

**Ruth Nettles**

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**From:** Woods, Vickie [vf1979@att.com]  
**Sent:** Wednesday, August 22, 2007 3:42 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 070357-TL AT&T Florida's Ltr. to Ann Cole re: Response to Staff Rec issued on August 16, 2007  
**Importance:** High  
**Attachments:** 070357-T.pdf

- A. Vickie Woods  
Legal Secretary to James Meza III, Manuel A. Gurdian  
and Tracy W. Hatch  
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[vf1979@att.com](mailto:vf1979@att.com)
- B. 070357-TL: Petition of AT&T Florida for Relief from Carrier-of-Last-Resort Obligations Pursuant to Florida Statutes §364.025(6)(d) (Cabana South)
- C. BellSouth Telecommunications, Inc.  
on behalf of Manuel A. Gurdian
- D. 4 pages total (includes Letter and certificate of service)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Ltr. to Ann Cole re: Response to Staff Recommendation issued on August 16, 2007  
  
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August 22, 2007

Ms. Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No.: 070357-TL  
Petition of AT&T Florida for Relief from Carrier-of-Last-Resort  
Obligations Pursuant to Florida Statutes §364.025(6)(d) (Cabana  
South)**

Dear Ms. Cole:

BellSouth Telecommunications, Inc. d/b/a ("AT&T Florida") respectfully submits this letter to respond to certain statements made by the Florida Public Service Commission ("Commission") Staff in the proposed agency action ("PAA") recommendation issued on August 16, 2007 in the above-captioned document. Specifically, AT&T Florida takes issue with the following paragraph in the conclusion of the recommendation:

Staff has concerns about whether AT&T Florida acted in good faith in its negotiations with FortGroup to arrive at an equitable agreement to provide voice service to Cabana, Phase II. It appears AT&T Florida delayed the installation of its network facilities and then presented its request for payment to FortGroup so late in the construction phase that FortGroup had no other reasonable choice than to seek an alternative provider for voice service at Cabana, Phase II. Staff believes AT&T Florida could have filed its petition with the Commission earlier, which would have afforded FortGroup an opportunity to provide a meaningful response.

AT&T Florida recognizes that the filing of a letter in response to a PAA recommendation is not common; however, AT&T Florida feels compelled to respond to Staff's concerns regarding AT&T Florida's intentions and motivations in negotiating with the developer, FortGroup. At bottom, AT&T Florida disagrees with

these statements and submits that this response is necessary so that Staff and the Commission are aware of facts that refute Staff's concerns.

**First**, while AT&T Florida and FortGroup had discussions about serving Cabana, Phase I and II beginning in October 2005, the developer did not own the land for Cabana, Phase II until AT&T Florida was in the final stages of installing facilities to serve Cabana, Phase I. Thus, the developer did not have the right to ask AT&T Florida to install facilities for Cabana, Phase II when discussions about the development began. Accordingly, any belief that AT&T Florida could have begun installing facilities for Phase II concurrent with installing facilities for Phase I is incorrect.

**Second**, any contention that AT&T Florida delayed the submission of a special construction bill for Cabana, Phase II fails to recognize that the Commission first established that special construction was a component of the "good cause" analysis in its March 13, 2007 vote in Docket No. 060882-TP, which was specifically memorialized in its April 4, 2007 written order. Prior to this decision, the Commission had not established that an ILEC should use the special construction process and the Commission's CIAC rule as a means to (1) gauge the economics of serving a development; and (2) potentially resolve the ILEC's economic concerns by negotiating an agreed-upon price with the developer to serve the development.

After this decision, AT&T Florida conducted a special construction analysis pursuant to its special construction tariff and the Commission's CIAC rule. This analysis required AT&T Florida to conduct a detailed examination of the network architecture required and costs associated with serving the development. Upon completion of this examination, AT&T Florida issued a special construction bill to the developer on April 30, 2007. See Exhibit E to Petition. The developer responded to this request on May 7, 2007 by refusing to pay or negotiate a special construction charge. See Exhibit F to Petition.

Thereafter, on May 15, 2007, AT&T Florida requested that the developer confirm in writing that it refused to pay any special construction charges. On May 16, 2007, the developer advised AT&T Florida that it would not confirm anything in writing but that the developer made the decision to use another vendor to provide voice service. *Id.* AT&T Florida confirmed these assertions in writing on May 18, 2007. AT&T Florida then filed its Petition for COLR relief on June 4, 2007.

As this chronology makes clear, AT&T Florida did not delay in filing the Petition; rather, AT&T Florida followed the Commission's guidance from its decision in Docket No. 060882-TP before filing a petition seeking COLR relief.

**Third**, as stated by AT&T Florida in its discovery responses to Staff, it was not until April 17, 2007 that the developer first requested AT&T Florida to provide

facilities in Cabana, Phase II within a specified time period. See Response to Staff Data Request No. 7. Prior to this time, AT&T Florida had no specific information from the developer to suggest that the need for service was imminent due to the construction progress of the development.

**Fourth**, any suggestion that AT&T Florida's actions forced the developer to choose another voice provider and to lock-out AT&T Florida is simply incorrect. The developer always had the option of having AT&T Florida install facilities by paying the requested special construction charges. Notwithstanding AT&T Florida's offer, the developer made the unilateral, independent decision to prevent AT&T Florida from installing facilities.

For these reasons, AT&T Florida submits that Staff's PAA recommendation should be revised to remove the above-quoted paragraph as the conclusions contained therein are not supported by the facts presented in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Gurdian', written over a circular stamp or mark.

Manuel A. Gurdian

cc: All Parties of Record  
Jerry D. Hendrix  
E. Earl Edenfield, Jr.  
James Meza III

**CERTIFICATE OF SERVICE**  
**Docket No. 070357-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

(\*) Electronic Mail and First Class U. S. Mail this 22nd day of August, 2007 to the

following:

Patrick Wiggins (\*)  
Rich Mann (\*)  
Staff Counsels  
Florida Public Service  
Commission  
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**Cabana South Beach Apartments LP**  
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