

Florida Cable Telecommunications Association

Steve Wilkerson, President

VIA ELECTRONIC DELIVERY

October 5, 2006

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

RE: Docket Nos. 060554 – Post Workshop Comments of the FCTA

Dear Ms. Bayo:

Attached for filing is the Post September 14, 2006 Workshop Comments of the Florida Cable Telecommunications Association, Inc.

Copies have been served upon the parties of record by electronic and U.S. Mail delivery.

Thank you for your assistance in this matter. Please contact me with any questions.

Sincerely,

s/ Michael A. Gross

Michael A. Gross
Vice President, Regulatory Affairs &
Regulatory Counsel

Enclosure

cc: All Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Carrier-of-Last-Resort; Multitenant)
Business and Residential Property;)
Comments and Suggested Changes for Rule)
Development)
_____)

DOCKET NO. 060554-TL

Filed: October 5, 2006

**POST SEPTEMBER 14, 2006 WORKSHOP COMMENTS OF THE
FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC.**

The Florida Cable Telecommunications Association, Inc., (FCTA) files its post September 14, 2006 Workshop Comments on proposed Rule 25-4.084, Florida Administrative Code, to adopt provisions relating to Carrier-of-Last-Resort (COLR) obligations of ILECs with respect to multitenant business and residential property, and states:

BACKGROUND

A Notice of Proposed Rule Development was published in the August 25, 2006, edition of the Florida Administrative Law Weekly. The Notice indicated that its purpose and effect is to codify the requirements for a local exchange company to petition the Commission for relief from its COLR obligations to a multitenant business or residential property. A copy of the Notice of Proposed Rule Development is attached hereto as Exhibit A. The subject area to be addressed is implementation of Section 364.025(6)(d), Florida Statutes. The preliminary text of the proposed Rule 25-4.084 Carrier-of-Last-Resort; Multitenant Business and Residential Property, is incorporated into the Notice attached as Exhibit A. A Rule Development Workshop was held on September 14, 2006.

As part of SB 142, legislation was passed that exempts ILECs from their COLR obligation under certain conditions. The way the statute is structured, there are four

conditions where the ILEC is prevented from providing basic local service in a building or development as a result of an exclusive agreement with another provider of communications service. "Communications service" is defined in the statute as a voice service or a voice replacement service. Section 364.025(6)(a)3. If any of the four conditions exist, the ILEC is automatically exempted from its COLR obligation and is merely required to give the FPSC a notice. Section 364.025(6)(c). If none of the automatic exemptions are applicable, an ILEC may still petition the FPSC and obtain a waiver of COLR for "good cause." Section 364.025(6)(d). This section requires the FPSC to enact rules to implement the good cause waiver provisions, and a rule development workshop was recently held. The FCTA did not oppose this bill, since it seemed pretty straightforward and basically fair.

On December 16, 2005, BellSouth Telecommunications, Inc., (BellSouth) filed a Petition for Wavier of Rules 25-4.066 and 25-4.067, Florida Administrative Code and Petition to Initiate Rulemaking. In the Petition, BellSouth requested the Commission to waive the requirements of 25-4.066 and 25-4.067, Florida Administrative Code, regarding the provision of basic services as a COLR under certain factual situations, and to initiate rulemaking to amend Rules 25-4.066 and 25-4.067, Florida Administrative Code. Section 364.025, Florida Statutes, requires an ILEC to provide basic local telecommunications services within a reasonable time period to any person requesting such service within the company's service territory. Section 364.15, Florida Statutes, authorizes the Commission to order additions or extensions to a telecommunications facility in order to secure adequate service or facilities for telecommunications services. Rules 25-4.066 and 25-4.067 implement the provision of 364.025 and 364.15 as

mentioned above. In its petition, BellSouth enumerated several examples, including alleged situations where BellSouth encountered a property owner who has entered into an exclusive facilities and/or service agreement with another communications provider, such that BellSouth would not be permitted to install its facilities within and/or provide service within or to the development (referred to by BellSouth as a “physical lockout”) and a situation where the property owner entered into a “bulk agreement” with another communications provider (referred to BellSouth as a “economic lockout”). BellSouth withdrew its petition on August 11, 2006.

In an Order adopted October 12, 2000 and released on October 25, 2000, the FCC entered a ruling prohibiting carriers, in commercial settings, from entering into contracts that effectively restrict premises owners or their agent from permitting access to other telecommunications service providers.¹ However, the FCC concluded that in residential markets, by contrast, it did not have enough information in the record to determine whether it should forbid exclusive contracts under some or all circumstances.²

BELLSOUTH IS ONLY EXEMPTED FROM ITS COLR OBLIGATION UNDER SB 142 IF THERE IS AN EXCLUSIVE ARRANGEMENT FOR THE PROVISION OF VOICE SERVICE.

The controversy stems from two sources. The first involves a letter that BellSouth sent to a developer asserting that it would not provide service if the developer struck an exclusive deal with another provider for high-speed Internet or video, while the statute is clear that an exemption will apply only where the exclusive arrangement is for

¹ First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, adopted October 12, 2000, released October 25, 2000, (FCC, ¶¶ 25-27).

² Id.

voice service. The FCTA's concerns about the letter were borne out at the rule development workshop when BellSouth claimed that if an exclusive arrangement is made with a developer or building owner for data and/or video, then BellSouth has a "business case" argument that it can obtain a waiver of COLR under the "good cause" exemption for which the FPSC is currently developing rules. BellSouth's argument is that it would be unprofitable if BellSouth could only offer voice service and nothing else. BellSouth went so far as to claim that an exclusive arrangement for data is sufficient good cause, because the customer can avail itself of computer enabled voice service. In other words, if the customer has data service, BellSouth is excused from providing basic local service

It is notable that HB 817, the precursor to SB 142, defines "communications service" include broadband service, data service, information service, and cable service. The Legislature's omission of video and data service from the definition of communications service in SB 142, which was ultimately passed by the Legislature, clearly establishes the legislative intent to limit exemptions from COLR obligations to situations where there are exclusive arrangements involving voice service only. Moreover, the Commission does not have jurisdiction over video and data service, and therefore, is not authorized to adopt rules affecting these services. Accordingly, the Commission is without authority to adopt rules that would provide a "good cause" COLR exemption for ILECs where a developer or building owner has entered into an exclusive arrangement with a communications service provider for video or data services only.

CONCLUSION

Accordingly, the FCTA objects to BellSouth's "business case scenario" as an example of good cause for waiver of its COLR obligations. Moreover, the FCTA

supports a rule which does not attempt to define specific examples of good cause, but suggests good cause for a waiver of the COLR obligation be determined on a case-by-case basis, except that the rule should be explicit (consistent with the statute) that any COLR exemption based on good cause shall be limited solely to exclusive voice service arrangements.

Respectfully submitted this 4th day of October 2006.

/s Michael A. Gross

Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
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CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing Comments of Florida Cable Telecommunications has been served upon the following parties electronically and by U.S. Mail this 5th day of October 2006.

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/s Michael A. Gross

Michael A. Gross

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060554-TL

IN RE: CARRIER-OF-LAST-RESORT; MULTITENANT BUSINESS
AND RESIDENTIAL PROPERTY

NOTICE OF PROPOSED RULE DEVELOPMENT

TO: ALL INTERESTED PERSONS

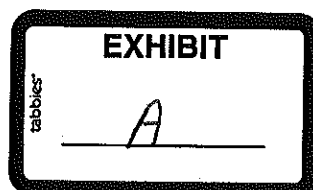
ISSUED: August 17, 2006

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission staff has initiated the development of Rule 25-4.084, Florida Administrative Code, to adopt provisions relating to carrier of last resort; multitenant business and residential property.

The attached Notice of Proposed Rule Development will appear in the August 25, 2006, edition of the Florida Administrative Weekly. A rule development workshop will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., September 14, 2006
Betty Easley Conference Center
Room 140, 4075 Esplanade Way
Tallahassee, Florida

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).



DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

NOTICE OF PROPOSED RULE DEVELOPMENT
DOCKET NO. 060554-TL
PAGE 3

NOTICE OF PROPOSED RULE DEVELOPMENT

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060554-TL

RULE TITLE:

RULE NO.:

Carrier-of-Last-Resort; Multitenant Business and Residential Property

25-4.084

PURPOSE AND EFFECT: To codify the requirements for a local exchange company to petition the Commission for relief of its Carrier-of-Last-Resort (COLR) obligations to a multitenant business or residential property.

SUBJECT AREA TO BE ADDRESSED: Implementation of Section 364.025(6)(d), FS.

SPECIFIC AUTHORITY: 350.127(2) FS

LAW IMPLEMENTED: 364.025 FS

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 a.m., September 14, 2006

PLACE: Betty Easley Conference Center, Room 140, 4075 Esplanade Way, Tallahassee, Florida

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

(d) The specific facts and circumstances that demonstrate "good cause" for the waiver as required by Section 364.025(6)(d);

(e) A statement that interested persons have 10 calendar days from the date the petition is filed with the Commission to file comments to the Commission, unless the tenth day falls on a Saturday, Sunday, or holiday, in which case the comments must be filed no later than the following working day; and

(f) A statement certifying that delivery of the petition has been made on the relevant owners or developers.

Specific Authority 350.127(2) FS. Law Implemented 364.025.

History--New