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February 22, 2007

VIA ELECTRONIC MAIL

Beth Salak, Director
Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Docket No. 060732-TL - In the Matter of: Complaint Regarding BellSouth Telecommunications, Inc.'s Failure to Provide Service On Request In Accordance with Section 364.025(1), F.S., and Rule 25-4.091(1), F.A.C. by Lennar Homes, Inc.

Dear Ms. Salak:

In response to your request for a brief position paper addressing Lennar's policy perspective on whether information on data or video agreements should be included in BellSouth Telecommunications, Inc. d/b/a AT&T Florida's (BellSouth) COLR letters to developers, we provide the following response.

At the outset, we acknowledge that Staff has expressed a desire to consider the policy aspects of this debate separate and apart from the legal arguments. However, Lennar believes very strongly that it is nearly impossible to bifurcate the policy aspects of this issue from the legal aspects. From our perspective, Section 364.025, F.S., is clear and thus not open to interpretation. The only legitimate bases for relief from the COLR obligation are tied to direct impediments in the ILEC's ability to provide voice service. Consequently, no letter that is intended to elicit information that could be used to establish the basis for relief from the COLR obligation should include demands for information that cannot be considered in the context of a request for COLR relief.

The problem here is that, in previous versions of the BellSouth developer letters, BellSouth has demanded information in the context of its COLR letter that Lennar, as well as

other developers, believe cannot be considered in the context of a Commission determination on COLR relief, and has also unduly delayed seeking waivers in certain instances pending receipt of such information. By including demands for such information in a letter that also clearly says BellSouth will not provide service until it receives the information, BellSouth places developers in the untenable position of either: (1) providing BellSouth with information that could give BellSouth an unfair competitive advantage over providers of other services; or (2) seeking telecommunications service from another provider.

Any references to video and data contract information in the context of the COLR letter will certainly create the perception that the developer must provide that information or risk BellSouth declining to provide service to a development of its own accord. In spite of the fact that there is no support whatsoever in the language of the law for BellSouth to avoid serving a property based upon agreements for cable services, data services, or marketing services, customers do want to have access to BellSouth service, so it should not be surprising that developers will feel substantial pressure to provide the information demanded by BellSouth even at the expense of their own bargaining positions and at the risk of limiting other competitive service options in developments.

While service agreements with data or cable services providers may impact the package of services that BellSouth offers at a property and the types of facilities BellSouth elects to install at a property, such agreements certainly would not physically or legally impair BellSouth's ability to provision communications services, which was clearly the Legislature's only concern when it passed the COLR relief language in SB 142. Thus, BellSouth does not need this information, as it seems to indicate, for purposes of deciding whether to file a Petition for Waiver of its COLR obligation. Nevertheless, to be clear, Lennar does not necessarily object to BellSouth requesting such information in the appropriate context. It is possible that such information may be helpful for network planning purposes, and could be legitimately requested through a properly structured letter to a developer. However, such requests should not give any indication that service will not be provided if the information is not provided, and should not be couched in terms that create the perception that such information could provide the basis for BellSouth to decline to serve of its own accord. At a minimum, such requests should be entirely separate and apart from any COLR letter.

We appreciate that BellSouth has been willing to consider the feasibility of a two-letter approach, but in reviewing recent drafts, we still have concerns that the wording of the letters negates the underlying purpose of having two letters. Lennar believes that a COLR letter should be just that—a letter specifically designed to determine whether any conditions exist at a property that would automatically relieve BellSouth of its obligation to provide voice service. The questions should seek information about situations and arrangements as specifically contemplated by the statute, and nothing more. There should be no linkage to video or data services or marketing arrangements, even in the context of seeking a waiver, because such information is not an appropriate basis for a Section 364.025(6)(d) waiver. Likewise, a properly structured "network planning letter" should be designed to elicit information necessary for

network planning purposes. It should be clear what the information is for, and how it will be used. It should also be clear that the information provided will not be used or disseminated improperly. Such information is generally considered to be proprietary confidential information by Lennar, and we have a significant concern that the release of such information, be it to third parties or BellSouth's retail arm, could unduly impair Lennar's ability to contract for goods and services on a going forward basis, and could also be used by BellSouth to unfairly leverage its position in the market, which could ultimately limit the choices available for Lennar and its customers.

In conclusion, Lennar is concerned that the longer BellSouth is allowed to tie requests for information about cable, video, and data services to letters that pertain to COLR relief, the more likely it is that developers will feel pressured to either provide competitively sensitive information to BellSouth or forego service from BellSouth entirely. Consequently, customers will have fewer options for service, which will impact property values and significantly lessen the benefits of a competitive market environment. In the early stages of any development, developers find themselves standing in the stead of the ultimate consumers, and if BellSouth is allowed to continue this practice, developers will be forced to choose for the consumers. . . to have BellSouth or not to have BellSouth. That decision will alter every other option for communications, data, and video service the residents of that development will have thereafter. That's not what consumers want, its not fair to them, it's not consistent with a competitive market, and it's contrary to the law.

Thank you for this opportunity to present our position, as well as the extensions of time staff has allowed us. Concurrent with our filing of this letter, we are also providing two letters for your consideration that we believe structure the COLR letter and the network planning letter in the most legally appropriate manner. I also should add that we are continuing our discussions with BellSouth on this topic; our filing of this position paper and draft letters should not be interpreted to mean that the parties have reached an impasse.

Sincerely,

Beth Keating

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