

ORIGINAL

DOCKET NO. 070126-TL Villages of Avalon, Phase II

WITNESS: Direct Testimony Of Sally A. Simmons, Appearing On Behalf Of Staff

DATE FILED: August 10, 2007

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ORIGINAL

DIRECT TESTIMONY OF SALLY A. SIMMONS

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Q. Please state your name and work address.

A. My name is Sally A. Simmons, and my address is 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

Q. By whom are you employed and in what capacity?

A. I am employed by the Florida Public Service Commission as Bureau Chief of Telecommunications Arbitrations and Tariffs, in the Division of Competitive Markets and Enforcement.

Q. What are your current responsibilities as Bureau Chief of Telecommunications Arbitrations and Tariffs?

A. I presently supervise 12 employees, either directly or indirectly. Eight of these employees are engaged primarily in resolving formal disputes between competing telecommunications service providers. These proceedings typically take the form of (1) arbitrating issues which two carriers could not resolve in negotiating an interconnection agreement, (2) resolving issues of contract interpretation or alleged breach of contract which arose between the parties subsequent to the signing of an interconnection agreement, and (3) establishing generic policy for common issues related to the development of local competition in Florida. The four remaining employees handle the administrative processing of negotiated and adopted interconnection agreements, certain supporting functions for the bureau and division, and the administrative processing of tariff and price list filings made by incumbent local exchange companies (ILECs), interexchange companies (IXCs), and competitive local exchange companies (CLECs).

Q. Please summarize your educational and professional background and highlight your experience which is particularly relevant to this proceeding.

A. I have Bachelors and Masters degrees in Economics from Virginia Polytechnic Institute and State University (Virginia Tech). My professional experience includes 16 years on the headquarters'

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1 staff of the Chesapeake & Potomac Telephone Companies, American Telephone & Telegraph
2 Company (legacy AT&T), and the Bell Atlantic Corporation, in which I held positions of increasing
3 responsibility in rate planning, forecasting, and product line management. I was appointed a District
4 Staff Manager for Bell Atlantic in 1984 and worked in various product line management positions at
5 this level through 1989. Of particular relevance to my testimony in this docket is that during 1986
6 and 1987, I served as the business planning and capital budgeting liaison for the product line
7 management department, covering the former Chesapeake & Potomac Telephone Company entities
8 (Maryland, Washington, D.C., Virginia, and West Virginia). During 1988 and 1989, I served as the
9 capital budgeting liaison for the product line management department for the entire Bell Atlantic
10 region (New Jersey, Pennsylvania, Delaware, Maryland, Washington, D.C., Virginia and West
11 Virginia). As the capital budgeting liaison, I became very familiar with Bell Atlantic's capital
12 budgeting processes and was responsible for presenting all capital-dependent product line
13 management initiatives and negotiating associated funding.

14 Since 1991, I have been employed by the Florida Public Service Commission in my existing
15 division and its predecessor names and configurations, first as a Regulatory Analyst Supervisor, then
16 as a Public Utilities Supervisor, and finally as a Bureau Chief since 1995. The sections and bureaus
17 under my supervision have been heavily involved in directing proceedings designed to implement and
18 encourage development of local competition in Florida.

19 Q. Have you previously testified before regulatory agencies?

20 A. Yes. I have testified on the Commission's behalf with respect to two rulemaking challenges
21 before the Florida Division of Administrative Hearings. My testimony addressed (1) the basis for the
22 Commission's rule regarding disconnection of local service, and (2) the conceptual basis for the
23 Commission adopting a "fresh look" policy, allowing end users to terminate contracts, with limited
24 liability, under certain circumstances, in order to avail themselves of new competing alternatives. In
25 addition, I have testified before this Commission regarding a recommended approach to implementing

1 Section 364.604, Florida Statutes, regarding billing practices.

2 Q. What is the purpose of your testimony?

3 A. In this direct testimony, I address how both a developer and an ILEC such as AT&T Florida
4 likely would evaluate options and make business decisions during the course of a negotiation.
5 Further, I discuss how these evaluations and business decisions that occurred prior to the filing of the
6 instant petition could be very material to the Commission's deliberations on whether AT&T Florida
7 has demonstrated good cause sufficient to grant relief from its carrier-of-last-resort (COLR)
8 obligation for the Villages of Avalon, Phase II. Finally, I address possible considerations which the
9 Commission could use to guide its decision making in this docket.

10 Q. How do you believe a developer would consider and weigh his options in the context of
11 negotiating with potential voice, data, and video providers?

12 A. On the surface, a developer's ability to select from two or more providers would seem to
13 provide it some negotiating leverage. In addition to financial factors such as door fees and recurring
14 commissions which would appear to be important considerations, I would anticipate that a developer
15 logically would also consider the reputation of a provider when assessing the likelihood that the
16 provider's service would be considered at least satisfactory to future residents. I believe that name
17 recognition and overall reputation would generally favor the dominant provider, which suggests that
18 the ILEC would be preferred for voice, and the incumbent cable company would be preferred for
19 video. Presumably either the ILEC or the incumbent cable company would be acceptable for data. If
20 there is only one well-established provider for each of the voice and video components, I believe a
21 developer may have less effective choice than might first seem to be the case. Further, a developer's
22 choice of provider(s) may equally be influenced by how willing and able a carrier is to install its
23 facilities in accord with the developer's construction schedules for roads, homes, and recreational
24 amenities.

25 Q. How is AT&T Florida regulated?

1 A. AT&T Florida operates under price regulation by virtue of the company having elected this
2 form of regulation pursuant to Section 364.051, Florida Statutes. Per Section 364.051(1)(c),
3 companies which elect price regulation are “exempt from rate base, rate of return regulation.”
4 Therefore, AT&T Florida is not subject to earnings regulation by this Commission.

5 Q. How do you believe an ILEC such as AT&T Florida would consider and weigh its options in
6 the context of negotiating with a developer?

7 A. Unless otherwise constrained, economic theory holds that companies are generally motivated
8 to seek out the most profitable investment opportunities to pursue over a particular time frame, which
9 based on my corporate experience, is often a five-year planning horizon. As noted, AT&T Florida is
10 not subject to earnings regulation. Further, I believe that the new statutory option that allows an ILEC
11 to seek a waiver of its COLR obligation based on good cause shown now could encourage AT&T
12 Florida to view a developer’s project as discretionary, when in the past the same project would have
13 been viewed as essential to meeting the COLR responsibility. (For example, AT&T Florida concedes
14 that it was legally required to serve the Villages of Avalon, Phase I.) Based on my professional
15 experience with negotiating capital funding for discretionary projects, a carrier typically seeks to
16 maximize net income or cash flow derived from its limited capital funds which remain after
17 addressing essential network projects. On this basis I believe it is logical to assume that an ILEC like
18 AT&T Florida would compare the attractiveness of a developer’s project to other investment
19 opportunities.

20 AT&T Florida has expressed a strong preference for selling its full panoply of voice, data, and
21 video services. In her direct testimony in this docket, AT&T Florida witness Shiroishi states that
22 “[w]e want to use our investment dollars wisely to bring Florida residents all of our advanced services
23” (Shiroishi Direct Testimony, p. 3, lines 17-19) This statement suggests to me that AT&T
24 Florida may have used a negotiation strategy of resisting selling a more limited set of services, which
25 would be consistent with my view that a rational firm would strive to maximize its financial gain from

1 its limited capital funds. For example, a contract for voice and data services may be economic, yet
2 not pursued, if it is viewed to be a less desirable use of scarce capital dollars and therefore sub-
3 optimal. Conceivably, AT&T Florida may have had an opportunity to negotiate a contract for
4 something less than its full panoply of services, but may have chosen not to pursue this possibility,
5 even though such a contract might have been an economic use of capital dollars.

6 Q. What factors do you believe this Commission should consider in determining whether or not
7 AT&T Florida should be relieved of its COLR obligation for the Villages of Avalon, Phase II?

8 A. In terms of a decision making framework, I offer two suggested approaches. The first
9 approach considers AT&T Florida's petition exclusively from the standpoint of the company's form
10 of regulation. Since AT&T Florida operates under price regulation, not earnings regulation, an
11 argument can be made that the company should be required to assume the downside risk of less
12 desirable projects in exchange for the company benefiting from all upside risks, without limitation.
13 This approach is logical from the standpoint of having symmetrical regulation. I note that price-
14 regulated ILECs do have an opportunity under Section 364.051(4)(b), Florida Statutes, to recover a
15 portion of the costs of repairing damage caused by tropical storms through a time-limited surcharge
16 on customer bills. Tropical storms are the only downside risk expressly covered by the statute for
17 price-regulated ILECs, in the sense that the Commission is required, upon petition, to grant recovery
18 of costs incurred, subject to prescribed statutory limitations. Stated differently, the statute expressly
19 carves out only one class of exogenous costs for recovery separate from the price regulation scheme.

20 Second, if the Commission believes that it may be reasonable in some situations to mitigate
21 the downside risk for a price-regulated ILEC by granting a COLR waiver, I would suggest
22 considering a framework which relies on two necessary conditions and one sufficient condition.
23 Necessary conditions are conditions that would need to be satisfied, yet are not conclusive. If the
24 necessary conditions are satisfied, then consideration would move to whether the sufficient condition
25 is satisfied. If the sufficient condition is satisfied, then COLR relief would be justified under this

1 construct.

2 The two necessary conditions would be (1) demonstrable evidence that the current situation
3 makes for the uneconomic provision of voice service by the ILEC, and (2) the availability of an
4 alternative voice or voice replacement service. By themselves, these two conditions would be
5 necessary, but not sufficient, in my opinion. (I am not taking a position on the appropriate time frame
6 for evaluating whether the provision of voice-only service is uneconomic.) I believe the sufficient
7 condition would be demonstrable evidence that the ILEC did not have the opportunity to negotiate an
8 agreement that would produce an economic result. This sufficient condition would address the
9 concern that an ILEC's internal decision making process may discard a capital project not on the basis
10 of it being uneconomic, but rather on the basis that funding the project in a limited form, without
11 offering its full panoply of voice, data, and video services, would not satisfy the firm's apparent goal
12 of maximizing its financial gain from its limited capital funds.

13 Under this suggested framework of necessary and sufficient conditions, COLR relief would be
14 justified if and only if (1) there is demonstrable evidence that provision of voice service by the ILEC
15 would be uneconomic, (2) there is an alternative voice or voice replacement service available, and (3)
16 the ILEC did not have the opportunity to negotiate an agreement that would provide for economic
17 provision of service(s).

18 Q. Does this conclude your direct testimony?

19 A. Yes, it does.

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for relief from carrier-of-last-resort (COLR) obligations pursuant to Section 364.025(6)(d), F.S., for Villages of Avalon, Phase II, in Hernando County, by BellSouth Telecommunications, Inc. d/b/a AT&T Florida.

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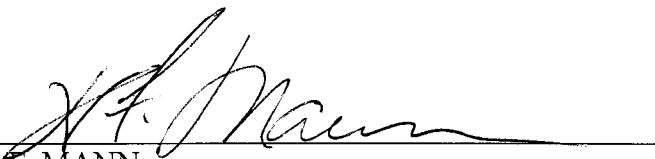
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true copy of STAFF'S DIRECT TESTIMONY OF SALLY A. SIMMONS has been furnished to the following by U. S. and Electronic mail this 10th day of August, 2007:

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