)-(4), (6) and (14)

The Proposed Revision includes subsections (1)-(3) from Staff's proposal, which address the requirements that a LEC seeking to be relieved of its COLR obligations must file a petition with the Commission; that the petition must only concern a single development; and that certain information must be included in the petition. The Proposed Revision makes minor editorial changes to these subsections and modifies subsection (1) so that it permits service by overnight mail. In addition, the Local Carriers have proposed adding subsection (4) that would state the requirements for comments in opposition to a petition that mirror the requirements for petitions. The Local Carriers also propose subsection (6) that would permit a petition to include a request for expedited consideration, which, if granted, would require a decision within 30 days from the filing of the petition. The Local Carriers propose subsection (6) because the ability to obtain expedited treatment can be critical when "go-no go" network construction decisions must be made on short notice. In those circumstances, if the local carrier does not know whether it must provide service, it must choose between commencing uneconomic construction or waiting for a decision and risking possible failure to meet its COLR obligations on time if it receives an adverse ruling.

Finally, subsection (14) simply notes that the terms used in the rule will have the same meanings as set forth in the statute.

2. Factors to be considered in determining good cause: Subsection (5)

Subsection (5) sets out a nonexclusive list of factors that the Commission may consider in determining whether good cause exists to grant relief from a carrier's COLR obligations. Factors that may be considered include whether the owner or developer has entered into an agreement with another communications service provider[16] and the effect that agreement has on the LEC's provision of service; whether the owner or developer has an agreement with another provider of data, video or other services, and its effect on the LEC's provision of service; and whether residents, tenants or occupants have access to communications service (voice or a voice replacement service such as VoIP) from another provider. Because the public policy underlying COLR obligations fundamentally concerns customers' access to telephone service, these factors are important in determining whether good cause exists to grant relief from those obligations. The Commission could, of course, consider other factors raised by the parties in reaching its decisions.

[16] The COLR Statute defines "communications service" as "voice service or voice replacement service through the use of any technology." Fl. Stat. § 364.025(6)(a)3. A "communications service provider" is defined to mean "any person or entity providing communications services, any person or entity allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer." Id. § 364.025(6)(a)2.

3. Information to be provided by owners and developers: Subsections (7), (8) and (11)

Subsection (7) recognizes that a LEC requires information to determine whether it has a COLR obligation or whether it has grounds for automatic relief or relief that can be granted for good cause shown. By establishing a vehicle for obtaining such information, subsection (7) provides the LEC with the information necessary to ensure the COLR Statute is properly enforced. Without that information, LECs may be left not knowing whether they are entitled to automatic relief or have grounds to request relief based on good cause. Further, subsection (7) should reduce the number of petitions that are filed because the LEC does not have access to all the relevant data. Information that a LEC may request includes the date customers will first require service at the property; whether any of the circumstances triggering automatic relief are present; information about agreements the owner or developer has entered into or plans to enter into with other providers and the identity of the providers; whether those providers will be arranging for other parties to offer communications service; and whether the owner or developer intends to exclude the LEC from providing any services at the property. Subsection (8) makes clear that the information to be provided shall not include confidential financial terms of agreements owners and developers have entered into with other providers. The information is required to be provided with the notarized certificate described in subsection (11) to ensure the accuracy of the information.

4. Facts giving rise to a rebuttable presumption of good cause: Subsections (9), (10) and (12)

In implementing the statute, the Commission should give meaning to the term "good cause" that is consistent with the COLR policy. It should identify situations that, if alleged and not rebutted, give rise to COLR relief without further inquiry. Subsection (9) lists three such situations: (a) when no opposing comments are filed (or they fail to meet the minimal requirements of subsection (4)); (b) when the petition alleges facts demonstrating that the owner or developer has entered into an agreement with another provider and that provider will be offering or arranging for another provider to offer communications service at the property; and (c) when the owner or developer fails to provide a timely response to the LEC's request for information under subsection (7). In each case, the presumption is amply justified.

Obviously, if no party responds to a petition for COLR relief, it may be reasonably be assumed that no one opposes the request and that the petition should be granted. The presumption is rebuttable as provided in subsection (12), so a party could request that good cause not be presumed because, for example, the facts alleged regarding service of the petition are not accurate.

If the owner or developer has entered into or plans to enter into an agreement with another service provider who will provide (or arrange with a third party to provide) communications service at the property, the Commission can be satisfied that the residents, tenants or occupants have access to voice or voice replacement service. The basis for the COLR obligation – lack of access to telephone service – will have disappeared and there will be no justification for forcing the LEC to undertake wasteful and uneconomic construction to serve the property. Again, however, the presumption

can be rebutted under subsection (12) if the owner or developer alleges facts that contradict the core allegations in the petition concerning the nature of the arrangement between the owner or developer and the service provider.

A presumption also would arise if the owner or developer fails to provide the information requested under subsection (7) within the required time.[17] This presumption is reasonable because if the owner or developer refuses to provide the specified information, the strong likelihood is that the information would support COLR relief. Moreover, the owner or developer should be given an incentive to cooperate with the LEC so the LEC does not have to decide whether to proceed with a wasteful project without the necessary facts concerning its COLR obligations and rights to relief. If the owner or developer believes the facts alleged in connection with the information request are inaccurate, under subsection (12) it may attempt to rebut this presumption.

5. Effect of grant of COLR relief: Subsection (13)

Subsection (13) provides that if the LEC receives COLR relief, it also shall be relieved of any obligations that flow from the COLR obligation with respect to the property in question, including obligations that otherwise would arise under Rules 25-4.066 (concerning new service installation) and 25-4.067 (concerning extensions of facilities). This provision makes explicit the logical consequences of granting COLR relief.

[17] The information must be provided within 20 days of the request or within the time required by subsection (10), which allows the owner or developer to state the date customers will first require service and otherwise respond that it does not yet have the requested information, in which case the owner or developer must provide the information within a reasonable time after receiving it and the LEC must receive the information no later than 240 days before the stated service start date.

For the foregoing reasons, Verizon respectfully requests that the Commission adopt the Proposed Revision.

Respectfully submitted on October 5, 2006.

By: s/ Dulaney L. O'Roark III
Dulaney L. O'Roark III
6 Concourse Parkway, Suite 600
Atlanta, Georgia 30328
Phone: (770) 284-5498
Fax: (770) 284-5488
Email: de.oroark@verizon.com

Attorney for Verizon Florida Inc.