BEFORE THE FLORIDA 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.	DOCKET NO. 070126-TL ORDER NO. PSC-07-1008-PAA-TL ISSUED: December 19, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

FINAL ORDER DENYING MOTION FOR SUMMARY FINAL ORDER,

ORDER CANCELLING ORDER ESTABLISHING PROCEDURE,

AND

NOTICE OF PROPOSED AGENCY ACTION GRANTING PETITION FOR RELIEF FROM COLR OBLIGATION FOR VILLAGES OF AVALON, PHASE II

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein, in Section IV, Notice of Proposed Agency Action Granting Waiver of COLR Obligation, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) is the carrier of last resort (COLR) for the development known as The Villages of Avalon. The Villages of Avalon is a private deed-restricted residential community consisting of approximately 796 lots under development by Avalon Development LLC (Avalon Development). The Villages of Avalon, Phase II (Avalon, Phase II), which is the property subject to AT&T Florida's petition, contains approximately 476 lots and is contiguous to Villages of Avalon, Phase I (Avalon, Phase I). As of this time, there are no residents living in Avalon, Phase II.

Avalon Development has entered into agreements with Capital Infrastructure, LLC d/b/a Connexion Technologies (Connexion) and Beyond Communications a/k/a Baldwin County Internet/DSSI Service, LLC (Beyond Communications) to be the exclusive provider of data and video services to homes in both phases. The Connexion website asserts that the charges for those services are paid through the homeowners' association (HOA) dues. Beyond Communications is also offering its voice service to the residents on an individual customer basis by subscription. The network facilities deployed by Connexion are capable of carrying voice, video, and data service in both phases.

While Avalon, Phase I, is already populated with residential customers, Avalon, Phase II, is still in the construction phase. We understand that no residential customer has yet purchased and moved into a home in Avalon, Phase II.

Avalon Development is requesting that AT&T Florida install its network facilities in Avalon, Phase II; however, Avalon Development is prohibiting AT&T Florida from providing video and data services to those homes by granting easements to AT&T Florida restricted to voice-only service.

On February 23, 2007, AT&T Florida filed a petition for relief from its carrier-of-last-resort obligation pursuant to Section 364.025(6)(d), Florida Statutes (2007), for Avalon, Phase II, located in Hernando County, Florida. On March 12, 2007, Avalon Development submitted its reply to AT&T Florida's petition and requested that the Commission deny AT&T Florida's petition, deny the relief requested by AT&T Florida, and dismiss this proceeding with prejudice. Avalon Development further contends that because AT&T Florida already provides voice service to Avalon, Phase I, under a previously accepted easement, it should not be permitted by the Commission to reject the same easement or refuse to provide service to the adjacent Avalon, Phase II.

On May 8, 2007, AT&T Florida filed a letter requesting that its petition be rescheduled for consideration from the May 22, 2007, Agenda Conference to the July 10, 2007, Agenda Conference, to allow the parties time to discuss the possibility of Avalon Development paying to AT&T Florida special construction charges for the installation of AT&T Florida's network facilities at the subject property. On June 25, 2007, Avalon Development communicated with AT&T Florida by letter advising that Avalon Development would not pay special construction charges. This was reiterated in a letter of the same date to the Commission.

On July 10, 2007, at a regularly scheduled agenda conference, we voted to keep this docket open and set this matter directly for an administrative hearing rather than to issue a notice of proposed agency action. Pursuant to our directive, this matter was scheduled for an administrative hearing on September 6, 2007, by Order No. PSC-07-0606-PCO-TL (Order Establishing Procedure), issued July 30, 2007.

On July 16, 2007, by letter dated July 11, 2007, Avalon Development withdrew its formal objection to AT&T Florida's petition. In that letter, Avalon Development asserted that it would not participate in the proposed formal hearing process in this docket. No other party has intervened in this docket.

On July 31, 2007, AT&T Florida filed the prefiled testimony of its two witnesses. On August 6, 2007, AT&T Florida filed its Motion for Summary Final Order. Since August 6, 2007, AT&T Florida filed objections and responses to staff's discovery requests.

On August 14, 2007, AT&T Florida filed its Motion for Continuance of the hearing scheduled for September 6, 2007. On August 16, 2007, the Prehearing Officer issued Order No. PSC-07-0663-PCO-TL, granting AT&T Florida's Motion for Continuance. On October 2, 2007, AT&T Florida filed its Amended Motion for Summary Final Order.

Section 364.025(6)(b), Florida Statutes, permits a local exchange company (LEC) to be automatically relieved of its COLR obligations if any of four specific conditions is satisfied. If a LEC is not automatically relieved pursuant to any of the four conditions, a LEC may seek a waiver of its COLR obligation from the Commission for good cause shown under Section 364.025(6)(d), Florida Statutes.

In this case, AT&T Florida is seeking a "good cause" waiver of its COLR obligation for Avalon, Phase II, pursuant to Section 364.025(6)(d), Florida Statutes, which states:

> A local exchange telecommunications company that is not automatically relieved of its carrier-of-last-resort obligation pursuant to subparagraphs (b)1.-4. may 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. Upon petition for such relief, notice shall be given by the company at the same time to the relevant building owner or developer. The commission shall have 90 days to act on the petition. The commission shall implement this paragraph through rulemaking.

We have jurisdiction over this matter pursuant to Sections 364.01 and 364.025, Florida Statutes (2007).

II. Denial of Motion for Summary Final Order

We conclude that AT&T Florida is not entitled to a summary final order *as a matter of law*. Accordingly, we deny AT&T Florida's Amended Motion for Summary Final Order. In reaching this finding we considered the standard for granting a summary final order, as provided by statute and pertinent case law.

A. Standard

Section 120.57(1)(h), Florida Statutes, provides that a summary final order shall be granted if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact

exists and that the moving party is entitled as a matter of law to the entry of a final order.[1] Rule 28-106.204(4), Florida Administrative Code, states that "[a]ny party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven days of service, file a response in opposition, with or without supporting affidavits."

Under Florida law, "the party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact,"[2] and every possible inference must be drawn in favor of the party against whom a summary judgment is sought. The burden is on the movant to demonstrate that the opposing party cannot prevail.[3] "A summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law."[4] "Even where the facts are undisputed, issues as to the interpretation of such facts may be such as to preclude the award of summary judgment."[5] If the record reflects the existence of any issue of material fact, possibility of an issue, or even raises the slightest doubt as to an issue of fact, summary judgment is improper.[6] However, once a movant has tendered competent evidence to support his or her motion, the opposing party must produce counter-evidence sufficient to show a genuine issue because it is not enough to merely assert that an issue exists.[7]

As stated above, under Section 120.57(1)(h), Florida Statutes, summary final order may be granted only when the movant is entitled to the relief sought as a matter of law. Additionally, however, we have recognized that policy considerations should be taken into account in ruling on a motion for summary final order. In Order No. PSC-98-1538-PCO-WS,[8] this Commission stated that

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[1] In 1998, the legislature amended Chapter 120, Florida Statutes, to make summary judgment available in administrative proceedings through summary final order. Ch. 98-2000, Fla. Laws. Before this statutory change, parties before the Commission would on rare occasions file a motion for summary judgment under the Florida Rules of Civil Procedure. Thus, "summary final order" is analogous to "summary judgment," so case law and orders addressing "summary judgment" are generally applicable to "summary final order."

[2] Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993).

[3] Christian v. Overstreet Paving Co., 679 So. 2d 839 (Fla. 2nd DCA 1996).

[4] Moore v. Morris, 475 So. 2d 666, 668 (Fla. 1985). See also McCraney v. Barberi, 677 So. 2d 355 (Fla. 1st DCA 1996) (finding that summary judgment should be cautiously granted, and that if the evidence will permit different reasonable inferences, it should be submitted to the jury as a question of fact).

[5] Franklin County v. Leisure Properties, Ltd., 430 So. 2d 475, 479 (Fla. 1st DCA 1983).

[6] Albelo v. Southern Bell, 682 So. 2d 1126 (Fla. 4th DCA 1996).

[7] Golden Hills Golf & Turf Club, Inc. v. Spitzer, 475 So. 2d 254, 254-255 (Fla. 5th DCA 1985).

[8] Issued November 20, 1998, in Docket Nos. 970657-WS and 980261-WS, In Re: Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and Desoto Counties by Lake Suzy Utilities, Inc., and In Re: Application for Amendment of Certificates Nos. 570-W and 496-S To Add Territory in Charlotte County by Florida Water Services Corporation.

> We are also aware that a decision on a motion for summary judgment is also necessarily imbued with certain policy considerations, which are even more pronounced when the decision also must take into account the public interest. Because of this Commission's duty to regulate in the public interest, the rights of not only the parties must be considered, but also the rights of the Citizens of the State of Florida are necessarily implicated, and the decision cannot be made in a vacuum. Indeed, even without the interests of the Citizens involved, the courts have recognized that
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> > [t]he granting of a summary judgment, in most instances, brings a sudden and drastic conclusion to a lawsuit, thus foreclosing the litigant from the benefit of and right to a trial on the merits of his or her claim. Coastal Caribbean Corp. v. Rawlings, 361 So. 2d 719, 721 (Fla. 4th DCA 1978). It is for this very reason that caution must be exercised in the granting of summary judgment, and the procedural strictures inherent in the Florida Rules of Civil Procedure governing summary judgment must be observed. Page v. Staley, 226 So. 2d 129,132 (Fla. 4th DCA 1969). The procedural strictures are designed to protect the constitutional right of the litigant to a trial on the merits of his or her claim. They are not merely procedural niceties nor technicalities.

In summary, for this Commission to grant AT&T Florida's motion it is necessary for us to conclude not only that good cause exists to grant the COLR waiver, but that there exists no genuine issue as to any material fact supporting the claim of good cause and that AT&T Florida is entitled as a matter of law to the entry of a summary final order.

B. Conclusion

Whether there exists good cause to waive a LEC's COLR obligation to provide basic telecommunications service is an issue that inherently comprises both factual and policy considerations. Our staff encountered resistance in its attempts to secure from Avalon Development documents pertaining to agreements between Avalon Development and the alternative providers serving both Avalon phases, none of whom are subject to the regulatory jurisdiction of this Commission. Nevertheless, we have thoroughly reviewed the information available in the unique factual and procedural circumstances of this case.

We do not dispute the material facts upon which AT&T Florida bases its claim of good cause for waiver of its COLR obligation. Under Section 364.025(6)(d), Florida Statutes, however, we presently must exercise our policy-making discretion to weigh these material facts. This Commission must decide, on a case-by-case basis, whether we believe that, in the totality of circumstances in this matter, good cause does exist. This decision is imbued with the policy considerations which we noted in our Order No. PSC-98-1538-PSC-WS.[9] Accordingly, due to

[9] Order No. PSC-98-1538-PCO-WS, issued November 20, 1998, in Docket Nos. 970657-WS and 980261-WS, In Re: Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and Desoto Counties by

the policy considerations that must be accounted for, we find that AT&T Florida is not entitled as a matter of law to a summary final order.

III. Cancellation of Order Establishing Procedure

At our regularly scheduled agenda conference on July 10, 2007, we voted to set this matter directly for hearing rather than to issue a notice of proposed agency action. At that time, it appeared that irrespective of the content of the proposed agency action, either AT&T Florida or Avalon Development would protest and request an evidentiary hearing. Thus, the notice of proposed agency action was not necessary to afford a clear point of entry to dispute this Commission's action. Consequently, pursuant to Order No. PSC-07-0606-PCO-TL (Order Establishing Procedure), this matter was set for formal administrative hearing to be held on September 6, 2007.

The circumstances have changed, however, since the July 10, 2007, agenda conference. On July 16, 2007, Avalon Development filed a letter noticing its withdrawal as a party from the proceedings. Given that there now seems to be no dispute over the material facts upon which AT&T Florida bases its claim of good cause, it now appears that a hearing is not necessary to determine AT&T Florida's petition for waiver of its COLR obligation. For this reason we cancel Order No. PSC-07-0606-PCO-TL (Order Establishing Procedure) and proceed with our proposed agency action process, pursuant to Rule 25-22.029, Florida Administrative Code.

IV. Grant of Waiver of COLR Obligation

A. Background

As noted in Section I. Background, which is applicable to Sections II, III, and IV, Avalon Development initially contested AT&T Florida's petition for waiver and urged the Commission to deny the relief requested. Avalon Development subsequently withdrew as a party to this proceeding and withdrew its formal objection to AT&T Florida's petition. Avalon Development stated in its withdrawal letter that it believed AT&T Florida had an obligation to provide voice service to Avalon Phase II.

B. AT&T Florida's Arguments

AT&T Florida argues that good cause for relief from its carrier-of-last-resort (COLR) obligation in this case exists based on four assertions: (1) Avalon Development has entered into an exclusive agreement for video and data services with an alternative provider; (2) Avalon Development has expressly limited AT&T Florida to the provision of voice service only; (3) Providers other than AT&T Florida will have the capability of offering voice or voice

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Lake Suzy Utilities, Inc., and In Re: Application for Amendment of Certificates Nos. 570-W and 496-S To Add Territory in Charlotte County by Florida Water Services Corporation.

replacement service to residents of Avalon, Phase II; and (4) The provision of voice service by AT&T Florida is uneconomic.

1. Exclusive Agreement For Video and Data

In support of its first assertion that Avalon Development has entered into an exclusive agreement for video and data services with an alternative provider, AT&T Florida submitted a cross-promotional advertisement from Connexion's website. In this advertisement, Connexion indicates that Internet and video services will be provided by Beyond Communications in Avalon, Phase II, and that these services will be included in the bulk service agreement. AT&T Florida states that Connexion subcontracted with Beyond Communications to provide data and video services, and that fees for video and data services will be paid by all home buyers in the form of homeowner association (HOA) dues. The website advertisement also contains language listing Beyond Communications as capable of providing telephone service by subscription on an individual customer basis.

In its testimony, AT&T Florida explains the relationship between Connexion and Beyond Communications: "Connexion appears to be an infrastructure provider. Connexion provides the fiber optic infrastructure within a development, and then aligns with service providers who interface with the customers to provide actual service."

In its original petition, AT&T Florida provided, as "Exhibit C," an advertisement from William Ryan Homes Florida, Inc., one of a number of builders involved in the development of Avalon, Phase II. In the advertisement, the following language appears: "HOA fees include cable, internet service (fiber optics) and much more." AT&T Florida states that this information supports its argument that Avalon Development has assigned the exclusive video and data rights to a company other than AT&T Florida and that home buyers in Avalon, Phase II, will be required to pay for these two services from Beyond Communications through homeowner association dues.

2. Voice-Only Easement

AT&T Florida's second assertion, that it is restricted by Avalon to a "voice only" easement, does not appear to be in dispute. AT&T Florida is restricted from providing video and data services by wireline to the residents of Avalon, Phase II. According to AT&T Florida, it does not currently have a proprietary video product, relying instead on a marketing agreement with DirecTV, a satellite provider. Nonetheless, AT&T Florida accurately states that it is limited in Avalon, Phase II, to the provision of voice-only service, using wireline technology.

3. Alternative Voice Service

AT&T Florida's third assertion is that alternative voice service will be available to residents of Avalon Phase II. AT&T Florida again refers to Connexion's website, which lists the Villages of Avalon as a development in which it offers services, and describes its network

capabilities. According to Connexion, it installs an infrastructure of fiber-to-the-home, which Connection explains:

> Fiber to the Home refers to the installation of fiber optic cable directly to the home. Fiber optic wiring replaces the duplicate infrastructure that the Telephone and Cable companies have installed in the past in a neighborhood setting. Fiber has a higher bandwidth capacity and can easily transmit traditional applications like telephone, television, and internet, with plenty of capacity left over for applications in the future.

Based on its website claim, Connexion thus has installed a network architecture capable of providing voice grade communications to residents of Avalon, Phase II. Beyond Communications, with whom Connexion apparently has contracted to provide service, intends to offer voice service. Beyond Communications also does business under the name Smart Resort. Marketing materials from Smart Resort's website contain the following:

> Your phone service is next generation IP telephony. The service is also plain old telephone. This means you have the ability to use any brand or type of telephone. You just walk into your unit, plug in your phone and you are ready to make a call.

Smart Resort lists itself as a provider of local calling, long distance calling, and an array of supplemental features including call waiting, call forwarding, emergency 9-1-1 service, and voice mail.

4. Uneconomic Investment

AT&T Florida's final claim is that provision of service to Avalon, Phase II, will result in an uneconomic investment. AT&T Florida maintains that the voice-only easement will reduce revenue opportunities which, in turn, will lead to an inability to determine if and when the company will recover its infrastructure investment. AT&T Florida also contends that it will incur additional costs if it is forced to serve Avalon, Phase II, because it will have to modify its front-end ordering system to comply with voice-only service. AT&T Florida, however, did not provide any information to support this last contention.

AT&T Florida projects that the cost to install facilities in Avalon, Phase II, will be $326,819. Our staff evaluated AT&T Florida's analysis and found the methodology to be reasonable and the costs employed to arrive at the $326,819 figure realistic. Through easement restrictions, AT&T Florida is prohibited from offering data and video services in Avalon, Phase II, so AT&T Florida is unable to offer discount packages of wireline voice, data, and video. We note that nothing in the voice-only easement would prevent AT&T Florida from offering a package of voice services including wireline, wireless, local, and long distance.

AT&T Florida asserts in its petition that it requires the flexibility to offer all services it markets in order to recover its network investment in an appropriate time frame. Information provided in discovery responses supports AT&T Florida's argument that the voice-only easement may defer its ability to recover its investment. AT&T Florida was asked to provide a

breakdown of its Florida residential customers based on services accepted. AT&T Florida provided its total number of residential telecommunications customers in the state, and of the total, how many of its customers were voice only, a combination of voice and data, and a combination of voice and DirecTV, as well as the number of customers who relied on AT&T Florida for a combination of voice, data, and DirecTV. The figures are confidential; however, we believe a reasonable inference can be made from the discovery responses that restricting AT&T Florida to voice-only service may compromise AT&T Florida's ability to recover its initial investment within what it considers to be a reasonable time frame.

AT&T Florida points out that restricting the company to voice service in the 320-unit development of Avalon, Phase I, resulted in 15.5 percent of residents in the built-and-occupied homes ordering telecommunications service from AT&T Florida. AT&T Florida believes a similar take-rate can be expected in Avalon, Phase II, because (1) both developments consist of single-family homes; (2) both developments, through easements, limit AT&T Florida to providing voice-only service; and (3) both developments, upon information and belief, have entered into the same or similar contractual arrangements with the same alternative provider for the provision of voice, data, and video service.

AT&T Florida believes that the exchange revenues for the initial five years would amount to $155,213, based on its calculations using a slightly higher take rate than Avalon, Phase I, of 20 percent, and utilizing the average revenue per unit and the occupancy forecast, for Avalon, Phase II. Subtracting the projected revenues for the initial five years from the estimated cost of construction of $326,819, leaves $171,606 - - an amount AT&T Florida believes should be paid by Avalon Development, and which AT&T Florida has requested Avalon Development to pay, as line extension fees pursuant to Rule 25-4.067(3), Florida Administrative Code. In a letter to the Commission dated June 25, 2007, Avalon Development stated that it would not pay the requested fee.

C. Conclusion

We conclude that based on the particular facts and totality of circumstances of this case, AT&T Florida has demonstrated good cause for this Commission to waive its COLR obligation in Avalon, Phase II. It appears from materials assembled by AT&T Florida that Avalon Development has entered into an exclusive agreement for video and data service with an alternative provider. The claim by AT&T Florida that it will be limited to providing voice-only service in the Villages of Avalon Phase II, is substantiated by a review of the easements granted.

It appears Connexion has installed a fiber network in Avalon, Phase II, that is capable of providing alternative voice service. And AT&T Florida's method of estimating the investment necessary to install its voice-grade facilities in Avalon, Phase II, is reasonable and the costs employed to arrive at the $326,819 figure realistic.

We emphasize the limited nature of this docket and that our conclusion is based on the specific facts and totality of circumstances herein. We conclude that in view of the evidence and testimony presented by AT&T Florida, and the totality of circumstances as reflected in the body

of this Order, good cause exists under Section 364.025(6)(d) for a waiver of the AT&T Florida's COLR obligation in Avalon, Phase II.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AT&T Florida's Motion for Summary Final Order is hereby denied. It is further

ORDERED that Order No. PSC-07-0606-PCO-TL (Order Establishing Procedure) is hereby cancelled. It is further

ORDERED that AT&T Florida's Petition for Relief from COLR Obligation for the Villages of Avalon, Phase II, is hereby granted. It is further

ORDERED that the provisions of Section IV shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall be closed upon the issuance of the Consummating Order.

By ORDER of the Florida Public Service Commission this 19th day of December, 2007.

ANN COLE
Commission Clerk

(S E A L)

HFM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in Section II in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Office of Commission Clerk and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

As identified in the body of this order, the Commission's action in Section III is preliminary, procedural or intermediate in nature. Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. Any party adversely affected by the order may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

As identified in the body of this order, the Commission's Proposed Agency Action in Section IV is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 9, 2008. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.