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REDACTED

August 6, 2007

ORIGINAL

COMMISSION
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RECEIVED-FPSC

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

**Re: Docket No. 070126-TL: Petition of AT&T Florida for Relief from
Carrier-of-Last-Resort Obligations Pursuant to Florida Statutes
§ 364.025(6)(d) (Avalon)**

Dear Ms. Cole:

Enclosed is an original and fifteen copies BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion for Summary Final Order which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Manuel A. Gurdian

- CMP _____
- COM 5 _____
- CTR _____
- ECR _____
- GCL 3 _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC _____
- OTH _____

cc: All parties of record
Jerry Hendrix
E. Earl Edenfield, Jr.
James Meza III

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 070126-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 6th day of August, 2007 to the following:

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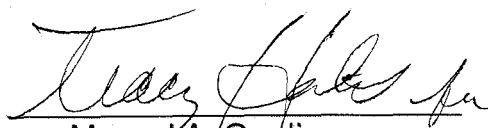
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REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:)	
)	Docket No. 070126-TL
Petition of AT&T Florida for Relief)	
from Carrier-of-Last-Resort Obligations)	
Pursuant to Florida Statutes §364.025(6)(d))	
(Avalon))	
_____)	Filed: August 6, 2007

AT&T FLORIDA’S MOTION FOR SUMMARY FINAL ORDER

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”), pursuant to Rule 28-106.204(4), Florida Administrative Code, respectfully submits this Motion for Summary Final Order regarding its Petition for Relief from Its Carrier-of-Last-Resort (“COLR”) Obligations (“Petition”) for a development in Hernando County, Florida called Villages of Avalon, Phase II (“Avalon, Phase II”). As set forth below, there are no material facts in dispute and AT&T Florida is entitled to judgment as a matter of law. Specifically, “good cause” exists for AT&T Florida to be relieved of its COLR obligation. Alternatively, even if the Florida Public Service Commission (“Commission”) does not find “good cause” present, AT&T Florida requests that the Commission find that it has no obligation to deploy facilities to Avalon, Phase II until Avalon Development, LLC (“Developer”) pays special construction charges previously submitted by AT&T Florida.

INTRODUCTION AND SUMMARY

This case is about the Developer’s decision to prevent AT&T Florida from providing video and data service to approximately 476 homes in Avalon, Phase II. Notwithstanding this decision to restrict AT&T Florida’s ability to compete, the

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Developer is attempting to force AT&T Florida, through its COLR obligation, to make uneconomic investments by installing duplicative facilities to provide voice service *only*.

Lest there be any confusion, AT&T Florida desires to serve all of the residents of Avalon, Phase II with all of its services; however, AT&T Florida should not be forced to make uneconomic investments, because the Developer has hijacked COLR for its own financial gain. Simply put, absent these Developer-imposed restrictions on the types of services AT&T Florida can provide, AT&T Florida would not be before the Commission asking for COLR relief.

Under Section 364.025, Florida Statutes, AT&T Florida has the right to seek COLR relief from the Commission for “good cause” shown. AT&T Florida submits that “good cause” is established when the following conditions are satisfied: (1) a developer has entered into an exclusive or near exclusive agreement for video and data services with an alternative provider; (2) a developer expressly or effectively restricts the LEC to providing voice service only; (3) providers other than the LEC will be or will have the capability of providing voice or voice replacement service to residents; and (4) the provision of voice service by the LEC is uneconomic. The following compelling, unrefuted and undisputed evidence establishes “good cause” in this case:

- Through a voice-only easement, the Developer is prohibiting AT&T Florida from providing anything other than voice service to Avalon, Phase II. *See* Elizabeth R. A. Shiroishi’s Affidavit attached hereto as Exhibit “A” (“ERAS Affidavit”) at ¶ 11.

- The Developer has entered into an agreement with Connexion Technologies f/k/a Capitol Infrastructure (“Connexion”) who in turn contracted with

Smart Resorts a/k/a Beyond Communications (“Beyond Communications”) for the provision of voice service at Avalon, Phase II. *See* Connexion website pages attached hereto as Exhibit “B”; May 23, 2006, September 21, 2006, and September 25, 2006 correspondence between attorneys for the Developer and Attorney for AT&T Florida, attached hereto as Exhibit “C”; Beyond Communications website pages attached hereto as Exhibit “D”.

- The Developer has entered into an agreement with Connexion who in turn entered into a bulk agreement with Beyond Communications for video and data services to all homes within the development. *See* Connexion website pages attached hereto as Exhibit “B”; Beyond Communications website pages attached hereto as Exhibit “D”. Under this arrangement, residents of Avalon, Phase II will pay for this data and video service through their Home Owners Association fees. *Id.*

- In return for the rights granted to Connexion and/or Beyond Communications by the Developer, Connexion and/or Beyond Communications have likely provided the Developer with economic consideration. *See* Connexion documents attached hereto as Exhibit “E”.

- As a result of this voice-only easement, AT&T Florida will not be able to offer residents of Avalon, Phase II AT&T Florida’s full panoply of services that exist today and that will exist in the future including data and video services. ERAS Affidavit at ¶ 11. Conversely, Beyond Communications will be able to offer any bundles of voice, data and video it offers to every single resident of Avalon, Phase II. *See* Beyond Communications website pages attached hereto as Exhibit “D”; Connexion website pages attached hereto as Exhibit “B”.

- Residents of Avalon, Phase II will be able to obtain voice service from Beyond Communications, VoIP providers, or wireless carriers. *See* Connexion website pages attached hereto as Exhibit “B”; Beyond Communications website pages attached hereto as Exhibit “D”; ERAS Affidavit at ¶ 13.

- AT&T Florida estimates that it will cost approximately \$326,819 to deploy facilities to provide voice service to Avalon, Phase II. *See* Larry Bishop Affidavit attached hereto as Exhibit “F” (“LB Affidavit”) at ¶ 8, 13.

- Based on AT&T Florida’s experience with Avalon, Phase I, which is a single-family, sister development where the Developer has restricted AT&T Florida to providing voice service only pursuant to a voice-only easement, AT&T Florida believes that the take rate for its voice only services in Avalon, Phase II will be 20% or less. ERAS Affidavit at ¶ 15.

- AT&T Florida has offered to share in the economic burden associated with providing voice service only by charging the Developer, pursuant to its special construction tariff and the Commission’s line extension rule, special construction costs that exceed AT&T Florida’s five year estimated revenue. ERAS Affidavit at ¶ 18. The Developer has refused to pay this or any amount and thus has not agreed to take on any financial burden associated with its COLR request. ERAS Affidavit at ¶ 18.

- On July 11, 2007, the Developer withdrew its formal objection to AT&T Florida’s Petition for COLR relief and stated that it would not participate in the evidentiary hearing. *See* Developer’s July 11, 2007 correspondence to the Commission attached hereto as Exhibit “G”.

SUMMARY FINAL ORDER STANDARD

Under Rule 28-106.204(4), Florida Administrative Code, “[a]ny party may move for summary final order whenever there is no genuine issue of material fact.” The purpose of summary judgment or of a summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts. *See* Order No. PSC-01-1427-FOF-TP at 13. When a party establishes that there is no material fact on any issue disputed, then the burden shifts to the opponent to demonstrate the falsity of the showing. *Id.* “If the opponent does not do so, summary judgment is proper and should be affirmed.” *Id.* There are two requirements for a summary final order: (1) there is no genuine issue of material fact; and (2) a party is entitled to judgment as a matter of law. *Id.* at 14-15. AT&T Florida satisfies both requirements in this proceeding and is entitled to a judgment in its favor.

ISSUES AND UNDISPUTED MATERIAL FACTS

Issue 1: Under Section 364.025(6)(d), Florida Statutes, has AT&T Florida shown good cause to be relieved of its Carrier-of-Last-Resort Obligation to provide service at the Villages of Avalon, Phase II located in Hernando County?

I. AT&T Florida Has Established “Good Cause” to be Relieved of Its COLR Obligation for Avalon, Phase II.

A. The Legislature Has Determined that a LEC’s COLR Obligation Is Not Absolute and Does Not Apply in Certain Circumstances.

Under § 364.025, F.S., a local exchange company (“LEC”) is required to furnish basic local exchange telecommunications service within a reasonable period of time to any person requesting such service within the company’s service territory. Section 364.025, F.S. This obligation has historically been referred to as the LEC’s COLR obligation. COLR is specifically tied to Universal Service, which the Florida Legislature

has defined as an “evolving level of access to telecommunications services, taking into account advances in technologies, services, and market demand for essential services, that the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas.” See § 364.025, F.S. The basic concept of COLR and Universal Service is that all residents in a company’s service territory, including those in rural areas, will be able to receive basic local service in a reasonable period of time and at reasonable rates.

The obligation of LECs to provide basic voice service in a reasonable period of time and at reasonable rates, however, is not absolute. In recognition of the advance of competition from traditional communications providers and non-traditional, unregulated alternative providers (*e.g.* wireless carriers, cable companies, VoIP providers), the Florida Legislature created several exceptions to a LEC’s COLR obligation in the 2006 legislative session. ERAS Affidavit at ¶ 10. These exceptions, which are the Legislature’s most recent pronouncement of its intent regarding COLR, are the linchpin of AT&T Florida’s case.

The revised COLR statute now provides two avenues for a LEC to obtain relief from its traditional COLR obligation. First, § 364.025(6)(b) provides the LEC with *automatic* relief if one of the four following scenarios applies:

- A developer permits only one communications service provider to install its communications service related facilities or equipment to the exclusion of the LEC, during the construction phase of the property.

- A developer accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications service providers to the exclusion of the LEC.

- A developer collects from occupants or residents charges from the provision of any communication service provided by an entity other than the LEC, including, but not limited to, collection through rent, fees, or dues.

- A developer enters into an agreement with the communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the LEC's access to the property.

§ 364.025(6)(b), F.S.

In conjunction with creating COLR relief, the Legislature also created two new definitions – “communications service provider” and “communications service”. “Communications service provider” is defined as “any person or entity providing communications services, any person or entity allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or Developers.” § 364.025(6)(a)(2). “Communications service” is defined as “voice service or voice replacement service through the use of any technology.” § 364.025(6)(a)(3). While not directly at issue in this case, these new definitions and the automatic relief provisions are important in analyzing the instant Petition. This is so because they evidence the Legislature’s intention to provide a LEC with COLR relief when (1) another, alternative provider is providing voice service or “voice replacement service through the use of any technology” to residents of a property; and (2) the provision of

voice service is economically infirm due to contractual arrangements the Developer has entered into with alternative providers for voice service.

Second, when none of those four specific automatic relief scenarios are present, § 364.025(6)(d), F.S., provides that a LEC may petition the Commission for a waiver of its COLR obligation, which shall be granted upon “good cause” shown:

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 Developers. The commission shall have 90 days to act on the petition.

§ 364.025(6)(d). It is this scenario that forms the basis for AT&T Florida’s Petition.

B. “Good Cause” Means Valid Grounds to Seek Relief of COLR, and the Burden of Proof Is Not a “Super Burden”.

In creating discretionary COLR relief, the Legislature did not articulate what specifically constitutes “good cause.” Instead, it left that determination to the Commission. Nevertheless, it is clear that the Legislature intended that a LEC would not have a COLR obligation in certain circumstances – *e.g.*, when “good cause” is shown. Thus, the seminal inquiry is what constitutes “good cause”.

“When interpreting a statute, legislative intent is the polestar of the inquiry.” *Hanes City HMA, Inc. v. Carter*, 948 So. 2d 904 (Fla. App. 2nd DCA 2007) (citing *Cason v. Florida Dep’t. of Mgm’t Serv.*, 944 So. 2d 306 (Fla. 2006)). Such intent is derived primarily from looking at the plain meaning of the statute. “If the language of a statute is clear and unambiguous, the legislative intent must be derived from the words used

without involving rules of construction or speculating as to what the legislature intended.” *Zuckerman v. Alter*, 615 So. 2d 661, 663 (Fla. 1993). “One of the most fundamental tenets of statutory construction requires that we give statutory language its plain and ordinary meaning, unless the words are defined in the statute or by the clear intent of the legislature.” *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992) (citing *Southeastern Fisheries Ass’n, Inc. v. Department of Natur. Resources*, 453 So. 2d 1351 (Fla. 1984)). If necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary. *Gardner v. Johnson*, 451 So. 2d 477 (Fla. 1984).

In addition, as stated by the Supreme Court in *Unruh v. State*, 669 So. 2d 242 (Fla. 1996):

As a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless. Furthermore, whenever possible courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another. This follows the general rule that the legislature does not intend to enact purposeless and therefore useless legislation.

Here, the statute is clear and unambiguous: A LEC not automatically relieved of its COLR obligation “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.” See 364.025(6)(d), F.S. “Good” is defined by *Black’s Law Dictionary* (6th ed.) as “valid; sufficient in law”, while “cause” is defined by *Black’s Law Dictionary* (6th ed.) as a “ground for a legal action”. Further, “good cause” is defined by *Blacks Law Dictionary* (6th ed.) as “[l]egally

sufficient ground or reason.” Accordingly, based on its plain and ordinary meaning, “good cause” essentially means valid grounds to bring a request for COLR relief.¹

Moreover, upon reading the provisions of § 364.025 together and giving full effect to all, as required under the law, it is clear that “good cause” or “valid grounds” for COLR relief exist if the following conditions are satisfied: (1) a developer has entered into an exclusive or near exclusive agreement for video and data services with an alternative provider; (2) the LEC is expressly or effectively restricted by the developer to providing voice service only; (3) providers other than the LEC will be or will have the capability of providing voice or voice replacement service to residents; and (4) the provision of voice service by the LEC is uneconomic.

Such an interpretation harmonizes *discretionary* COLR relief with *automatic* COLR relief in that, with both, residents will have access to voice or voice replacement service from another provider, which is the ultimate purpose of COLR. Further, under both, COLR relief would be available when it is uneconomic to provide voice service to a development due to contractual arrangements a developer makes with an alternative provider. *See e.g.*, § 364.025(6)(b)(3).

Any suggestion that, because COLR is limited to voice service, discretionary relief is not available when a LEC is only restricted in providing video and data service is erroneous. As an initial matter, this argument would render the discretionary relief provisions of § 364.025(6)(d) meaningless. This is so because it would require a restriction on a LEC’s ability to provide voice service in order to obtain discretionary

¹ This meaning is consistent with how the Florida Supreme Court has defined “good cause” in the context of untimely pleadings: “We have defined ‘good cause’ in this context . . . [as] a substantial reason, one that affords a legal excuse, or a cause moving the court to its conclusion, not arbitrary or contrary to all the evidence. . . .” *In re: Estate of Goldman*, 79 So. 2d 846 (Fla. 1955). AT&T Florida has been unable to locate any Florida case law setting forth the definition of “good cause” in a more relevant context.

COLR relief; however, 364.025(6)(b) already provides *automatic* COLR relief in those situations. Therefore, under this argument, there would be no situations where a LEC could obtain discretionary relief. *See Unruh*, 669 So. 2d at 245 (“As a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless. . . This follows the general rule that the legislature does not intend to enact purposeless and therefore useless legislation.”).

Moreover, the express wording of Section 364.025(6)(d) does not support this claim. Unlike the automatic provisions, which focus on the provision of “communications services” by a “communications service provider”, the discretionary COLR relief provision provides a LEC with the right to seek COLR relief “for good cause shown based on the facts and circumstances of *provision of service* to the multitenant business or residential property.” § 364.025(6)(d) (emphasis added). The use of “service” instead of “communications service” is significant. It makes it clear that the Legislature did not intend for discretionary relief to be limited to only when a LEC is prohibited in providing voice service. Had the Legislature intended otherwise, it would have expressly used “communications service” and not “service” in § 364.025(6)(d).

Furthermore, this argument disregards the fact that the automatic relief provisions of § 364.025(6)(b) recognize that automatic relief is available when it is uneconomic for the LEC to provide voice service to a property. *See* § 364.025(6)(b)(3) (stating that a LEC has automatic relief when the Developers collects charges for communications service provided by an alternative provider in the form of rent, fees, or dues). Clearly, if the Legislature determined that a LEC has *automatic* COLR relief when it is uneconomic to provide voice service due to a Developer’s contractual arrangement with an alternative

provider, the Legislature also intended for a LEC to obtain *discretionary* COLR relief when it is uneconomic for the LEC to provide voice service, even if the Developer has not expressly included voice service in the contractual arrangement with the alternative provider. Such an interpretation harmonizes discretionary COLR relief with automatic COLR relief and renders a consistent application of the 2006 revisions to the COLR statute. *See Golf Channel v. Jenkins*, 752 So. 2d 561, 564 (Fla. 2000) (“[R]elated statutory provisions should be read together to determine legislative intent. . .); *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992) (“It is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole.”).

Equally unpersuasive is any argument that AT&T Florida must meet a “super burden” in order for the Commission to grant discretionary COLR relief. At the outset, the express wording of § 364.025(6)(d) does not contain any language to suggest that a petition must prove “good cause” by clear and convincing evidence, beyond a reasonable doubt, or any other standard that imposes a heightened burden of proof on the petitioner. Rather, the statute simply provides that relief can be sought for “good cause shown based on the facts and circumstances of the provision of service to” each property. *See* 364.025(6)(d). Had the Legislature intended to impose a “super burden” it would have done so expressly by imposing that requirement in the language of the statute.² In

² The United States Supreme Court has held that silence by Congress regarding the standard of proof required “is inconsistent with the view that Congress intended to require a special, heightened standard of proof.” *Grogan v. Garner*, 498 U.S. 279, 659 111 S.Ct. 654 (1990). Thus, the Court held that it will presume that the “preponderance of the evidence” standard would apply in civil actions between private litigants, unless “particularly important individual interest or rights are at stake.” *Id.* (quoting *Herman & MacLean v. Huddleston*, 459 U.S. 375, 389-390, 103 S.Ct. 683 (1983)). Under this standard, the Court has applied a clear and convincing standard in a proceeding to terminate parental rights and in an involuntary commitment proceeding. *See Herman*, 459 U.S. at 389 (citing *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804 (1979); *Woodbury v. INS*, 385 U.S. 276, 285-86, 87 S.Ct. 483 (1966)). Even assuming the right

addition, Florida law suggests that the standard for establishing “good cause” is the “preponderance of the evidence” standard and not a heightened “clear and convincing” standard. *See e.g., Cochran v. Broward County Police Benev. Assoc., Inc.*, 693 So. 2d 134, 135 (Fla. App. 4th DCA 1997).

C. “Good Cause” Is Present Based on the Facts and Circumstances of Avalon, Phase II.

i. The Developer Has Provided Connexion/Beyond with the Exclusive or Near Exclusive Right to Provide Data and Video Service in Avalon, Phase II.

The Developer has entered into an agreement with Connexion who in turn contracted with Beyond Communications for the provision of voice service at Avalon, Phase II. *See* Connexion website pages attached hereto as Exhibit “B”; May 23, 2006, September 21, 2006, and September 25, 2006 correspondence between attorneys for the Developer and Attorney for AT&T Florida, attached hereto as Exhibit “C”; Beyond Communications website pages attached hereto as Exhibit “D”. The Developer has also entered into an agreement with Connexion who in turn entered into a bulk agreement with Beyond Communications for the provision of video and data services to all homes within the development. *See* Connexion website pages attached hereto as Exhibit “B”; Beyond Communications website pages attached hereto as Exhibit “D”. Under this arrangement, residents of Avalon, Phase II will pay for this data and video service through their Home Owners Association fees. *Id.* In return for the rights granted by the Developer, Connexion and/or Beyond Communications have likely provided the

to voice service is an “important individual right”, this is not a case where the Commission’s decision could result in residents in Avalon, Phase II not receiving *any* voice service. In fact, if the Petition is granted, residents will receive voice service from Beyond Communications, other VoIP providers, and wireless carriers. Thus, there is no important individual right at stake in this proceeding. It should be noted that AT&T Florida has found no Florida case law adopting the Supreme Court’s reasoning.

Developer with economic consideration. *See* Connexion documents attached hereto as Exhibit “E”.

Any argument that the Developer’s arrangement is not exclusive or near exclusive should be summarily rejected in light of the fact that the Developer is only willing to provide AT&T Florida with a voice-only easement. Pursuant to this voice-only easement, AT&T Florida has no legal right or opportunity to provide any service other than voice service to Avalon, Phase II. Further, residents of Avalon, Phase II will be paying for their video and data service through their Home Owner’s Association Fees, which creates, at a minimum, a *de facto* exclusive arrangement. *See* Commissioner McMurrin’s Statement from July 10, 2007 Agenda in Docket No. 070126-TL at p.31-32 (“I think good cause can be reached with some sort of exclusive agreement for at least data and video or some kind of substantially equivalent nonoptional inclusion of that in homeowners fees. Because I think that’s ultimately the same thing as having an exclusive agreement. Because I just don’t think that many people are going to sign up for another data and video provider if it’s already included in something that they don’t have the option not to pay for.”). Accordingly, the Commission should find that the Developer and Connexion/Beyond Communications have entered into an exclusive or near exclusive agreement for the provision of data and video services within Avalon, Phase II.

ii. The Developer Is Only Allowing AT&T Florida to Provide Voice Service in Avalon, Phase II.

There is also no dispute that the Developer, through a voice only easement, is only allowing AT&T Florida to provide voice-service to residents of Avalon, Phase II. ERAS Affidavit at ¶ 11. The Developer has provided no evidence to suggest that it has any intention of changing this voice-only restriction. *Id.*

iii. Residents of Avalon, Phase II Will Be Able to Receive Voice Services from Other Providers.

The underlying purpose of COLR is for consumers to have access to voice service, not voice service from a LEC. ERAS Affidavit at ¶ 9. The 2006 revisions to § 364.025, F.S. make this clear as the law now automatically relieves AT&T Florida of its COLR obligation in certain situations and authorizes AT&T Florida to seek relief in others. While the automatic provisions are not directly at issue in this case, these new provisions are important, because they evidence the Legislature's intention to provide a LEC with COLR relief when an alternative provider is providing voice service or "voice replacement service through the use of any technology" to residents of a property.

This concept applies equally when AT&T Florida is seeking discretionary COLR relief. As stated by former Commissioner Deason: "I believe that requiring uneconomic investment under the guise of carrier of last resort obligation is wasteful and is not productive and not in the public interest. And if there are viable alternatives to customers, then they have service, and that is the primary requirement of COLR obligations it seems to me." *See* Docket No. 060554-TL, Dec. 19, 2007 Agenda Conference Transcript at 25-26.

Here, there is no dispute that Beyond Communications will be providing its VoIP voice service to residents within Avalon, Phase II. *See* Connexion website pages attached hereto as Exhibit "B"; Beyond Communications website pages attached hereto as Exhibit "D"; May 23, 2006, September 21, 2006, and September 25, 2006 correspondence between attorneys for the Developer and attorney for AT&T Florida attached hereto as Exhibit "C". In describing this service to potential customers, Beyond Communications claims that "[y]our 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 phones and you are ready to make a call.” See Beyond Communications website pages attached hereto as Exhibit “D”. The features available include local calling, long distance calling, emergency 911 service, call waiting, call forwarding, and voice mail. *Id.* This is consistent with Mrs. Shiroishi’s affidavit, where she stated that Beyond Communications’ voice service appears to be a fixed VoIP service, which is very similar to fixed wireline from a consumer’s standpoint. ERAS Affidavit at ¶ 13.

In addition to Beyond Communications offering voice service, residents of Avalon, Phase II will also be able to obtain voice service from other VoIP providers (*e.g.* over-the-top VoIP) and wireless carriers. ERAS Affidavit at ¶ 13. The Commission has already determined in Docket No. 060763-TL that a VoIP product and wireless service are alternative voice service for residents in a development: “. . . [W]e find that voice service from other providers using Voice over Internet Protocol technology and wireless cellular technology will be available on an individual customer basis at retail prices to the residents living within the Treviso Bay development at the time of each resident’s occupancy.” See Order No. PSC-07-0331-FOF-TL at 5.

Accordingly, no resident in Avalon, Phase II will be without voice service if AT&T Florida’s Motion is granted. The residents of Avalon, Phase II will be able to obtain voice service from Beyond Communications and will be able to obtain voice service from another VoIP provider or from a wireless carrier.

iv. Providing Voice Service Only to Avalon, Phase II is Uneconomic for AT&T Florida

As provided in Mr. Bishop's Affidavit, AT&T Florida estimates that it will cost \$326,819 to deploy facilities for a fiber-to-the-curb ("FTTC") architecture in Avalon, Phase II to provide voice service. LB Affidavit at ¶ 8, 13. The FTTC architecture was determined to be the most cost-efficient architecture available to serve Avalon, Phase II, because much of the FTTC architecture, including the remote terminal cabinet and the backbone fiber, were already in place to serve Avalon, Phase I. LB Affidavit at ¶ 11. Further, because AT&T Florida has no way of knowing which residents in Avalon, Phase II may order voice service, AT&T Florida must install facilities throughout the development even though it estimates a 20 percent or less take rate. LB Affidavit at ¶ 10. As stated by Mr. Bishop in his Affidavit, if AT&T Florida waited until a voice service request was received before installing facilities, AT&T Florida would need to dig-up customer driveways and landscaping that are already in place. LB Affidavit at ¶ 10. These actions are generally not received well by residents and lead to increased costs to deploy facilities. LB Affidavit at ¶ 10.

Moreover, based on Avalon, Phase I, a single-family sister development where AT&T Florida is subject to a voice-only easement, AT&T Florida believes that the take rate for its voice services in Avalon, Phase II will be 20 percent or less.³ The take rate for Avalon, Phase I is appropriate to use for the instant matter because (1) both developments consist of single-family homes; (2) both developments, through easements, are limiting AT&T Florida to providing voice service only; and (3) both developments have entered

³ Indeed, the take rate for Avalon, Phase I is 15.5 percent. ERAS Affidavit at ¶ 16.

into contractual arrangements with the same alternative providers for the provision of voice, data, and video service.

In further support of the anticipated take rate is the fact that Beyond Communications has a distinct competitive advantage over AT&T Florida. Specifically, as a result of the voice-only easement, AT&T Florida will not be able to offer the residents of Avalon, Phase II AT&T Florida's full panoply of services that exist today and that will exist in the future, including data and video services. Conversely, Beyond Communications will be able to offer its "triple-play" of voice, data, and video to every-single resident of Avalon, Phase II.

Further buttressing AT&T Florida's uneconomic argument is the fact that AT&T Florida has offered to share in the economic burden of serving Avalon, Phase II pursuant to the Commission's Line Extension Rule as well as its special construction tariff. Specifically, AT&T Florida has offered to only charge the Developer those costs that exceed AT&T Florida's five year estimated local exchange revenue. ERAS Affidavit at ¶ 19. As stated by Mr. Bishop in his Affidavit, the estimated cost to place facilities to serve Avalon, Phase II is \$326,819. LB Affidavit at ¶ 13. Using AT&T Florida's standard financial model, which includes inputs such as build-out rate, forecasted take rate, and average revenue per unit, the projected five times annual exchange revenue for Avalon, Phase II is \$155,213. LB Affidavit at ¶ 21, 22.

Pursuant to AT&T Florida's special construction tariff (§ A5) and this Commission's Line Extension Rule (25-4.067, F.A.C.), AT&T Florida has provided the Developer with a special construction bill of \$171,606 to deploy facilities in Avalon, Phase II. LB Affidavit at ¶ 19, 20. The Developer did not make a counter-offer and

advised in a June 25, 2007 letter to the Commission that “Avalon will not pay AT&T’s requested fee for the deployment of AT&T’s facilities to provide communications services to Phase II of the development.” *See* July 11, 2007 correspondence from Developer to the Commission attached hereto as Exhibit “G”; LB Affidavit at ¶ 23. Consequently, even though the Developer is demanding that AT&T Florida make unwise economic investments pursuant to COLR for its own financial gain, the Developer is refusing to take *any* financial responsibility associated with this decision.

v. Public Policy Supports a Finding of Good Cause.

In addition to the above facts, which conclusively establish “good cause”, public policy further supports granting the instant Motion. The overriding policy question in this case is whether developers can manipulate COLR to force LECs to make uneconomic investments while also stifling consumer choice for the suite of communications and entertainment services that residents expect. ERAS Affidavit at ¶ 6. “AT&T Florida supports the idea that consumers should be free to choose any company they want for video, data, and voice service. Indeed, AT&T Florida has invested, and will continue to invest, hundreds of millions of dollars in Florida to be able to offer consumers meaningful video, data, and voice competition.” ERAS Affidavit at ¶ 6. However, AT&T Florida wants to use its investment dollars wisely to bring Florida residents all of our advanced services instead of using those dollars to bring a single, duplicative service. ERAS Affidavit at ¶ 6. Indeed, by requiring AT&T Florida to invest in a duplicative network limited to providing voice service, “the Commission will effectively shift those investment dollars away from other consumers in the state who

would stand to receive the full suite of advanced services from AT&T Florida.” ERAS Affidavit at ¶ 8.

And, although the Commission does not have regulatory authority over developers, or over broadband data and video services, the Commission is in a position to influence the behavior of developers. By granting COLR relief under this particular set of facts, the Commission sends a message to developers that exclusive service arrangements are not in the best interest of the public. Such a message will certainly get the attention of developers. ERAS Affidavit at ¶ 7.

For all of these reasons, AT&T Florida has established “good cause” to be relieved of its COLR obligation for Avalon, Phase II.

Issue 2: May AT&T Florida impose charges on the developer, Avalon, Phase II, as a condition of installing facilities? If so, under what conditions and what kind of charges?

II. If the Commission Does Not Find that “Good Cause” Exists, the Commission Should Find that AT&T Florida Is Not Obligated to Install Facilities Until the Developer Pays Special Construction Charges.

In the event the Commission does not find that “good cause” exists, the Commission should then find that AT&T Florida has no obligation to install facilities unless and until the Developer pays special construction charges. This analysis is entirely independent of the good cause analysis under § 364.025, F.S.

The Commission’s Line Extension Rule, Rule 25-4.067(1), F.A.C., requires AT&T Florida to “make reasonable extensions to its lines and service and shall include in its tariffs . . . a statement of its standard extension policy setting forth the terms and conditions” by which AT&T Florida will extend facilities to serve applicants for service. Rule 25-4.067(1), F.A.C. It also requires that any policy “have uniform application” and

that it “provide that the proportion of construction expense to be borne by the utility shall not be less than five times the annual exchange revenue of the applicants.” *Id.* If the cost equals or exceeds the estimated cost of the proposed extension, AT&T Florida must construct the extension of facility without charge to the applicants. If, however, the estimated costs exceed the amount “which the utility is required to bear” – five times annual exchange revenue – “the excess cost may be distributed equally among all subscribers initially served by the extension.” Rule 25-4.067(1), F.A.C. AT&T Florida’s Tariff provides that special construction applies when “the cost to construct line extension facilities for an individual subscriber . . . exceeds the estimated five year exchange revenue.” *See* AT&T Florida’s Tariff at A5.2.1(B)(1). AT&T Florida’s Tariff § A5 is attached hereto as Exhibit “H”.

As stated above, AT&T Florida’s cost to construct line extension facilities pursuant to the Developer’s request exceeds the estimated five year exchange revenue. Accordingly, AT&T Florida is entitled to charge the Developer special construction charges per Rule 25-4.067(1), F.A.C. and AT&T Florida’s Tariff § A5.2.1(B)(1). And, per AT&T Florida’s Tariff, payment of special construction “is due upon presentation of a bill for the specially constructed facilities.” § A5.2.2.2(B). If the party requesting special construction fails to pay in advance, then AT&T Florida has no obligation to deploy facilities. ERAS Affidavit at ¶ 22.

AT&T Florida recognizes that, historically, the Line Extension Rule has primarily applied to individual subscribers. ERAS Affidavit at ¶ 20. However, in this situation, where developers are effectively acting as agents for future, yet-to-be-identified residents of a property, the Line Extension Rule applies to Developers. *Id.* “Indeed, if developers

can use COLR to force AT&T Florida to make uneconomic investments by installing duplicative facilities in properties where consumer choice is restricted, developers also must be responsible for the liabilities associated with such use. Stated another way, if a developer can trigger COLR before any residents exist on the property, then the developer, for all practical purposes, is in fact the subscriber for the entire development.”

Id.

Accordingly, the Commission should find that, in this situation, AT&T Florida’s Tariff governs and that AT&T Florida has no obligation to proceed with installing facilities irrespective of any COLR obligation, should the Developer refuse to pay special construction charges. Deciding this issue any other way guts the historical, industry-standard application of special constructions, violates AT&T Florida’s Commission-approved Tariff, and renders the entire special construction process – a process designed to protect the LEC from “undue risk associated with specially constructed facilities” -- meaningless. *See* AT&T Florida’s Tariff at § A5.1.2(A)(1).

Conclusion

For the foregoing reasons, AT&T Florida respectfully requests that the Commission grant this Motion for Summary Final Order and find that AT&T Florida is relieved of its COLR obligation for Avalon, Phase II. There are no material facts in dispute, and AT&T Florida is entitled to judgment as a matter of law. Alternatively, if the Commission does not grant AT&T Florida COLR Relief, the Commission should find that AT&T Florida has no obligation to install facilities until the Developer pays special construction charges.

Respectfully submitted this 6th day of August, 2007.

AT&T FLORIDA



JAMES MEZA III⁴

TRACY W. HATCH

MANUEL A. GURDIAN

c/o Nancy Sims

150 South Monroe Street, Suite 400

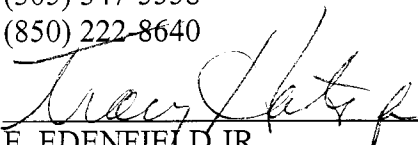
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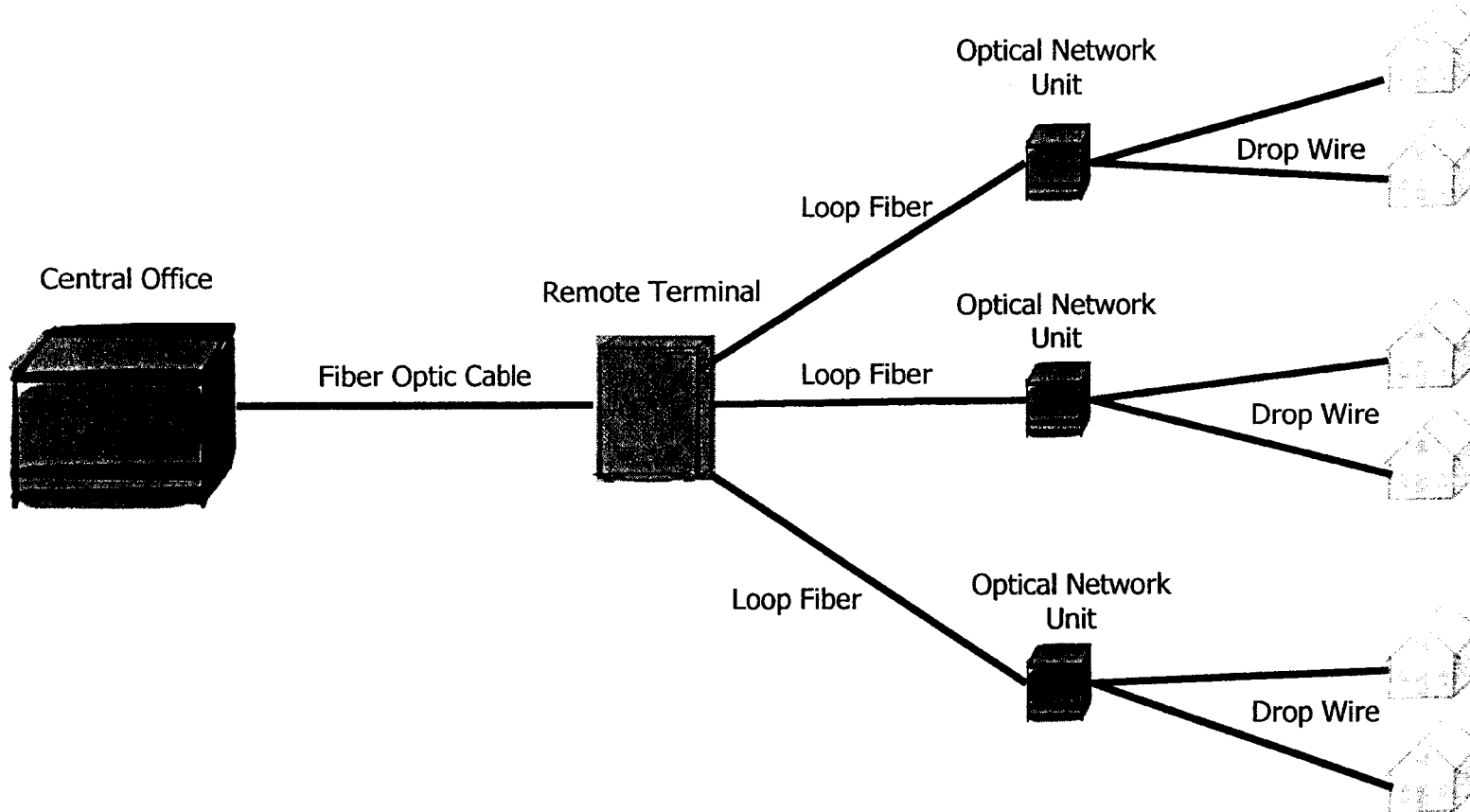
675 West Peachtree Street, N.E.

Atlanta, GA 30375

(404) 335-0757

⁴ The undersigned is licensed in Louisiana only, is certified by the Florida Bar as Authorized House Counsel (No. 464260) per Rule 17 of the Rules Regulating the Florida Bar, and has been granted qualified representative status by the Commission in Order No. PSC-07-0211-FOF-OT.

Fiber to the Curb Architecture



Docket No. 070126-TL
Exhibit No. LB-2
(1 page)

THE ENTIRE EXHIBIT IS CONFIDENTIAL

Docket No. 070126-TL
Exhibit No. LB-3
(2 pages)

THE ENTIRE EXHIBIT IS CONFIDENTIAL

Docket No. 070126-TL
Exhibit No. LB-4
(8 pages)

THE ENTIRE EXHIBIT IS CONFIDENTIAL

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TRACEY CHESTON

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John.Stanley@att.com
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May 15, 2007

VIA U.S. MAIL AND FACSIMILE

(813) 929-4020

Seth Boots, PE
Project Manager
Stokes Land Group
10329 Cross Creek Blvd
Suite M
Tampa, FL 33647

Re: Avalon, Phase II

Dear Mr. Boots:

This letter is in follow-up to various communications between you and representatives of BellSouth Telecommunications, Inc. d/b/a AT&T Florida regarding the above development, under construction in Hernando County, Florida. Since you have been the primary contact for AT&T Florida's Network Department regarding the development, we are sending this letter to you. We are also copying Ms. Holm with Avalon Development, LLC, since she is the person that submitted a March 9, 2007 letter with the Florida Public Service Commission on behalf of Avalon Development, LLC in the pending Docket No. 070126-TL, Petition of AT&T Florida for Relief from Carrier-of-Last-Resort Obligations Pursuant to Section 364.025(6)(d), Florida Statutes (the "Petition"). The letter from Ms. Holm objects to the petition and thus essentially asks AT&T Florida to place facilities to provide service to residents at the development.

As explained in the Petition, upon information and belief, the developer has entered into a non-exclusive agreement with Connexion Technologies f/k/a Capitol Infrastructure ("Connexion") who in turn contracted with "Smart Resorts a/k/a Beyond Communications" ("Beyond Communications") for the provision of voice service at Avalon Phase II. Moreover, upon information and belief, the developer has entered into an agreement with Connexion who in turn entered into a bulk agreement with Beyond Communications for video and data services to all homes within the development. The developer has thus offered AT&T Florida a



"voice only" easement that would allow AT&T Florida to provide voice service only. AT&T Florida has been informed that the same arrangements with other providers exist in Phase I of the development.

We understand that Phase II will have 476 residences and that the buildout will take place in phases - Phase 2B, 216 lots (first residents expected in September/October 2007); Phase 2A, 28 lots (first expected residents in 2008); and Phase 3, 232 lots (first expected residents in 2008). For the reasons described below, charges will apply to the developer for the placement of those facilities.

Florida Public Service Commission Rule 25-4.067(3), Florida Administrative Code provides that AT&T Florida may recover the costs for extensions of its lines to provide service that exceed five times annual exchange revenue pursuant to its tariffs. See Part A.5.2.1.B of AT&T Florida's General Subscriber Services Tariff.

AT&T Florida anticipates little or no service orders from residents for telecommunications service in Phase II in light of the arrangements the developer has entered into, directly and indirectly, with other providers. This expectation is supported by the fact that only 15.5% percent of built and occupied residences (according to the addresses designated as such in the developer's response to Commission Data Request No. VA-1 in the Petition proceeding) have ordered service from AT&T Florida. Accordingly, using a 20% take rate for AT&T Florida services for Phase II, AT&T Florida has calculated the anticipated five times annual exchange revenue at Phase II to be approximately \$155,213.

The extension/construction cost for facilities to serve Phase II is approximately \$326,819, which includes anticipated labor and material costs as well as overhead cost.

The above total cost amount less the five times annual exchange revenue is \$171,606. Accordingly, pursuant to the Commission Rule, AT&T Florida is requesting payment of this amount prior to extending its lines to serve Phase II.

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TRACEY CHESTON

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AT&T Florida is available to discuss the above sum with you at your convenience. We would like to schedule a meeting with you for this purpose. Please contact Tracey Cheston at 352.331.9199.

Sincerely,

A handwritten signature in black ink, appearing to read "John Stanley".

John Stanley

**Cc: Avalon Development, LLC - Attention: Mallory Gayle Holm, VP,
4315 Pablo Oaks Court, Jacksonville, FL 32224**

- Registration
- Demo
- Services & Features
- Activation Support
- Communities

Villages of Avalon

Address: Spring Hill, Florida

URL:

Developer: Stokes and Griffith

Move-in Begins: January 31 2006

Home Prices: from the \$200s to Millions

Home Sites: estimated 822

Services:

Internet Beyond Communications
Included
1-866-713-5182

Telephone Beyond Communications
By Subscription
1-866-713-5182

Television Beyond Communications
Included
1-866-713-5182

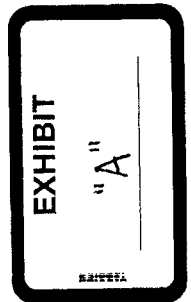
About this Community:

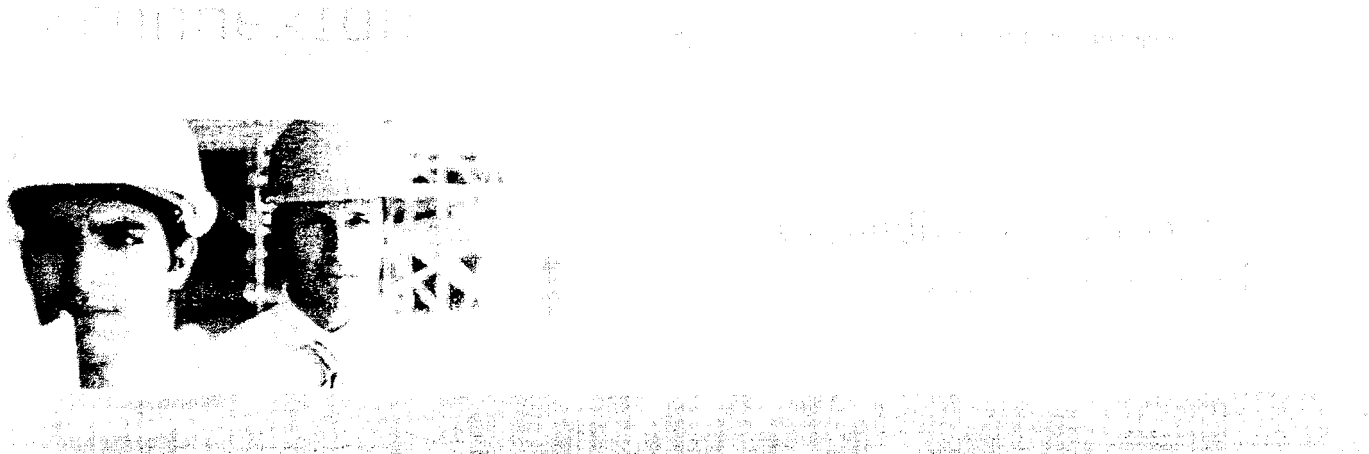
Located a quarter mile from the suncoast parkway, and about 20 minutes to downtown Tampa, the Villages of Avalon has something for everyone. With homes starting in the mid-\$200s and escalating through the millions, every home buyer will find the perfect house for their needs. Community amenities include a park with baseball and soccer fields, bike trails, Club house and a community pool.

Amenities: Close to Downtown Tampa
Community Pool
Nature Park
Bike Trails

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What We Do

How It Works

Demo

Features

Communities

Partners

Contact Us

A Better Technology

Fiber-Optic technology is not new. It has actually been around since the 1970's. However, Connexion Technologies has taken an innovative and revolutionary approach by offering a one-source technology solution to single family, multi family, high-rise, resort and hospitality properties coast to coast. This turnkey solution is fueled by our advanced fiber-optic networks, which can deliver all telecommunication services directly to each home, unit or property via a Fiber to the Home (FTTH) connection.

To understand how this fiber-optic amenity transforms owner, resident, and guest experiences, one needs to know why this powerful, reliable and cost-effective method truly provides superior technology versus copper and coaxial networks. It all starts with the bandwidth, or capacity of the fiber-optic cable. Unlike traditional networks, fiber has virtually unlimited capacity -- enough to deliver all telecommunication services with ease. With its unlimited capacity, fiber is also ready to accommodate "bandwidth hungry" emerging technologies -- the minute they come to market. Many call this fiber's "Future-Proof" advantage. Imaging having an unlimited pipe that can always handle as much data as you feed into it. The limited bandwidth and challenges facing copper and coaxial cable is becoming more evident, especially with more HDTV channels being televised.

Furthermore, because fiber-optic cable is composed of numerous strands of glass, it transmits telecommunication data at the speed of light. And, not being made from copper means that fiber cable does not conduct electricity. This not only makes it much more reliable, but also gives it incredible longevity (estimated 50-100 years) compared to a copper communications infrastructure.

The unmatched power, capacity, and benefits of Connexion Technologies fiber-optic amenity is so rich and powerful, that you'll soon realize that there's no comparison to our groundbreaking approach for your telecommunications infrastructure. Having a "Certified Fiber-Optic Development" offers amazing benefits while making properties stand apart from competitors.

Connexion Technologies - Information For Developers

A Better Way

Connexion Technologies partners with innovative developers, builders, owners, and operators to create forward-thinking, smarter, properties. To help take advantage of our state-of-the-art telecommunications amenity, we use our capital, not yours, for the design, deployment and management of the entire network.

Each property works closely with our top-level engineering team to design a network customized to their specific needs. From start to finish, the Connexion engineers work with you to ensure that every piece of the advanced infrastructure is designed, deployed, and operating properly. Over this fiber-optic entertainment and communications network, owners, residents, and guests receive television, telephone, Internet, security, and other cutting-edge services, at the speed of light.

Connexion Technologies is not a service provider, and we do not provide the actual voice, video, data and security services. Instead we align with an array of providers who deliver these services directly to each property and unit. Connexion Technologies manages and holds each of these providers to some of the highest levels of service quality in the industry. By bundling these services and delivering them at bulk rates, customers are also afforded significant savings. It's a distinct advantage to everyone. Ultimately, by separating the provider from the network, the property has more control over their telecommunication services. In short, there is a higher level of customer satisfaction and you enhance your reputation by offering much more value to your residents and guests. It's as simple as that.

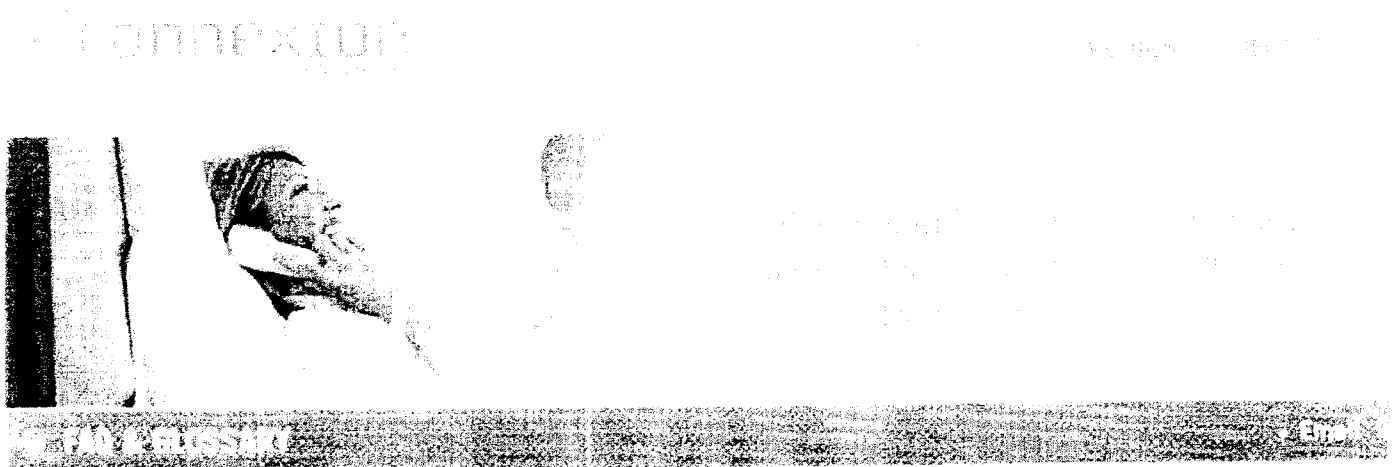
A Better Connection

Another advantage of installing a fiber network in your development is the increased property values that come just by having FTTH, FTTU, or FTTP (Fiber to the Premise). Research now indicates homes which feature a true fiber-optic connection, have an increased property value of \$5,000-\$10,000*, compared to others in the same area that do not. Fiber-optic networks are the best way to simplify and exceed the technology experiences of buyers, guests and owners. Connexion Technologies, the country's premier fiber-optic amenity company, is proud to offer builders, developers, and operators *A Better Connection*. (SM)

*TechHome Builder, December 2006

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FAQs · Glossary

General Questions

What is FTTH?

What happens if the electricity goes out?

Why are the service providers chosen by Connexion Technologies?

Homeowner Questions

What does the small box on the outside of my house do?

Why do I have to have a set top box?

How do I add more services to my internet, television, phone or security?

Can my additional services be added to my HOA payment?

My service(s) are not working, who do I call?

What is a Service Activation Specialist and why do I need to have them come to my house?

Why are my services billed through my HOA?

How is Connexion Technologies different from my local (Phone, Internet, Television, or Security) company?

I have your internet service, how do I switch it to AOL or Earthlink, etc.?

I have always had AOL email, can I keep my email address?

Can I get local cable service or service from my local phone company?

Developer Questions

How can I get collateral material on what FTTH is and to find out if Connexion will bring

Connexion Technologies - Frequently asked questions

it to my community?

How can I get more information regarding FTTH and how it can add to the value of the homes I am developing?

Who do I call to get FTTH into the community that I am developing?

What is the importance of Structured Wiring, and what is the additional cost to the builder?

What's the difference between FTTH and Copper/Coaxial Cable?

Why does Connexion Technologies want an easement?

Who is providing the services to my development?

General Questions

What is FTTH?

Fiber to the Home. Refers to the installation and use of fiber optical 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.

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What happens if the electricity goes out?

A back up battery pack is installed as part of your fiber infrastructure in the box on the outside of your home. The manufacturer states that this battery unit can power your telephone for up to four hours of continuous run time.

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Why are the service providers chosen by Connexion Technologies?

Connexion establishes a contract with your Developer/Home Owners Association who realizes the value of a fiber optic network within a community and contracted with Connexion when the community was being constructed. This contract allows Connexion to arrange for the delivery of communication services through their fiber optic infrastructure into the community. This means services can be billed into the Home Owners Association dues, which offers you an approximately 30% lower rate than the local services providers (i.e. Time Warner, Comcast, Brighthouse, Bellsouth, Sprint, Verizon, etc.)

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Developer Questions

How can I get collateral material on what FTTH is and to find out if Connexion will bring it to my community?

Please use the contact us form contained on this website, and one of our sales representatives for your area will contact you. You may also view the case studies on our various communities to learn more about the services provided by fiber.

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How can I get more information regarding FTTH and how it can add to the value of the homes I am developing?

According to studies done by Coming and other various sources, a fiber infrastructure in your community adds \$4000 to \$7000 per lot. The Coming website provides more information on these studies. ([View complete article](#), reference is on page 2, second paragraph)

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Connexion Technologies - Frequently asked questions

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Who do I call to get FTTH into the community that I am developing?

Email to Connexion@cnxntech.com or use the handy contact us form on this website.

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What is the importance of Structured Wiring, and what is the additional cost to the builder?

Without Structured Wiring, the high tech, high-bandwidth pipe that we have brought into your property is negated. Looped or daisy chain wiring inside the home limits bandwidth and flexibility within the home. The advantage of a structured wiring system is to support and optimize utilization of communication, security and multimedia technologies available today and for the future based on nationally recognized standards. Structured wiring is also required to support different technology advancements such as smart home, security and others. This works toward future-proofing the home. Consistency of design, flexible layout and logic are the keys to structured wiring systems. The difference in cost is approximately \$300 in labor and materials to include structured wiring in a home.

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What's the difference between FTTH and Copper/Coaxial Cable?

There are many advantages to installing FTTH in your community. Fiber does not conduct electricity, has virtually unlimited bandwidth, is not affected by heat and cold, has a longer lifespan than copper or coax to name a few. Fiber installed by Connexion Technologies is installed in conduit - meaning extra protection against accidental damage. When Fiber is installed to the edge of the neighborhood or just to the curb and the remainder of the infrastructure is installed using copper, this creates an unnecessary bottleneck. The closer to the home you pull fiber, the more bandwidth opportunity you give the user, which is why we pull it all the way to the home.

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Why does Connexion Technologies want an easement?

Connexion Technologies is an infrastructure provider instead of a service provider and requires a private communication easement. The easement also protects Connexion Technologies' investment in the fiber optic infrastructure.

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Who is providing the services to my development?

Connexion Technologies has "gold star" regional service providers that they currently work with in various geographic areas. Connexion will choose the service providers for your community based on your customized service needs. Our approach reduces construction complexity and on-going maintenance costs while providing residents in the community with the unique ability to hold service providers accountable to service level and pricing guarantees. The Connexion model is attractive to first rate service providers due to the minimal capital investment required by the service providers, the ease of monitoring the fiber optic network, and ease of providing upgrades to residents with just a tap of the keys instead of rolling a truck. Connexion functions as an agent for the HOA by monitoring the performance of each of the providers. At any time if a provider should fall below service level standards, Connexion can pull a provider and find a new one to service your residents.

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Homeowner Questions

What does the small box on the outside of my house do?

The Network Interface Device (NID) is the physical point on the side of the house that connects the fiber optics to the end user (i.e. phone, data, voice). This box is the property of Connexion Technologies and should not be opened, tampered with or destroyed. If there is a problem with

Connexion Technologies - Frequently asked questions

your NID, please contact the Connexion Technologies Customer Care Center at 800 205 8698.

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Why do I have to have a set top box?

The set top box provides access to the digital channels available through your television service provider.

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How do I add more services to my internet, television, phone or security?

Contact the Connexion Technologies Customer Care Center at 800 205 8698

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Can my additional services be added to my HOA payment?

Your HOA payment is set within a contract between Connexion Technologies and the Home Owners Association for your community. Any upgrades are agreed to between the home owner and the service provider and will be billed directly to the home owner from the service provider.

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My service(s) are not working, who do I call?

If any of your services go out, contact the service provider directly using their customer service number. In the event that your services are not repaired within a reasonable time frame, you may contact the Connexion Technologies Customer Care Center at 800 205.8698 to expedite the process.

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What is a Service Activation Specialist and why do I need to have them come to my house?

A Service Activation Specialist is a Connexion Technologies employee that comes to visit with new homeowners to help them get their services activated. The Service Activation Specialist comes to your home to ensure that you have proper education on everything your new fiber connected home has to offer. They can answer questions about your providers, getting upgrades, and what applications are coming in the future and will be available over fiber optic networks. Connexion Technologies welcomes feedback from its users and appreciates the opportunity to learn more about what future communications services owners would like to see in their community.

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Why are my services billed through my HOA?

Connexion Technologies and your HOA worked out an agreement in conjunction with the developer of your community to provide services to each homeowner. By billing these services through the HOA, Connexion is able to get a discounted bulk rate on your services and pass those savings on to the homeowner.

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How is Connexion Technologies different from my local (Phone, Internet, Television, or Security) company?

Connexion Technologies provides the infrastructure and brings in service providers who use that infrastructure to deliver the service. This helps Connexion ensure the quality of the services delivered and keeps the prices for those services low.

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Connexion Technologies - Frequently asked questions

I have your internet service, how do I switch it to AOL or Earthlink, etc.?

You can still subscribe to AOL or Earthlink's services, but you will still have internet service from Connexion's service provider.

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I have always had AOL email, can I keep my email address?

To keep your AOL email address you must continue to subscribe to AOL's services. This does not mean that they will be your service provider, your internet service will still be through Connexion's service provider.

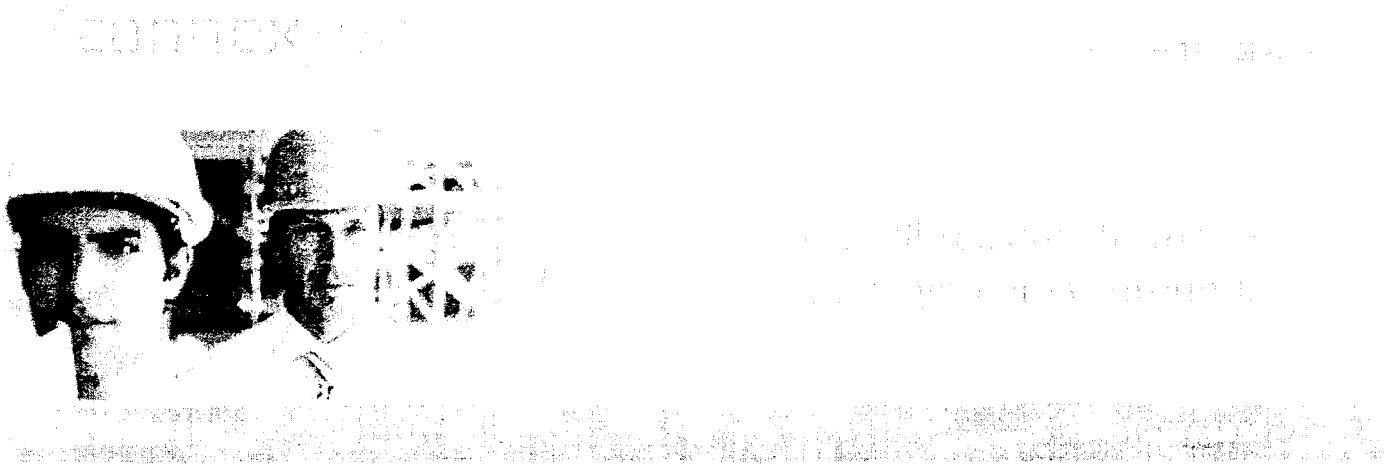
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Can I get local cable service or service from my local phone company?

You may call your cable company and request service from them. With a valid contract, Connexion Technologies will work with your cable company to make sure they do not damage the current infrastructure when coming to your house. Connexion will grant them access across the private easement on your property.

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Connexion Technologies - We provide fiber optic services for these communities



What We Do	Admiral's Quarters	Highlands at Walnut Creek	Purple Parrot Island Resort
How It Works	Alhambra Cove	High Point III	Purple Parrot Village
Demo	Amelia Concourse	Historic Westside Village	Regency Isle
Features	Apogee	Homeport Marina	Regency Towers
Communities	Aqua Pelican Isle Yacht Club	Icon Brickell	Renaissance Commons
Community Profiles	Back Bay	Indies	Reunion
Community List	Banana Bay	Indigo	Rice Hope
Developers & Builders	Barrington Cove	Jameson Place	Rio Mar
Testimonials	Beach Club Cottages	Johnson's Landing	Romar House
Partners	Beach Club Gulf Shores	Kellswater Bridge	Sailmaker's Place
Contact Us	Beach Side	La Perla	Sandy Creek Farms
	Beaver Creek	La Riva	Sanibel
	Bella Collina	Lake Washington	Sayan
	Bella Luna	Lakes at Savannahs	Sea Chase
	Belladagio	Las Olas	Sea Watch
	Bella Verde I	Latitude	Seaside Beach and Racquet Club
	Brentmoor	Laurelmor	Sides Moreno
	Boardwalk	Le Jardin	Somerby of Alpharetta
	Brentwood Lakes	Leeward Key	Sonoma Bay
	Bright's Creek	Legacy Key	St. Tropez
	Broadmoor	Levin's Bend at the Wharf	Sterling Shores
	Calabria	Livingston Ranch	Sugar Sands
	Caribe	Loft Downtown II	Summer House
	Caribe Cove	Loma Alta	Summer Key

Connexion Technologies - We provide fiber optic services for these communities

Carolina Colours	Lost Key-WCI	Sunset Bay
Carothers Crossing	Mariner Pass	TAO
Casa Bella	Marsh Harbor	Tesoro Beach Club
Cascades	Martinique	The Blue
Cedars of Chapel Hill	Maude Helen	The Club at Brickell Bay
CityPlace at Buckhead	Meadows	The Columns
Clematis	Meyer Real Estate	The Gardens
Clipper Bay	Mirabella	The Meridian
Colonnades	Mosaic	The Palms
Conservatory	Mosaic Tower II	The Vue
Cottages on the Greene	Nautilus	The Wharf
Craft Farms North	Navy Cove Harbour I	Tierra del Sol
Crystal Shores West	NeoVertika	Timber Run
Crystal Towers	Ocean Four	Timothy's Landing
Cutter Creek Plantation	Ocean Grand	Tributary at New Manchester
Cypress Club	Oceania	Tunica National
Cypress Gardens	Old Fields	Turnberry Reserve
Deerfoot Point	One Beach Club	Turquoise Place
Diamondhead	Ono Island	Tuscany at Suncoast Crossing
Eagle Bay	Onyx on the Bay	Tuscany Villas at Painted Mountain
Eden Condominiums	Opera Towers	Verandas
Egrets Landing	Orange Beach Marina	Villages Of Avalon
Entrada	Osprey Branch	Villas By The Bay
Ford's Colony of Rock / Mount	Overlook at Camp Creek	Villages at Copperstone
Ford's Colony of Williamsburg	Palm Beach	Vistas on the James
Grand Beach Resort	Park Condos	Walkabout
Grand Oaks	Park Village	Whispering Oaks
Grand Palisades	Perdido Pointe	White Oak
Grandview Resort	Phoenix All Suites	Willow Ridge
Grovenor House	Phoenix on the Bay	Windemere
Gwen Oaks	Plaza Midtown	Windsor Falls
Harbour House	Pointe Orlando	Wolf Bay Village
Harbour Place	Poitras Estates	World Quest Resort
Headwaters at Banner Elk	Portofino	Yacht Harbor
Heritage at New Riverside	Powell Place	
Heron Isles	Preserves at Savannahs	
Heron's Landing	Preserves Miami	

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Liebman, Sharon

From: SteimelW@gtlaw.com
Sent: Tuesday, May 23, 2006 11:18 AM
To: Liebman, Sharon
Cc: ZajkJ@gtlaw.com
Subject: RE: Draft easement, Avalon

I apologize for the delays. We ran into a couple of delays here. Anyway, Capitol Broadband is permitting other service providers to use its infrastructure to provide video and data services to residents. They have a contract with a third party who will probably also offer voice service to residents, but that offering will only be on a non-exclusive basis. It seems to me that they will have to be competitive with BST to obtain and keep voice customers.

Walt

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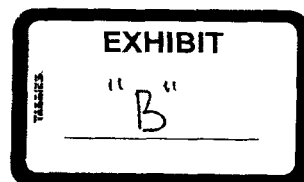
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From: Liebman, Sharon [mailto:Sharon.Liebman@BellSouth.COM]
Sent: Tuesday, May 23, 2006 11:00 AM
To: Steimel, Walt (Shld-DC-TelCom)
Cc: Liebman, Sharon
Subject: RE: Draft easement, Avalon

Thanks Walt. As you know, we have been waiting on a response from you for some time (since April 17). What do you mean by "underlying providers" below? I will respond on your other inquiry below and on the easement that you sent to me last Wed soon.

-----Original Message-----

From: SteimelW@gtlaw.com [mailto:SteimelW@gtlaw.com]
Sent: Tuesday, May 23, 2006 10:57 AM
To: Liebman, Sharon
Cc: ZajkJ@gtlaw.com
Subject: RE: Draft easement, Avalon



Liebman, Sharon

From: Liebman, Sharon
Sent: Tuesday, May 23, 2006 11:00 AM
To: 'SteimelW@gtlaw.com'
Cc: Liebman, Sharon
Subject: RE: Draft easement, Avalon

Thanks Walt. As you know, we have been waiting on a response from you for some time (since April 17). What do you mean by "underlying providers" below? I will respond on your other inquiry below and on the easement that you sent to me last Wed soon.

-----Original Message-----

From: SteimelW@gtlaw.com [mailto:SteimelW@gtlaw.com]
Sent: Tuesday, May 23, 2006 10:57 AM
To: Liebman, Sharon
Cc: ZajkJ@gtlaw.com
Subject: RE: Draft easement, Avalon

Sharon,

I've just caught up with my client. Capitol Broadband will not be providing voice. One of the underlying providers may be offering voice service as an option to residents, but only on a non-exclusive basis. Voice is not bundled into any fee, but is by individual subscription only. Does this answer your questions?

Can you let me know when BellSouth will be turning on service to the T-1s? We need to get service going. It is my understanding that BST is hooking up the voice lines to the builder's sales offices and other facilities, so I'd like a timeline for the T-1 connection. Any further delays on the T-1s will cause a disruption of service to residents who are scheduled to move in soon.

Thank you

Walt

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Liebman, Sharon

From: Liebman, Sharon
Sent: Monday, September 25, 2006 11:04 AM
To: 'CimkoJ@gtlaw.com'
Cc: Liebman, Sharon
Subject: RE: Avalon

Thank you John. I left a message for you last Friday in response to your e-mail below.

As noted in my message, it is our understanding that the arrangements that the developer has made with Connexion (and Smart Resorts) for Phase II of Avalon mirror those for Phase I. If our understanding is incorrect, please let me know. Note that we referenced this understanding our May 25 letter to Walt and didn't hear back otherwise, so we assume it is correct.

Again, thank you.

-----Original Message-----

From: CimkoJ@gtlaw.com [mailto:CimkoJ@gtlaw.com]
Sent: Thursday, September 21, 2006 3:58 PM
To: Liebman, Sharon
Subject: RE: Avalon

Sharon,

Sorry for not getting back to you sooner, but I was just able to have a discussion with Walt. Based on discussions he's had with the client, Walt told me that an arrangement has been made with a service provider for the provision of voice telephone service in Avalon. The provider is Smart Resorts, also known as Beyond Communications. The arrangement does not include any special marketing deal. The arrangement is not exclusive; it authorizes Smart Resorts to provide voice service, but does not give it the exclusive right to do so.

Please let me know if you have any further questions.

Also, the client is curious about BellSouth's interest in obtaining this information. I think you may have mentioned in an earlier conversation that BellSouth may explore marketing voice services to residents in Avalon and therefore was interested about whether any arrangements with other providers already exist. If possible, could you let me know if my recollection is correct; if it isn't, please let me know if you can shed any light on the basis for BellSouth's interest.

Thanks very much -- John

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From: Liebman, Sharon
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Cc: Liebman, Sharon
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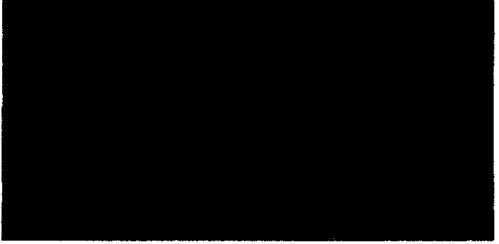
home

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- References
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- Board of Directors
- Products
- Next Generation
- SmartTV System
- Smart Resort
- Other
- Company Overview
- Contact Us

DSSI is the holding company of SmartTV and SMARTRESORT (soon to be re-branded as Beyond Communications). SmartTV is a System Integrator specializing in the IP Services Industry. Smart Resort is a Next Generations Service Provider using Ethernet and IP as its Platform and Protocol.

SmartTV provides integration, deployment, and training to Next Generation IP Services Providers. Installations include complete end-to-end solutions. SmartTV provides to our customers our Next Generation all IP Head End, our GigE fiber optic network transport system, and our specially designed Customer Premise Equipment (CPE). This System allows Services Providers to ability to provide a wide range of IP services, such as, VoIP, IPTV, IPSurvelance, Entertainment on Demand, and Extremely high bandwidth to the Internet. SMARTTV has also developed several specialty interfaces required in the Resort Industry to help Services Providers provide Resorts with enhanced services. Some examples are "Forced Channel TV" and Voice services integrated to Property Management Software.

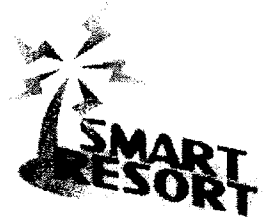
SMARTRESORT provides customers with complete set of High performance services, with one bill, from one provider. Utilizing SMARTTV'S End-to-End solution, SMARTRESORT currently provides customers with Phone (VOIP), Digital TV (IPTV), High Speed Internet (Ethernet Speeds), and Entertainment on Demand (our patent pending product). Through SMARTTV'S "Next Generation System", SMARTRESORT is able to provide large Ethernet type bandwidth to each customer, up to a gigabit if needed. This opens up a large amount of opportunity to provide enhanced services to allow for more revenue per subscribers.



DSSI has cultivated relationships with vendors to ensure a selection of the market's best performing products and continually expand its' services to enhance the ability to offer reliable and innovative solutions.

We figure out how to make multi-vendor products work together for optimum performance and greater customer savings.

We look at a customer's problem and create an efficient, customized solution.



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[Smart Resort](#)

[Beach Club](#)

[Smart](#)

[The Defining](#)

[Smart TV Comm](#)

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CORPORATE OVERVIEW

DSSI, LLC maintains it's corporate headquarters in Orange Beach, Alabama. **DSSI** is the holding company of SmartTV and SMARTRESORT (soon to be re -branded as Beyond Communications). SmartTV is a System Integrator specializing in the IP Services Industry. Smart Resort is a Next Generations Service Provider using Ethernet and IP as its Platform and Protocol.

Scroll down or use the links below to learn about the people that make up DSSI.

Jeff Hathaway - President, Chief Executive Officer and Founder - DSSI

Angelo Cicchino - Vice President of Business Development - DSSI

Mike Neasbe - General Manager - SmartTV

Renee Curtis - President - Smart Resort

Jeff Hathaway – President, Chief Executive Officer and Founder – DSSI

Mr. Jeff Hathaway brings over 20 years of technical, sales, executive and entrepreneurial experiences, working for both Fortune 100 companies and early stage startups. One of Mr. Hathaway's goals for DSSI is to help DSSI travel through the corporate life cycles from a startup to stability and beyond.

Mr. Hathaway's experience encompasses the gamut of executive leadership roles. He has spent 8 years of his career working inside billion dollar corporations such as Xerox, Businessland and Brother International. The balance of his 20 years experience has been spent founding, building and selling several small businesses.

Mr. Hathaway has learned the value of surrounding himself with talented people and has brought together a team of professionals that have the ability to take DSSI to a high level of success.

Mr. Hathaway currently lives in Southern Alabama with his wife, Renee, and they have two teenage boys, Josh and Jarrad.

Angelo Cicchino – Vice President of Business Development – DSSI

Angelo Cicchino has been in sales and management for over 30 years. Starting his sales carrier with Home Life Insurance Company of New York and Chicago, Illinois. He was honored his first year as rookie of the year for the state of Illinois in life insurance sales. Five years later he started Cicchino Enterprises, consisting of seventeen agents producing five million dollars of life insurance premium in its first year. In 1974, Jackson National Life, realizing Angelo's sales and management skills, asked him to be their Vice President of Sales and Marketing for the Gulf Coast region consisting of Louisiana, Mississippi, Arkansas and Alabama. Starting out in a new territory in New Orleans with one agent and recruiting no less than a minimum of 28 new agents per week for ten years he was successful in booking life insurance premiums in the excess of of 40 billion dollars by the tenth year and one hundred twenty million dollars of annuity premium in one year. He has authored many how to articles in life insurance selling, personal selling power, etc. He also owns many new enterprises that have been national and global in scope. Angelo comes to use from California and is spear-heading our sales team

effort.

Mike Neasbe – General Manager – SmartTV

Mike Neasbe is a 30-year veteran of the communications industry. His career began in the mid 70's as a CATV design engineer for several Midwest CATV systems. As bi-directional CATV broadband networks began to emerge as the first standards based networks for industrial and factory floor communications, Mr. Neasbe joined Clover Communications, Inc in Detroit, Michigan.

Over the next several years, as Sr. Systems Engineer with Clover, Mr. Neasbe designed and implemented several hundred plant wide Broadband systems for major clients such as Ford, GM, Chrysler and McDonnell Douglas Corporation.

In an effort to expand their national presence, Mike moved to Dayton, Ohio to open the first of several regional offices for Clover Communications. As networking technologies evolved from coax-based broadband to UTP and Fiber, Mike continued to develop process and procedure that enabled Clover to become a national force in the roll out of Standards based networks.

Mike is a BICSI - Registered Communications Distribution Designer and also maintains credentials with SCTE, NSCA and IEEE.

Lester Boihem – Vice President of Engineering – DSSI

Lester started working for BellSouth Telephone Company in 1971. There he started out as an installer and worked his way through the ranks into an elite group called Special Services where they installed all special services for events. This group worked on data, and anything that was a priority for the telephone company. Lester transferred into the mobile radio and microwave division where BellSouth sent him to school on various microwave and radio products that were used within the company. After 12 years with BellSouth, Lester left BellSouth and opened his own company, Two-Way Communications Company. The first contract landed by Two-Way was BellSouth as an outsource contractor. For 3 years he maintained BellSouth's two-way radios in their vehicles, all of their paging equipment, and radios for their security division. He also landed another large contract for Bergeron Shipyard where we maintained all the radios within the shipyard.

Lester worked out of his house for about two years then built his own building. At that time it was only Lester and five other employees. Today, the company has 30 employees with offices in New Orleans and Lafayette, Louisiana. He saw the need to build communications towers for his own use and built a company constructing and operating towers throughout the region; that was subsequently sold to Pinnacle Corporation. Then he opened up another company and started building towers for cellular companies along with towers he needed for himself; Total Towers was formed. In two years, Lester sold Total Towers to SBA; a national tower company traded on the stock exchange.

Lester opened up a Two-Way office in Orange Beach, AL. He built several towers and established a communications system in the Baldwin County area. In Alabama he met several developers and invested in condominiums and property in the area. Lester felt the need for technology in this area, met Jeff Hathaway and Dale Younce, and they formed Baldwin County Internet to deliver wireless Internet services. At that time, they decided not only to deliver wireless Internet, but also to become a CLEC telephone company, as well as acquiring a cable franchise. The partners are now delivering technology

to condominiums along the Gulf Coast region.

Renee Curtis – President – Smart Resort

Before joining DSSI, Renee Curtis was the President of a Michigan based statewide ISP. In this capacity, she was responsible for the upholding the company's strategic and financial goals by providing structured management and accounting procedures. Throughout her career she has consistently been involved with customer service management; developing and implementing unique customer promotions, call center procedures, and training lessons. Renee attended Michigan State University where her studies focused on business and accounting.

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www.SMARTRESORT.com [INTERNET]

High Speed Internet Services

Your condominium also comes equipped with Broadband High Speed Internet service. The speed of your Broadband Internet Service is 5 times that of conventional DSL. Your whole family can access the Internet with the home network that provides connectivity throughout your unit.

Features Available :

- connection to the information super highway
- e-mail
- web browsing
- AOL services compatibility
- Internet Chat
- web-mail service

You have been bombarded recently with TV ads touting the broadband highway. Now our high speed Internet service connects the "last mile" to your condominium or home. You will enjoy the latest and greatest from the World Wide Web or if you had to you could spend a couple more days and work from the beach.

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www.SMARTRESORT.com [PHONE]



Phone Services

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.

Features Available :

- local calling
- long distance calling
- call holding
- call forwarding
- call waiting
- emergency 911 service
- convenient unit to unit extension calling
- voice mail
- individualized voice mail greetings
- remote mail box access

Just to name a few!

*Feature availability may vary.
Contact a Smart Resort Sales Rep to find out what services are available at your condominium or home.
888-843-3822

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www.SMARTRESORT.com [CABLE]



Television Services

Your television services are the highest, uninterrupted, quality viewing. We suggest high definition TV (HDTV), for a quality of viewing never seen before. You will also be provided with a program/movie guide. The channels in the basic package are attached on a separate page. There will be a variety of premium packages for you to choose from that will also include sports packages, NFL Sunday and more.

Premium channels are available at below market price and can be added by calling 1 877-843-3822

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www.SMARTRESORT.com [VOD]



Video on Demand Services

VOD is the latest product to be delivered by Smart Resort Technology team. We will provide 1000's of selections to choose from, including new releases. You will be able to view new release movies from your living room or any of the bedrooms. You will be able to use one remote control to select your movie, a channel to view from our TV package or 3D Video Gaming.

As part of our Entertainment Package you will receive a Set Top PC that will allow you to multi-function. You can select a first run movie to view in your living room, younger kids can view a cartoon in a bedroom and/or older kids can play the latest video games all at the same time.

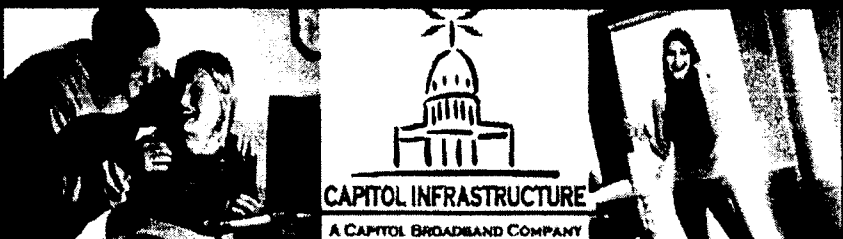
Imagine not having to go out in the rain and no late fees. You will be able to fast forward, pause or rewind your selected movie at any time.

If you have Internet access, the Set Top PC will allow you to send and receive Email from your TV and browse the Internet using a wireless keyboard that is provided.

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Capitol Infrastructure





Who is Capitol Infrastructure?

- A Telecommunications Infrastructure Company**
- Founded in 2002**
- Headquartered in Raleigh, NC**
- Deploying properties throughout the Southeastern United States**
- Currently close to 50,000 homes under contract for service**



Fiber Optic Infrastructure

We secure Service Providers to carry enhanced Telephone, Cable, Internet Access, and Security Monitoring over the fiber infrastructure

- More Channels**
- More Voice Features**
- Faster Access to the Internet**
- Increased Security**
- LOWER COSTS to RESIDENTS**
- Direct Payments to Developers**
- Future Technology Capabilities, including Gaming and Video on Demand within this year and endless capabilities moving forward**



Fiber to the Home vs. Coax

- Separation of the infrastructure from the service provider
- 1 thousand times more bandwidth
- 100 times less resistance
- One fiber for all services
- More services and future capabilities
- Passive network – not affected by Lightning or Corrosion



Fiber to the
Home



Coax

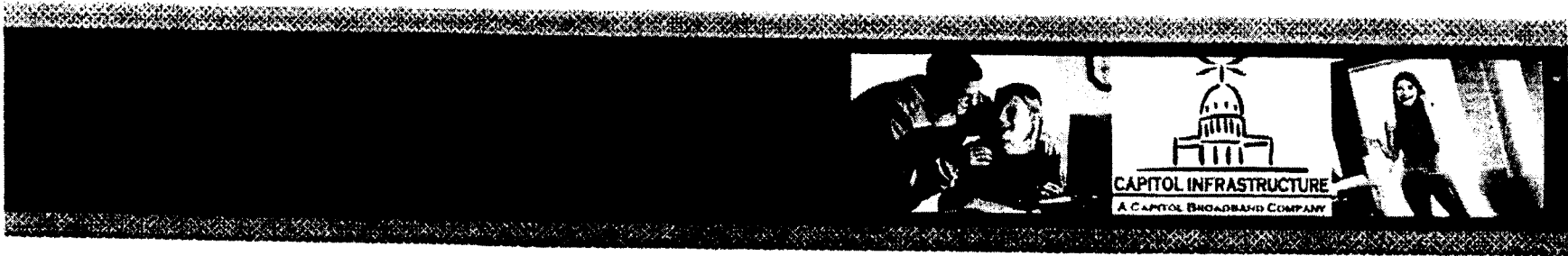


Bottom Line

A Fiber to the Home Infrastructure:

- **Speeds sales**
- **Lowers finance costs**
- **Increases lot values \$4k - \$7k***
- **Competitive Edge for your development – set yourself apart**

* According to a recent white paper by Corning Industries

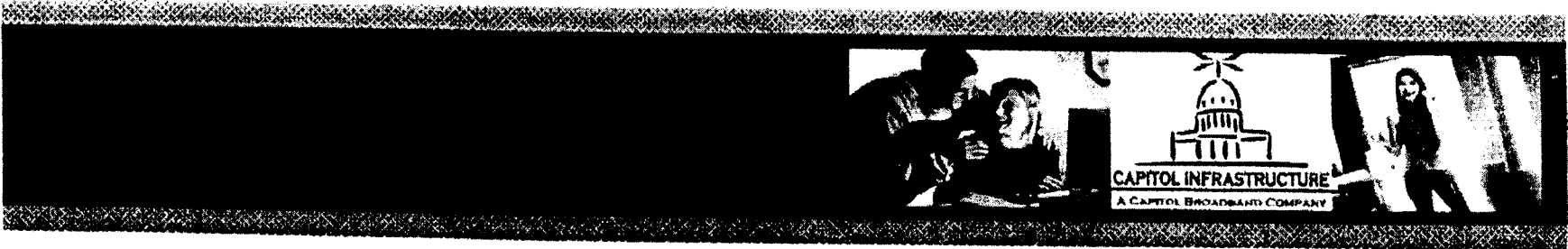


Revenue Sharing

- Shared monthly revenues per unit to the developer

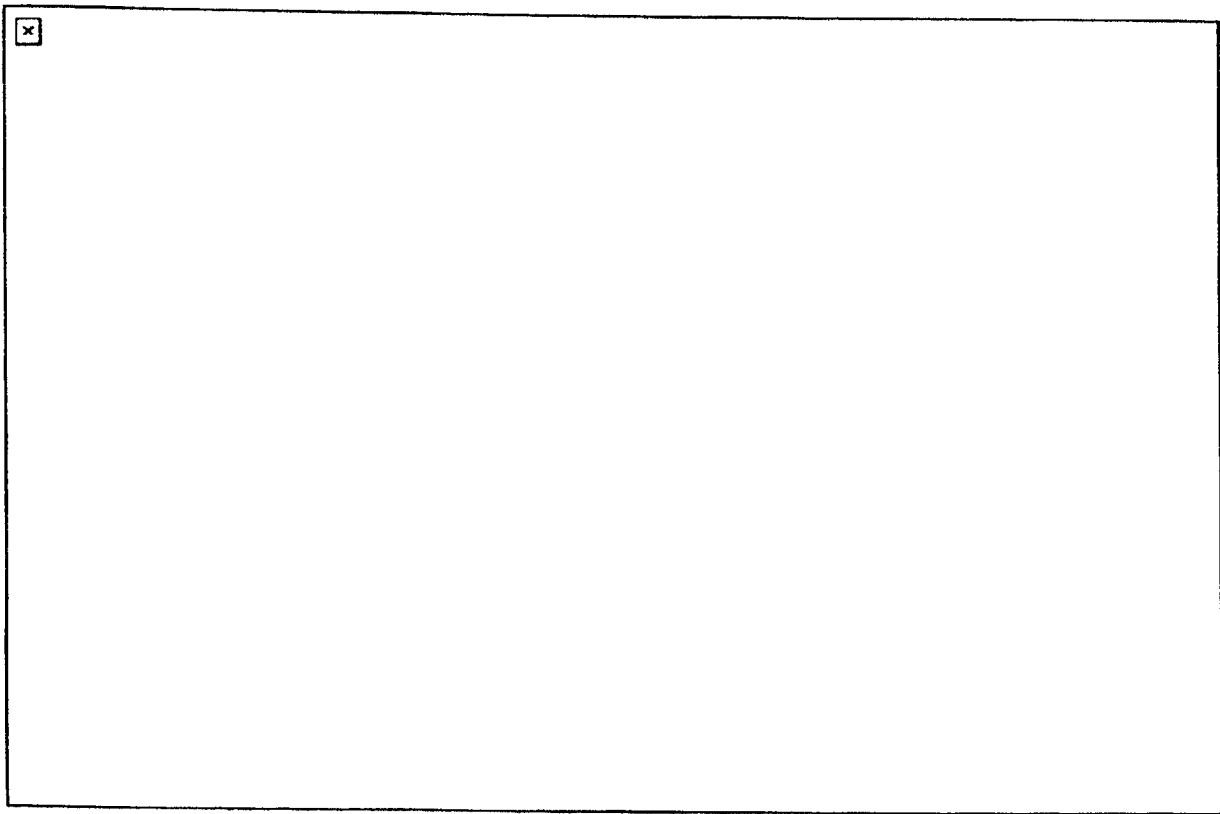
OR

- A one time payment to the developer in exchange for easements to provide the service



Connecting your Development

Corning Study http://www.corning.com/multimedia/flash/ftth_benefits/flash/ftth_benefits.htm





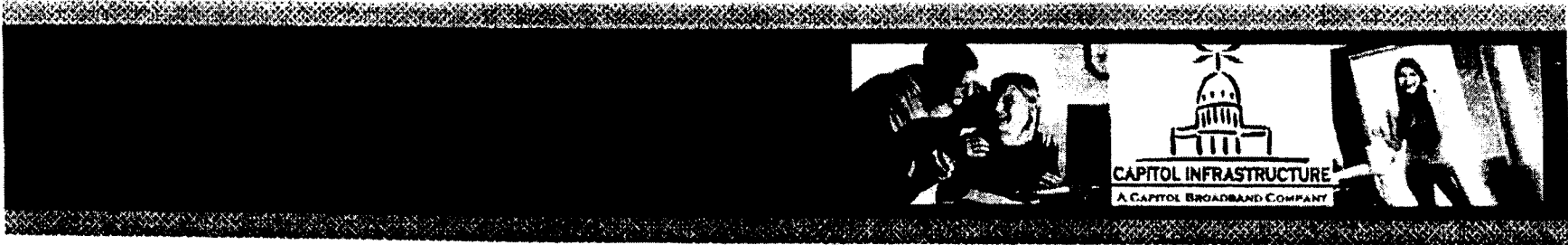
Services

Bulk High Speed Internet with 3Mbps downloads,
1Mbps uploads for unlimited computers

Bulk Standard Cable with over 70 channels
including High Definition locals

Bulk Telephone with unlimited local service with
calling features and expanded service area

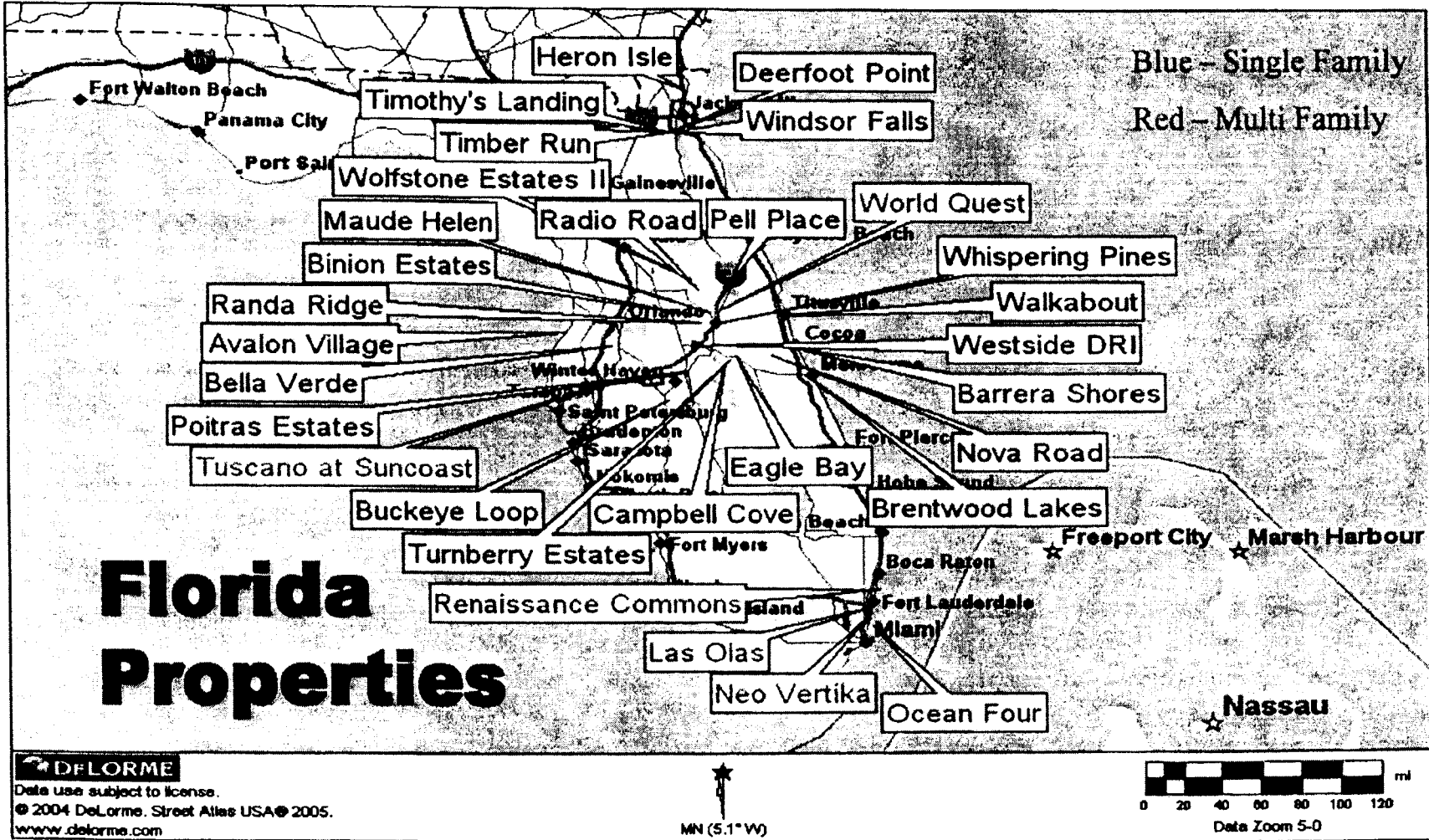
Bulk Security System monitoring with free basic
hardware and installation

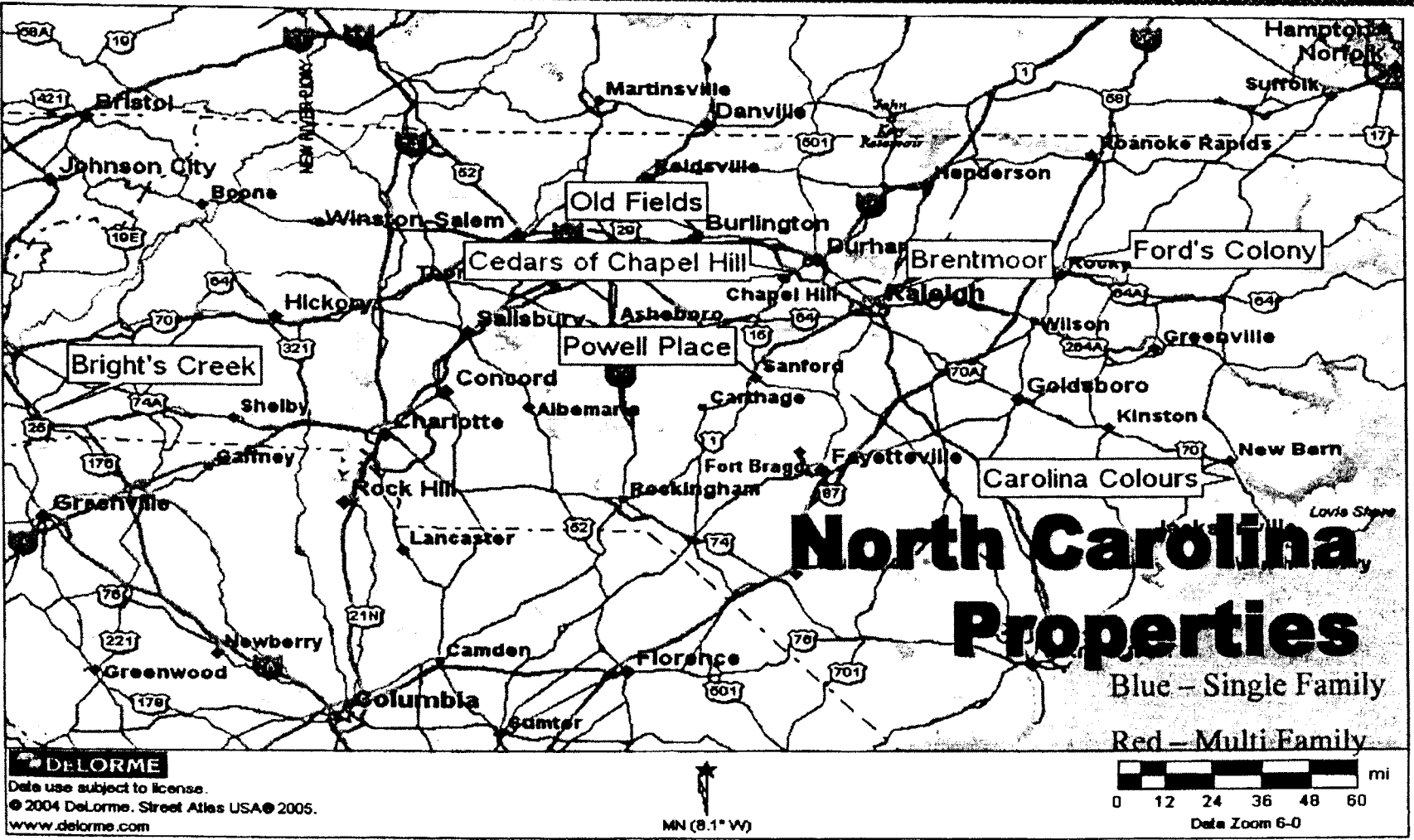
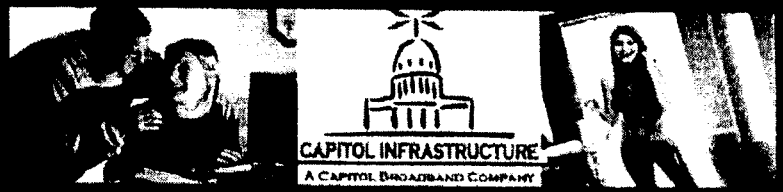


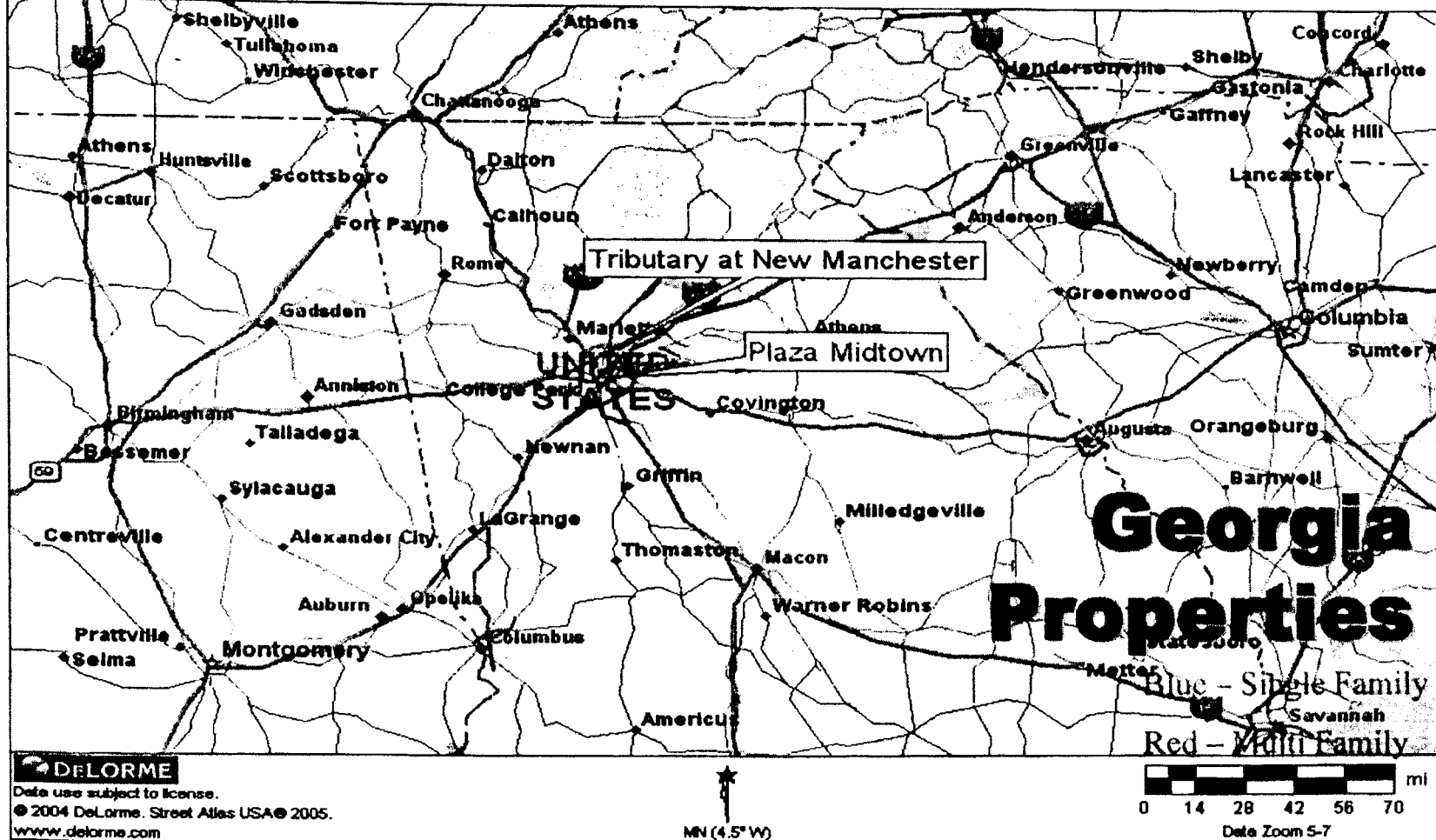
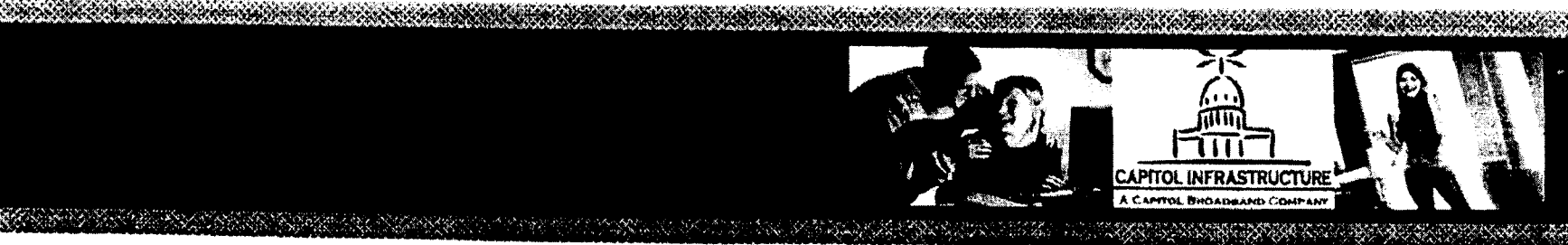
Service Providers

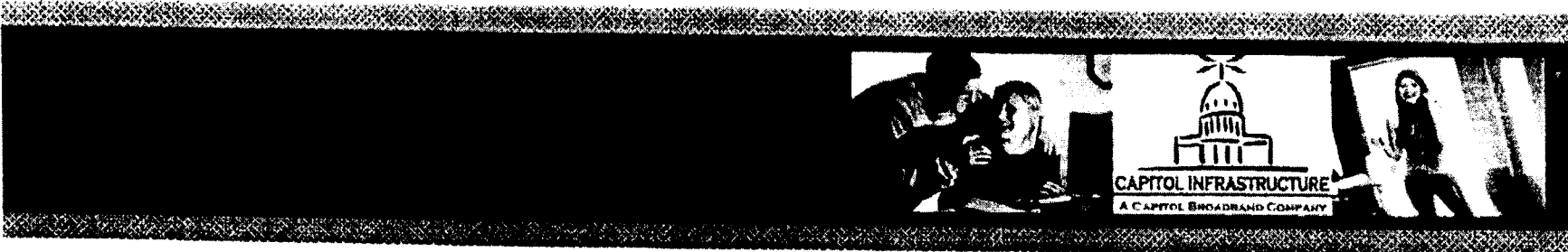
Capitol Infrastructure selects the best available video, voice, data, and security services from companies with a solid history of performance and financial stability.

- **Madison River Communications** – The 14th largest telephone company in the industry, providing local and long distance telephone service, Internet access, and cable TV to residents and businesses since 1996.
- **FDN Communications** – A privately owned Competitive Local Exchange Carrier based in Orlando offering the latest in communications products including local and long distance service and high-speed Internet.
- **Cavalier Telephone** – The largest facilities-based telephone company in the Mid-Atlantic, providing a full suite of residential and commercial telecommunications products.
- **Fusion Broadband** – A communications service provider with over 20,000 subscribers in over 20 states.
- **Ygnition** – A national leader in providing broadband services, including VOIP, high-speed Internet, and cable TV services to the multi-family and condominium industry as well as commercial office buildings.
- **ADT** – The largest provider of electronic security services to more than six million commercial, government and residential customers throughout North America.
- **Security Associates International (SAI)** – is "America's Leader in Security Services" and the leading provider of monitoring and security services dedicated to helping independent alarm dealers succeed in today's dynamic security markets.

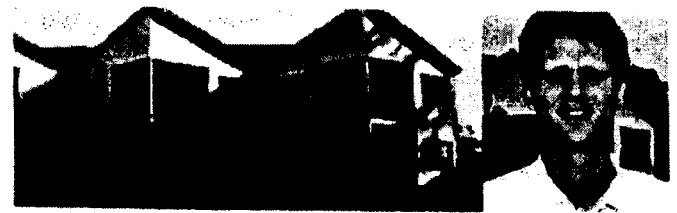








Comments from Clients



"We wanted a technological edge and Capitol Broadband's wireless Internet access gives us that. Our apartment buildings are much more than just "vanilla boxes."

DAVID FALK, JR. Drucker & Falk, a property management company with more than 23,000 units in the Southeast



"The value added of the technologies they are bringing to us versus the cost of the systems is very, very favorable."

ROGER PERRY East West Partners, developer of single-family, multi-family and multi-use communities



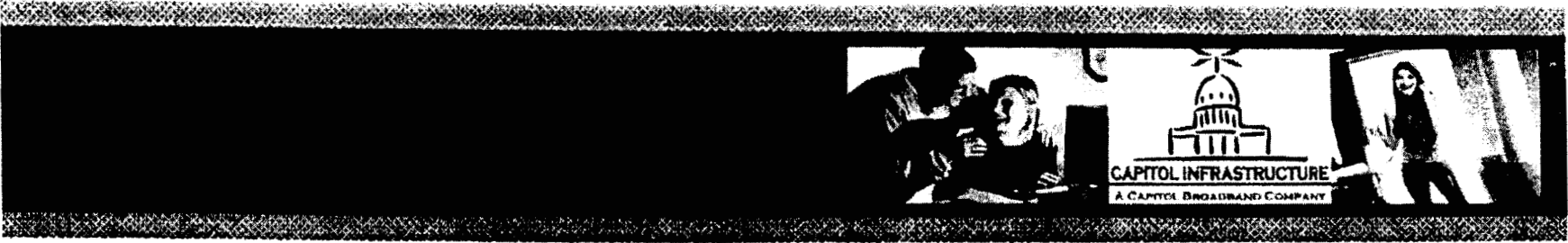
"Our occupancy rate has gone up from 85% to 94% in a year, which I can definitely attribute to our wireless amenity. And we get glowing reports from our resident surveys."

BUNNY BLAKE property manager of a 400-unit Drucker & Falk apartment community



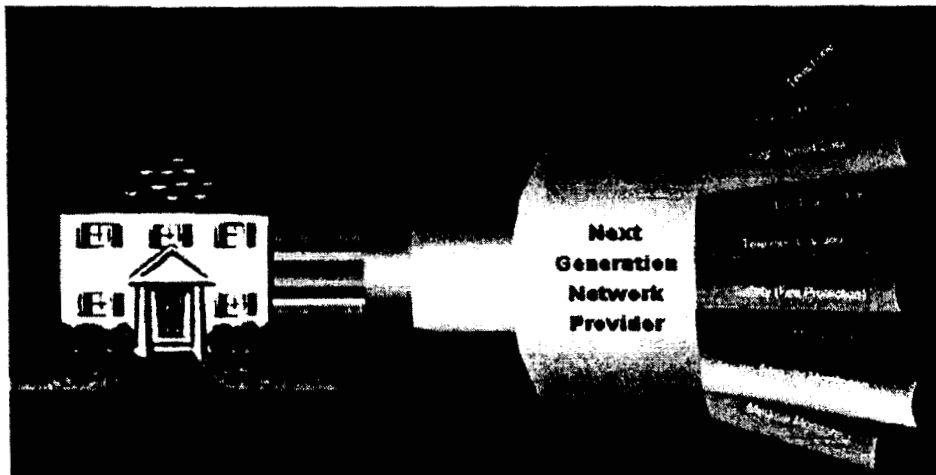
"Of all the providers we looked at, Capitol Broadband had the most capabilities, the strongest financial backing, and the best support."

DONALD PHILLIPS Phillips Development & Realty, developers of multi-family communities



Capitol Infrastructure

Using our Capital to deploy a state of the art fiber to the home infrastructure for the delivery of enhanced telephone, cable, Internet access, security service and MORE!







SETTING COMMUNITIES APART.
AT THE SPEED OF LIGHT.

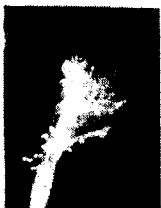


CAPITOL INFRASTRUCTURE

*Bringing residential communities
the latest voice, video, Internet,
and security technologies .*

WHY FIBER? WHY NOW?

It's 1,000 times faster than dial-up. Fifty times faster than DSL, cable modems, and T-1 lines. Optical fiber is always on, transmitting information at the speed of light.



Capitol Infrastructure is an industry leader in delivering fiber-to-the-home communications to residents of single and multi-family homes. And we are providing developers with a clear and convincing advantage when marketing their properties.

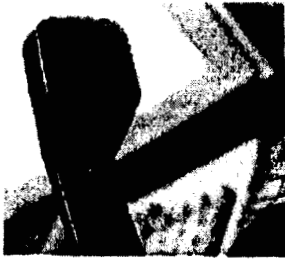
With the roll-out of high definition TV, increased gaming, and the sharing of large music, image, and video files, the demand for bandwidth has skyrocketed. Traditional copper wiring can't deliver it all. But fortunately fiber, and its substantial bandwidth, has become more cost-effective for residential applications.

The telephone, Internet, cable, home security, and wireless access that Capitol Infrastructure brings to your community are all delivered over a single network. That means a broader range of communication options at lower costs for your residents. And a new stream of revenue for you, the developer.

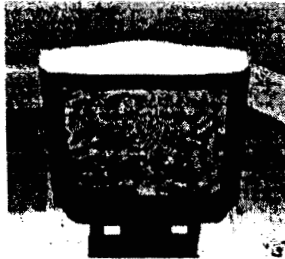
We're working throughout the Southeast to future-proof new homes. Partial lists of specific properties, builders and developers can be found on later pages.

3





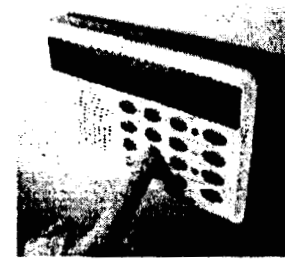
voice



video



data

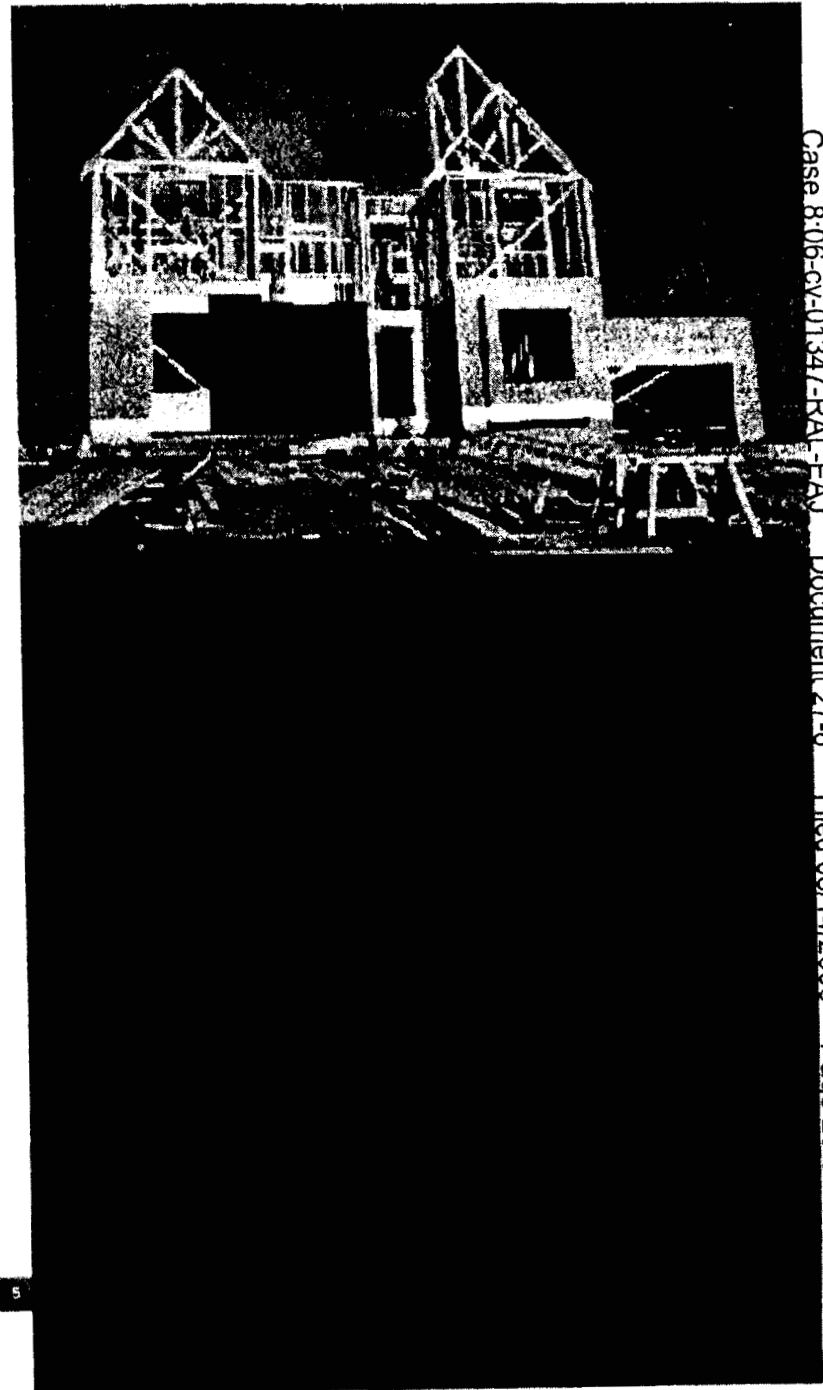


security

HOW DO WE DO IT? A QUICK OVERVIEW.

- Capitol Infrastructure (CI) contracts with you, the real estate developer, to install a complete fiber-to-the-home delivery system.
- The developer grants CI easements that permit access to contracted service providers.
- CI uses its own capital resources to install the infrastructure. The developer does not put up any capital.
- CI designs and installs the infrastructure including a video receiving/distribution system. Each home is directly connected with fiber to the communications center.
- CI contracts with service providers for provisioning of services: cable, telephone, Internet access, and security monitoring. WiFi access in common areas is also included. Future applications may include medical monitoring, video phone, remote access to in-home appliances and gaming, and video on demand.

-continued-



- Services are bundled for bulk purchase by all members of the homeowner's or condo association resulting in significant savings for residents.
- Services can also be offered to commercial and retail tenants on the property.
- All services are available to the homeowners when they move in, eliminating the hassle of phone calls and long installation lead times.
- Homeowners benefit from integrated customer support.
- And finally, CI pays the developer a monthly fee based on the number of residents and services delivered. Or you can opt for a one-time payment. Either way, this is a new and potentially significant source of revenue.



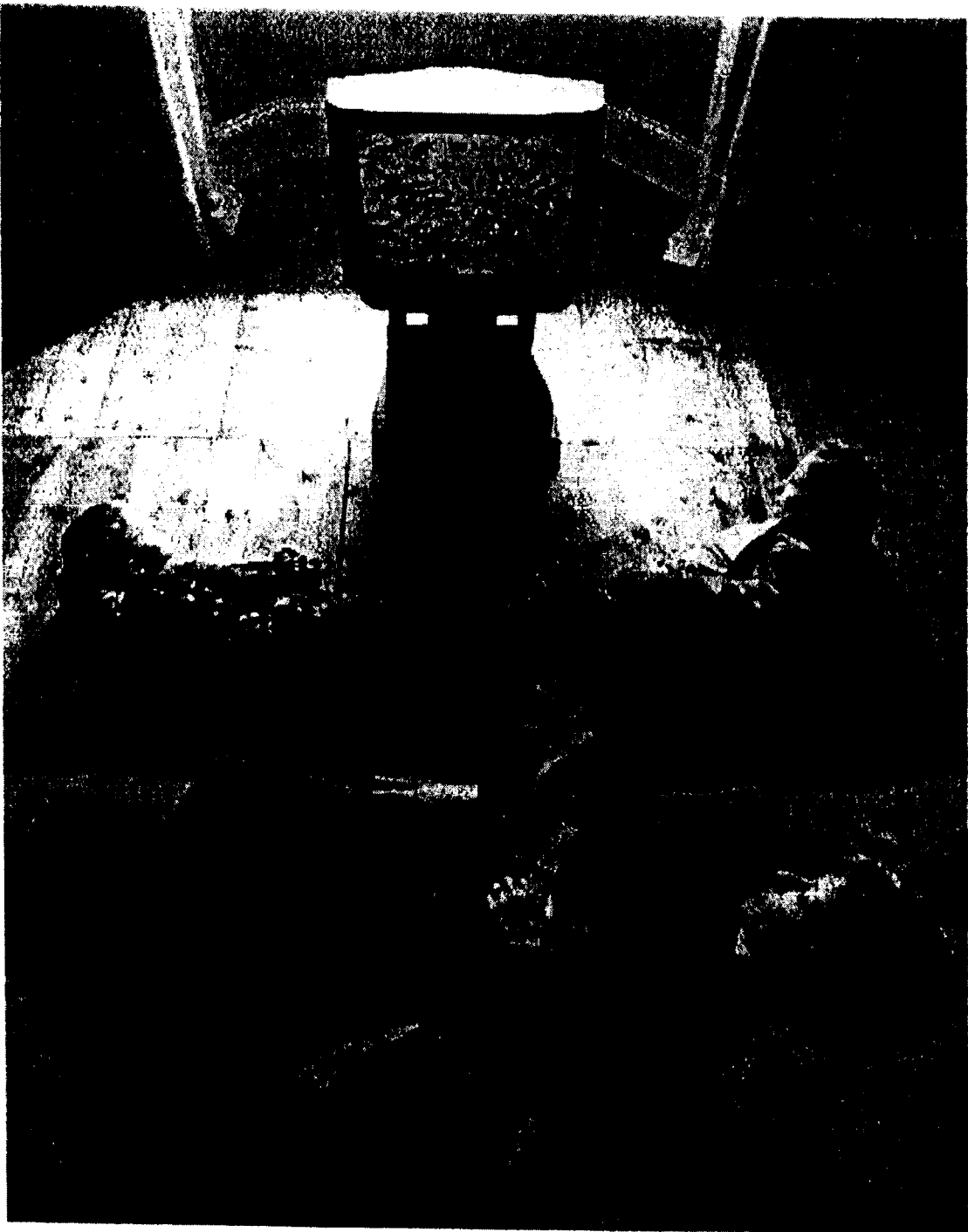
BECAUSE LIFE
DEMANDS MORE
THAN BASIC CABLE
AND DSL.

VOICE
Local Phone Service
Long Distance
Voice Mail
Call Forwarding
Conference Calls
Caller ID
Video Phone

VIDEO
Cable TV
Digital Cable TV
Premium Channels
(HBO, etc.)
Video On Demand
Pay Per View
Interactive TV

DATA
E-mail
Teleworking
Virtual Private Networks
Gaming
Fast Surfing
Downloading
Video Conferencing

OTHER
Security Systems
Meter Reading
Video Monitoring
Medical Monitoring
Music On Demand



FIBER-TO-THE-HOME AND
OUR SERVICE PROVIDERS BRING UNLIMITED
BENEFITS TO THE CONSUMER.

Today's prospective homebuyer chooses where to live based on many considerations. The availability and cost of technology is becoming increasingly

important. We are all becoming accustomed to instant communication and expect to stay constantly connected



to our family, friends, work, and the world.

- Lightning speeds allow for fast downloading of music files, gaming, and instant messaging.
- Wide range of cable programming including HD channels, upgradeable packages to include video on demand, premium and foreign language channels.
- Ability for future offerings such as medical monitoring, video conferencing, and home automation.
- Security systems with advanced features including fire alarm and remote access monitoring, with many upgrades available.
- Lower prices and higher levels of service.

FIBER-TO-THE-HOME AND
CAPITOL INFRASTRUCTURE BRING UNLIMITED
BENEFITS TO THE DEVELOPER.

Whether you are building a single-family neighborhood or high-rise condominium, fiber sets your property apart, allowing more and higher quality communication services, and better prices.



*Las Olas Beach Club,
Fort Lauderdale, Florida*

- Fiber has been shown to increase lot values.
- Fiber can speed the sale of your homes.
- We use our own capital, not yours, to design and install the infrastructure.
- Fiber is more reliable than traditional wiring. It is not affected by lightning or corrosion. Only fiber can meet ever-increasing demands for bandwidth.
- Unattractive pedestals are eliminated because all fiber is run through conduit as a protection from cuts.
- And finally, Capitol Infrastructure offers you a new and potentially significant revenue stream or lowered financing costs.



"Communities around the country are realizing the power of fiber to the home. Powell Place is pleased to be one of the first to bring this technology to our residents. I was having trouble finding a service provider to bring fiber to a growing location, but Capitol Infrastructure has delivered that solution."
BRYSON POWELL East West Partners, Developer of Powell Place, a mixed living community in Pittsboro, NC

"Of all the providers we looked at, Capitol Infrastructure had the most capabilities, the strongest financial backing, and the best support."
DONALD PHILLIPS Phillips Development & Realty, developers of multi-family communities

"Ford's Colony Rocky Mount affords a resident all of the first class amenities of a master planned community including a championship golf course, an 80 acre private lake, 24-hour security, and a clubhouse on 1000 plus lush acres. Access to technology is another important amenity for our home buyers and therefore has been considered thoroughly. Capitol Infrastructure provides a seamless communication solution for our builders and residents and all of the bandwidth of fiber optics. Capitol Infrastructure is a winning partner of Ford's Colony."
DREW MULHARE Vice President of Operations, REALTEC Incorporated, Developer of Ford's Colony gated community, Rocky Mount, NC

"The value added of the technologies they are bringing to us versus the cost of the systems is very, very favorable."
ROGER PERRY East West Partners, developer of single-family, multi-family and multi-use communities

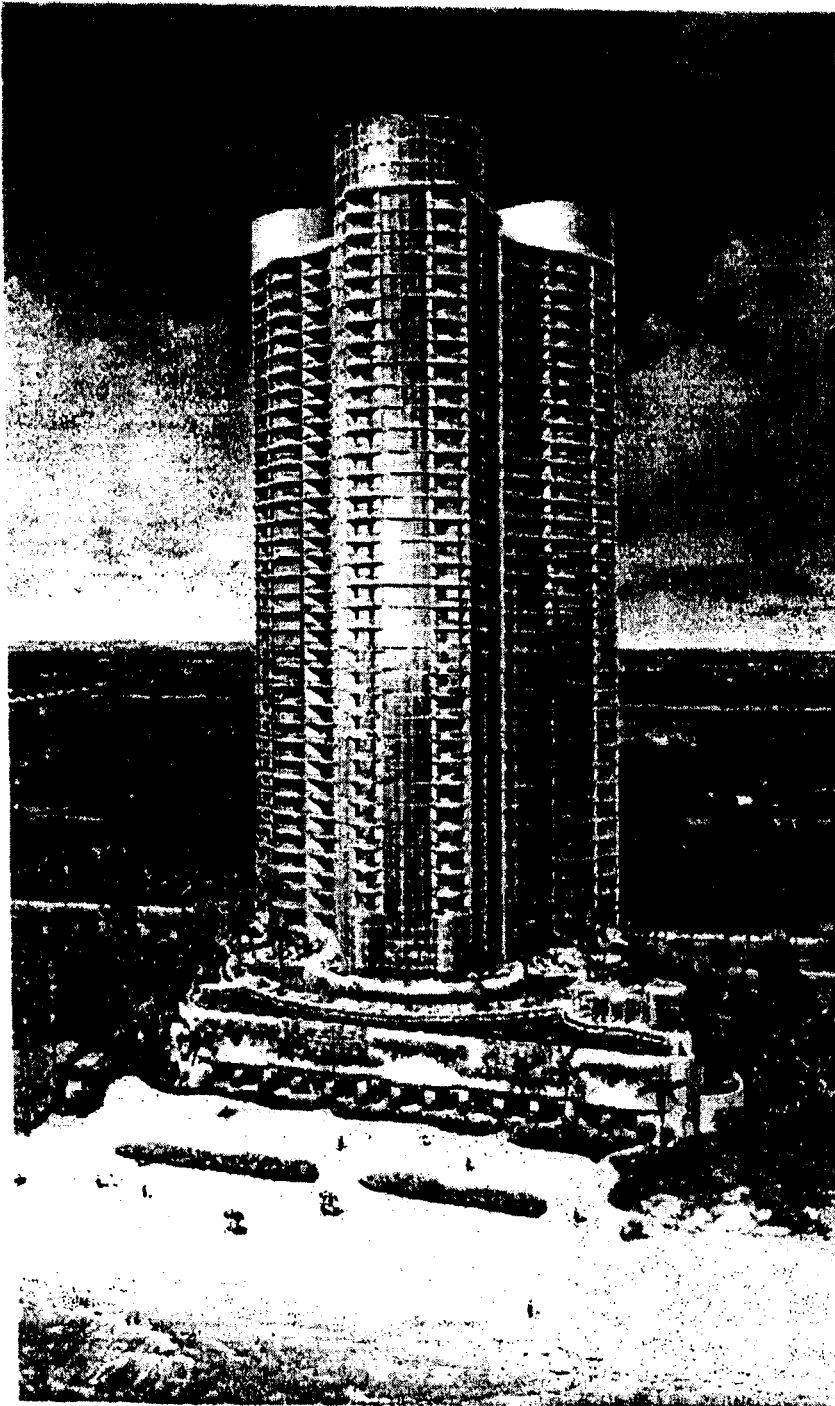
"The Related Group develops and implements diversified real estate projects for the ever growing state of Florida. Our target demographic is looking for technology offerings such as high speed Internet, customized cable programming and home security. Our residents are enthusiastic about living in a state-of-the-art community where their communications services will be reliably delivered over a fiber optic infrastructure. The buzz about fiber optics and the sophistication of the services that can be delivered over it, like video on demand and interactive gaming are likely to attract more buyers."
LEE HODGES The Related Group of Florida, Developer of Ocean 4 and Las Olas Beach Clubs

Ford's Colony in Rocky Mount, North Carolina



Case 8:06-cv-01347-RAL-EAJ Document 27-8 Filed 08/14/2006 Page 24 of 27

Docket No. 070126-TL, Exhibit E
Page 22 of 25



BRINGING PROVEN SERVICE PROVIDERS TO YOUR COMMUNITIES.

Capitol Infrastructure selects the best available video, voice, data, and security services from companies with a solid history of performance and financial stability.

MADISON RIVER COMMUNICATIONS – The 14th largest telephone company in the industry, providing local and long distance telephone service, Internet access, and cable TV to residents and businesses since 1996.

FDN COMMUNICATIONS – A privately owned Competitive Local Exchange Carrier based in Orlando offering the latest in communications products including local and long distance service and high-speed Internet.

CAVALIER TELEPHONE – The largest facilities-based telephone company in the Mid-Atlantic providing a full suite of residential and commercial telecommunications products.

FUSION BROADBAND – A communications service provider with over 20,000 subscribers in over 20 states.

YGNITION – A national leader in providing broadband services, including VOIP, high-speed Internet, and cable TV services to the multi-family and condominium industry as well as commercial office buildings.

ADT – The largest provider of electronic security services to more than six million commercial, government and residential customers throughout North America.

Ocean 4, a condominium community in Sunny Isles Beach, Florida

A CI COMMUNITY FEATURED IN
TECHHOME BUILDER.

In a recent article detailing the significant increase in fiber-connected neighborhoods, and the benefits to developers and end-users, TechHome

Builder highlighted a community wired by Capitol Infrastructure. Tributary at New



Manchester, built by Haven Properties, includes single-family homes, apartments, office space, and retail stores on 1600 acres outside of Atlanta.

The builder expects that their fiber-based package of amenities will help sell their homes. But what is more important, the package will boost the number of homeowners purchasing high-speed Internet. Haven Properties expects 100% penetration among their 20- and 30-something buyers, and nearly that for Baby Boomer prospects.

To dramatize the recent increase in connected communities in the U.S., the article cites statistics showing a 70% increase in fiber connected developments from April to October 2004.



Brentmoor Apartments in Raleigh, North Carolina

A PARTIAL LIST OF OUR COMMUNITIES.

NORTH CAROLINA
Cedars of Chapel Hill
Powell Place
Old Fields
Brentmoor
Ford's Colony of Rocky Mount
Carolina Colours
Bright's Creek

SOUTH CAROLINA
Grandview Resort

ATLANTA AREA
Tributary at New Manchester
Plaza Midtown

JACKSONVILLE AREA
Heron Isle
Timothy's Landing
Windsor Falls
Deerfoot Point
Timber Run
Brentwood Lakes

ORLANDO AREA
Pell Place
Randa Ridge
Ocoee Golf
Westside DRI

Barrera Shores
Nova Road
Campbell Cove
Eagle Bay
Turnberry Estates
Radio Road
Wolfstone Estates II
Binion Estates
Maude Helen
World Quest
Avalon Villages
Walkabout

TAMPA AREA
Bella Verde
Poitras Estates
Tuscano at Suncoast Crossing
Buckeye Loop

WEST PALM BEACH

FT LAUDERDALE

MIAMI AREAS

Renaissance Commons

Las Olas Beach Club

Neo Vertika

Ocean 4

Latitude

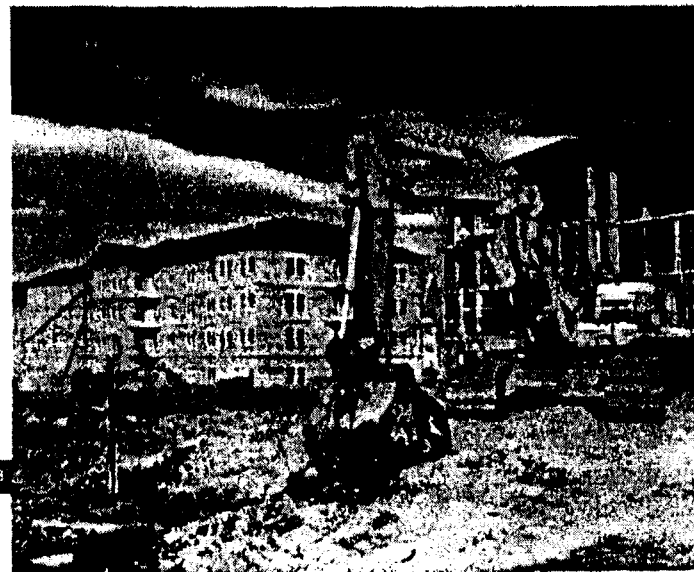
©2005 Capitol Broadband, LLC

SOME OF THE DEVELOPERS & BUILDERS
WE ARE WORKING WITH.

DEVELOPERS
Ford's Colony, LLC
Standard Pacific
East West Partners
Related Group
EA Fish
Daniel Corporation

BUILDERS
Georgia Pacific
Standard Pacific
Maronda Homes
Centex Homes
Richmond American
DR Horton
Mercedes Homes
Maesbury Homes

Cedars of Chapel Hill, a retirement community in North Carolina.



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:)
) Docket No. 070126-TL
Petition of AT&T Florida for Relief)
from Carrier-of-Last-Resort Obligations)
Pursuant to Florida Statutes §364.025(6)(d))
(Avalon))
_____) Filed: August 3, 2007

AFFIDAVIT OF LARRY BISHOP

Larry Bishop, being duly sworn, deposes and says the following:

1. I am a resident of the State of Georgia. I am over the age of 18 and am competent to make this Affidavit.
2. I graduated from Florida State University in 1998 with a Bachelor of Science degree in Electrical Engineering. I also graduated from the University of Florida in 2003 with a Masters in Business Administration. I began employment with BellSouth Telecommunications, Inc. d/b/a AT&T Southeast in 1999 and have held various positions in the network organization including Outside Plant Engineer and Loop Capacity Manager. In these positions, I was responsible for planning fiber optic cable, digital loop electronics, broadband, and new greenfield deployment. I have also coordinated with property developers regarding the placement of telecommunications facilities for single family and multi-dwelling unit developments. Additionally, I have dealt directly with developers, have planned the network architecture, and have designed the Engineering Work Order that would be implemented by AT&T Southeast construction forces to deploy facilities.
3. I have held my current position as a Supervising Manager since August 2005. In this position, I am responsible for supporting the AT&T Southeast region in the

following fields: outside plant engineering, greenfield deployment planning, and capital investment for the rehabilitation of outside plant. I have supervised Subject Matter Experts that supported AT&T Southeast building industry consultants and outside plant engineers that work with property developers to place telecommunications facilities for single family and multi-dwelling unit developments. In addition, I have also supervised a team of subject matter experts that are responsible for supporting loop deployment planning, digital loop electronics planning and provisioning, and proactive maintenance in the AT&T Southeast region.

4. Specifically, with regard to the Villages of Avalon, Phase II development in Hernando County, Florida ("Avalon, Phase II"), I have assisted the local engineering team responsible for the development of the cost estimate to serve the property as well as the network architecture chosen.

5. The purpose of this Affidavit is to describe on behalf of BellSouth Telecommunications, Inc. d/b/a ("AT&T Florida") the anticipated network deployment, associated costs and the five times annual exchange revenue analysis performed by AT&T Florida for Avalon, Phase II. In addition, I will discuss the status of negotiations between Avalon Development, LLC ("Developer") and AT&T Florida regarding the charges submitted by AT&T Florida for the deployment of facilities in Avalon, Phase II.

6. I have attached the following exhibits to my Affidavit: Exhibit LB-1, Exhibit LB-2, Exhibit LB-3, Exhibit LB-4, Exhibit LB-5 and Exhibit LB-6.

7. Avalon, Phase II is a community under construction near Brooksville, Florida in Hernando County that will have a total of approximately 476 single-family homes.¹

8. AT&T Florida has developed a network deployment strategy for Avalon, Phase II. The proposed network architecture for delivery of voice service in Avalon, Phase II is fiber-to-the-curb ("FTTC"). A diagram illustrating this architecture is attached hereto as Exhibit LB-1. This architecture involves the placement of a remote terminal cabinet containing loop electronics to serve the development. The remote terminal cabinet will be fed by a fiber optic cable that originates from the serving central office for that area. Distribution fiber facilities are then placed from the remote terminal to smaller enclosures that contain loop electronics (known as optical network units) located throughout the proposed development. From each optical network unit, buried copper service drops extend to the residences served by a specific optical network unit. Service drop enclosures are then placed in between the optical network units and the living units to provide access points to the buried service drops.

9. The proposed network deployment strategy described above is a reasonable and efficient method of serving Avalon, Phase II. Avalon, Phase II will be fed from an existing remote terminal cabinet that was placed to serve Villages of Avalon, Phase I² ("Avalon, Phase I"). The FTTC architecture was chosen to serve Avalon, Phase

¹ At the time AT&T Florida filed its Petition, it understood that the total amount of homes that would be built in Avalon, Phase II was 446 homes. The Developer recently provided updated information that 476 homes will be built.

² As background information, because of the unique circumstances present at the time, AT&T Florida acquiesced to a voice-only easement for "Villages of Avalon, Phase I." In March 2006, after incurring approximately \$230,000 to install facilities in Phase I to provide all types of services and with the first expected service date quickly approaching, AT&T Florida first learned of the Developer imposed voice-only restriction for Avalon, Phase I. Prior to this time, the Developer did not advise AT&T Florida that it could only provide voice service. Further, the circumstances involving Avalon, Phase I occurred

I due to the size of the development and the lack of available spare copper pairs in the geographical area of Avalon, Phase I. A backbone fiber cable was located near the property, which reduced some of the costs associated with FTTC. Fiber distribution facilities will be placed from the existing remote terminal cabinet placed to serve Avalon, Phase I to serve Avalon, Phase II.

10. AT&T Florida developed a deployment strategy to serve 100% of the residents up-front in Avalon, Phase II although the anticipated take rate is 20% or less for several reasons. First, if AT&T Florida waited until a voice service request was received before installing facilities, AT&T Florida would need to dig-up customer driveways and landscaping that are already in place. These actions are generally not received well by residents and lead to increased costs (in addition to those discussed in my testimony) to deploy facilities. Second, AT&T Florida is unable to forecast exactly which customers within the development will actually order service from it. Therefore, the network facilities should be placed throughout the development up-front in order to minimize costs and to provide voice service within a reasonable time following a request.

11. The FTTC architecture was determined to be the most cost-efficient architecture available to serve Avalon, Phase II, because much of the FTTC architecture, including the remote terminal cabinet and the backbone fiber, were already in place to serve Avalon, Phase I.

12. A Fiber-to-the-Node ("FTTN") architecture was also considered by AT&T Florida to serve Avalon, Phase II prior to the selection of FTTC. However, placing a FTTN architecture to serve Avalon, Phase II would require a new remote terminal cabinet

primarily prior to the enactment of Section 364.025(6). Thus, at the time that AT&T Florida learned of the voice-only restriction, AT&T Florida did not have the ability to petition the Commission for COLR relief.

and backbone fiber cable to be placed, in addition to the copper distribution facilities. In addition, due to the rising cost of copper, fiber distribution facilities are generally less expensive to install than copper distribution facilities in many cases. See AT&T Florida's "Cost Comparison Summary for Copper vs. FITL Distribution" attached hereto as Confidential and Proprietary Exhibit LB-2. Although this Cost Comparison was not specifically used in analyzing the costs associated with Avalon, Phase II, it illustrates that the average cost per living unit for copper distribution is approximately \$101 higher than fiber distribution facilities.

13. The total estimated build-out cost for Avalon, Phase II is \$326,819. Spreadsheets detailing and providing how the estimated costs for Avalon, Phase II were derived are attached hereto as Confidential and Proprietary Exhibit LB-3. Generally speaking, the costs include material, labor and overhead costs.

14. The cost estimate provided above is different from the original cost estimate AT&T Florida provided in its Petition because the original cost estimate for labor and material (\$244,966) was developed using an average cost per living unit for 446 units. Over time, the Developer has increased the build-out for Avalon, Phase II to 476 units. The original cost estimate also did not include overhead costs (\$64,823), which have been added to the cost estimate provided to the developer in accordance with AT&T Florida's Tariff – Section A5. Moreover, the updated cost estimate for labor and material (\$261,996) was developed using detailed design requirements specific to Avalon, Phase II, which includes actual cable footages, the updated number of units in the build-out plan, and actual material costs. The original cost estimate provided was not based on this specific information.

15. For Avalon, Phase II, material costs include the costs to place fiber distribution facilities. The following material is required for the installation of fiber distribution facilities: composite fiber/copper cable, conduit for roads and driveways, handholes, optical network units, buried service wire closures, and buried service wire(s) from the optical network unit to the buried service wire closures. Plug-ins required for the remote terminal cabinet and optical network units are not included in the material cost, because the plug-ins can be recovered/reused.

16. For Avalon, Phase II, labor costs include the labor required to install the fiber distribution facilities. The following labor is required to install fiber distribution facilities: engineering and design, placement contractor, cable splicers, and technicians/contractors required to place optical network units, copper terminals, install plug-in electronics, and to activate and turn up distribution systems including required performance testing and provisioning.

17. While I am not a cost expert, it is my general understanding that overhead captures costs that are incurred by AT&T Florida to produce all of its services, but cannot be directly attributed to and are not caused uniquely by any single service or combination of services (e.g. expenses of corporate operations and investment related costs).

18. I have reviewed the estimated costs for AT&T Florida's Network Deployment for Avalon, Phase II. AT&T Florida used its standard engineering pricing system OSPCM (Outside Plant Construction Management) to determine the estimated costs to install facilities to serve Avalon, Phase II. The OSPCM reports are attached hereto as Confidential and Proprietary Exhibit LB-4. These estimated costs encompass the necessary and reasonable work required for AT&T Florida to deploy facilities to

Avalon, Phase II. Further, the methodology used by AT&T Florida to calculate its costs is consistent with AT&T Florida's policies and procedures for determining special construction cost estimates pursuant to Section A5 of AT&T Florida's Tariff.

19. Pursuant to Rule 25-4.067, F.A.C. and AT&T Florida's Tariff – Section A5, AT&T Florida has determined that the Developer is responsible for \$171,606 of the estimated costs to deploy facilities to provide voice service to Avalon, Phase II.

20. On May 15, 2007, AT&T Florida forwarded correspondence to the Developer requesting payment of this amount. AT&T Florida's May 15, 2007 correspondence to the Developer is attached hereto as Exhibit LB-5.

21. The amount requested from the Developer was determined by subtracting the projected five times annual exchange revenue of \$155,213 from the build-out costs of \$326,819 for Avalon, Phase II.

22. The projected five year annual exchange revenue for Avalon, Phase II was based upon consideration of the following factors: (1) Average Revenue per Unit ("ARPU"), which is based upon actual historical revenue associated with residential lines in Florida, which Mrs. Shiroishi explains further in her Affidavit; (2) a 20% take rate, the rationale for which Mrs. Shiroishi explains in detail; and (3) occupancy forecast based on when homes are expected to be occupied based upon developer-provided information. A spreadsheet that details AT&T's Florida's special construction analysis is attached hereto as Confidential and Proprietary Exhibit LB-6.

23. With regard to the status of negotiations between the Developer and AT&T Florida, AT&T Florida contacted the Developer in order to schedule a meeting to discuss the requested payment; however, the Developer did not respond to AT&T

Florida's attempts to schedule a meeting. The Developer did not make a counter-offer to AT&T Florida's request for payment and advised in a June 25, 2007 letter to the Commission that "Avalon will not pay AT&T's requested fee for the deployment of AT&T's facilities to provide communications services to Phase II of the development."

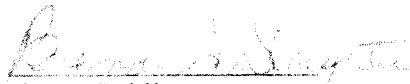
Further affiant sayeth not.

This 2nd day of August 2007.

Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.

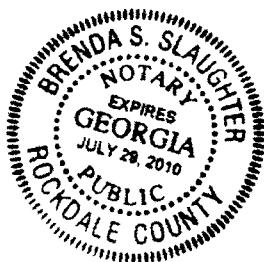

LARRY BISHOP

Sworn to and subscribed
before me this 2nd
day of August 2007.


Notary Public

Brenda S. Slaughter
Notary Public, Rockdale County, Georgia
My Commission Expires July 29, 2010

My commission expires: _____



RECEIVED-FPSC

07 JUL 16 AM 9: 02

COMMISSION
CLERK

AVALON DEVELOPMENT, LLC
4315 Pablo Oaks Ct.
Jacksonville, FL 32224

July 11, 2007

ORIGINAL

07 JUL 13 PM 7: 29
DISTRIBUTION CENTER

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

Re: Docket No. 070126-TL: Petition for relief from carrier-of-last-resort ("COLR") obligations pursuant to Section 364.025(6)(d), Florida Statutes, for Villages of Avalon, Phase II, in Hernando County, by BellSouth Telecommunications, Inc. d/b/a AT&T Florida

Dear Ms. Cole:

On July 10, 2007, the Florida Public Service Commission ("Commission") unanimously voted to set for formal administrative hearing the matter of the Petition by AT&T Florida ("AT&T") for relief from carrier-of-last-resort ("COLR") obligations pursuant to Section 364.025(6)(d), Florida Statutes, for Villages of Avalon, Phase II, in Hernando County. Avalon Development, LLC ("Developer") had previously filed an objection to AT&T's petition dated March 9, 2007, which was received by the Commission on March 12, 2007. That objection was renewed by the Developer's letter dated June 25, 2007, and received by the Commission on June 28, 2007.

The purpose of this letter is to inform the Commission that the Developer hereby withdraws its formal objection to AT&T's Petition and will not participate in the proposed formal hearing process for this docket. We recognize that by doing so, AT&T will likely face no opposition to its Petition, but Developer simply does not have the time or resources to take on a company the size of AT&T in lengthy and expensive administrative litigation before the Commission, whether that litigation be expedited or not. As a result, we also recognize that AT&T will likely have achieved its goal of depriving our homeowners of AT&T's services lest the Developer incur expensive litigation costs or pay AT&T approximately \$171,606 for AT&T to extend its facilities to serve Phase II of our development.

Developer still believes that AT&T should be required by the Commission to serve Phase II of the Villages of Avalon under its COLR obligations under Section 364.025, Florida Statutes, as AT&T currently does for Phase I of this same development. AT&T has provided the Commission with no reasonable justification or support for requiring the aforementioned line extension fee for Phase II. AT&T did not require any such payment by Developer for the contiguous and previously constructed AT&T communications network facilities serving Phase I of the residential development at issue. AT&T's argument in support of the proposed fee, that the current Section 364.025, Florida Statutes, did not exist at the time of the construction of

Phase I of our development, is a specious one, given that AT&T's COLR obligation and the Commission's line extension rule existed at the time of Phase I construction. As a result, Developer wholeheartedly supports the Commission Staff's recommendation that AT&T has not met its burden for COLR relief and the petition should be denied.

We hereby certify that we sent copies of this letter to the persons listed in the copy lines below, by certified First Class U.S. Mail and facsimile.

This filing with the Commission is submitted by Developer, on behalf of itself and its affiliate Stokes & Griffith Properties, LLC.

Sincerely,



Mallory Gayle Holm
General Counsel

cc: James Meza III
Sharon R. Liebman
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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 1
Cancels First Revised Page 1

ISSUED: July 17, 2006
BY: Marshall M. Criser III, President -FL
Miami, Florida

EFFECTIVE: August 1, 2006

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS

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TELECOMMUNICATIONS, INC.
FLORIDA

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS

A5.1 General

A5.1.1 Contents

Section A5. contains the regulations, rates and charges applicable to the provision of Company services which require:

- Special Construction
- Additional Engineering, Labor and Miscellaneous charges
- Charges for Unusual Installations
- Specialized Service or Arrangements
- Contract Service Arrangements
- Emergency Service Continuity Plan

(N)

A5.1.2 Explanation of Terms

ACTUAL COST

The term "Actual Cost" denotes all identifiable costs applicable to the specific case of special construction, plus prorated costs of items used in common with other facilities minus estimated net salvage.

ESTIMATED COST

The term "Estimated Cost" denotes the estimated costs applicable to the specific case of special construction of facilities plus prorated costs of items used in common with other facilities, minus estimated net salvage.

EXCESS CAPACITY

The term "Excess Capacity" denotes a quantity of facilities requested by a customer which is greater than that which the Company would construct to fulfill the customer's order for service.

FACILITIES

The term "Facilities" denotes any cable, poles, conduit, microwave or carrier equipment, wire center distribution frames, central office switching equipment, computers (both hardware and software), business machines, etc., utilized to provide (1) the services offered under this Tariff or (2) the services provided by a customer for his own use.

FIVE (5) YEAR FORECAST

The term "Five (5) Year Forecast" denotes a projection of the maximum number of cable pairs the customer will require over a five year period that is mutually agreed upon by the customer and the Company. This is normally the Initial Liability Period.

INITIAL LIABILITY PERIOD

The term "Initial Liability Period" (ILP) denotes a written agreement with the Company and the customer on the quantity of cable pairs to be provided and the length of time in which the customer expects to place the cable pairs in service.

MAXIMUM TERMINATION LIABILITY (MTL) CHARGE

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GENERAL SUBSCRIBER SERVICE TARIFF

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS (T)

A5.1 General (Cont'd)

A5.1.2 Explanation of Terms (Cont'd)

The term "Maximum Termination Liability Charge" denotes the maximum amount of money for which the customer is liable in the event all services or facilities ordered in a special construction case are discontinued before a specified period of time.

MTL PERIOD

The term "MTL Period" denotes the length of time the customer is liable for a termination charge in the event the specially constructed facilities are terminated. The MTL period is equal to the average account life of the telephone facilities provided. When the construction involves multiple classes of Plant with differing lives, the MTL Period is equal to the weighted average of the account lives involved in the special construction case.

NET SALVAGE

The term "Net Salvage" denotes the estimated scrap, sale, or trade-in value, less the estimated cost of salvage. Cost of salvage includes the costs of demolishing, tearing down, removing, or otherwise disposing of the material and any other applicable costs. Because the cost of removal may exceed salvage, facilities may have negative net salvage.

NONRECOVERABLE COST

The term "Nonrecoverable Cost" denotes the cost of providing for the specially constructed facilities for which the Company has no foreseeable use should the customer terminate service.

OTHER TELEPHONE COMPANY

The term "Other Telephone Company" denotes a company engaged in the business of furnishing public switched network telephone exchange services and which is not the *BellSouth Telecommunications, Inc.* (T)

PERMANENT FACILITIES

The term "Permanent Facilities" denotes facilities that are expected to remain in place for the normal service life of the plant.

RECOVERABLE COST

The term "Recoverable Cost" denotes the cost of providing for the specially constructed facilities for which the Company has a foreseeable reuse, either in place or elsewhere should the customer terminate service.

SPECIAL CONSTRUCTION

The term "Special Construction" denotes a series of tariff regulations that are designed to protect the Company from undue risk associated with specially constructed facilities and allows the Company to recover excessive investments incurred by the construction of facilities that will carry services currently offered on a general basis in a service tariff. These regulations are also designed to prevent undue subsidizations of specially constructed facilities by the general body of ratepayers.

SUBSCRIBERS IN GENERAL

The term "Subscribers in General", as used in this Tariff, is to be interpreted to include those cases where new construction is required to serve two or more customers.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
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BY: Joseph P. Lacher, President - FL
Miami, Florida

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.1 General (Cont'd)

A5.1.2 Explanation of Terms (Cont'd)

TEMPORARY FACILITIES

The term "Temporary Facilities" denotes facilities used to provide service to a customer where it is known before installation of the newly placed facility that the facilities will be relocated or removed prior to the normal service life of the plant.

TERMINATION CHARGE

The term "Termination Charge" denotes the portion of the Maximum Termination Charge that is applied as a nonrecurring charge when all services are discontinued prior to the expiration of the specified liability period.

UNDERUTILIZATION CHARGE

The term "Underutilization Charge" denotes an obligation, incurred by a customer, which is designed to reimburse the Company for the annual costs of a portion of specially constructed facilities when the customer's actual use of those facilities is less than 70% of the amount of use forecasted or ordered by the customer.

A5.2 Special Construction

A5.2.1 General Regulations

A. Application

1. Special Construction consists of a series of tariff regulations that are designed to protect the Company from undue risk associated with specially constructed facilities and allows the Company to recover excessive investments incurred by the construction of facilities that will carry services currently offered on a general basis in a service tariff. These regulations are also designed to prevent undue subsidization of specially constructed facilities by the general body of rate payers.
2. When special construction of facilities is required, the provisions of this Tariff apply in addition to all regulations, rates and charges set forth in the appropriate service tariff. All applicable provisions set forth in this Tariff will be implemented by a written agreement prepared by the Company and signed by the customer.
3. The regulations, rates and charges applicable for special construction of Company facilities which are used to provide services under this Tariff are as follows.

B. Conditions Requiring Special Construction

1. Special construction is required when suitable facilities are not available to meet a customer's order for service and/or a mutually agreed upon facility forecast and one or more of the following conditions exist:
 - The Company has no other requirement for the facilities constructed at the customer's request;
 - The customer requests that service be furnished using a type of facility, or via a route, other than that which the Company would otherwise utilize in furnishing the requested service;
 - The customer requests the construction of more facilities than required to satisfy his initial order for service; and submits a mutually agreed upon facility forecast;

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS (T)

A5.2 Special Construction (Cont'd)

A5.2.1 General Regulations (Cont'd)

B. Conditions Requiring Special Construction (Cont'd)

1. (Cont'd)

- The customer requests construction be expedited resulting in added cost to the Company;
- The customer requests that temporary facilities be constructed;
- The cost to construct line extension facilities for an individual subscriber when the cost exceeds the estimated five year exchange revenue;
- The term "customer" as used in the preceding context also includes those entities/businesses which, due to the nature of their business operations, may create a requirement to terminate a concentration of network facilities at said entities' operational centers. Such facilities may be individually ordered by and billed to separate customers who are patrons of the entities and typically utilize the facilities to avail themselves of the entities' services. Examples of such entities or businesses include, but are not limited to Telephone Answering Services, Alarm Central Terminal Locations and Specialized Mobile Radio Systems and Radio Common Carriers.
- Service wire (drop wire) that exceeds seventy-five (75) feet and or requires placement through, around, or under encumbrances and placement of transmission enhancers such as load coils, extenders, etc. (N)

C. Ownership of Facilities

1. Unless otherwise specified in this Tariff, the Company retains ownership of all specially constructed facilities even though the customer may be required to pay special construction charges.

D. Interval to Provide Facilities

1. Based on available information and the type of service ordered, the Company will establish an objective date for the installation of necessary facilities. The date will be established on an individual case basis and provided to the customer. The Company will make every reasonable effort to assure that the date is met. However, shortage of components, personnel or other factors may lengthen the installation interval.
2. If the scheduled completion date cannot be met due to circumstances beyond the control of the Company, a new completion date will be established and the customer will be notified. The amount of interest accrued on all prepaid items will be credited to the customer's account for any delays that could have been circumvented by the Company.

E. Special Construction Involving Interstate and Intrastate Facilities

1. When special construction involves facilities used to provide both interstate and intrastate services, charges for the portion of the construction used to provide intrastate service shall be in accordance with this Tariff. Charges for the portion of the construction used to provide interstate service shall be in accordance with BellSouth's F.C.C. No. 1 Interstate Tariff.

F. Charges of Other Companies

1. Charges and/or Maximum Termination Liabilities for special construction of facilities provided by another company are developed by the other company and may be applied by BellSouth under this Tariff on the other company's behalf.

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)**A5.2.2 Liabilities, Charges and Payments for Special Construction****A. General**

1. The various charges and payments that apply when the Company provides special construction of facilities in accordance with a customer's specific request are described as follows. The customer must provide the Company with written approval of all liabilities and charges prior to the start of construction. If more than one condition requiring special construction is involved, charges for each condition apply.

B. Payment of Charges

1. Payment is due upon presentation of a bill for the specially constructed facilities. To safeguard its interests during construction, the Company will require the customer to make an advance payment for the portion of the estimated cost of the special construction for which the customer is subject to a nonrecurring charge. Partial payments will be requested as costs are incurred and will be credited to the customer's account. No special construction charges paid to the Company are refundable except as provided under Section A5.2.2.D.3.

C. Start/End of Billing

1. When the facilities are provided, billing of recurring charges for specially constructed facilities starts on the contract service date or the inservice date, whichever is earlier. Billing accrues through and includes the day that the specially constructed facilities are discontinued. Monthly charges will normally be billed one month in advance.

D. Development of Liabilities and Charges

1. The customer has the option of having the liabilities and charges billed based on either estimated or actual costs. Costs, as used in this context, may include one or more of the items specified in A5.5.1 following. Estimated costs will be billed unless the customer notifies the Company of the selection of the actual cost option in writing prior to the start of special construction.
2. Under the estimated cost option, special construction liabilities and charges are developed based on estimated costs and will be specified in the written agreement between the customer and the Company.
3. Under the actual cost option, if all actual costs are not available prior to the start of service, estimated special construction charges will be specified in the written agreement between the customer and the Company. As soon as the actual costs, including costs of preparation and processing are subsequently determined, the estimated charges will be adjusted to reflect the actual costs.

E. Types of Contingent Liabilities

1. In Special Construction cases that involve recurring charges as described in A5.2.2.F.2. following, one or both of two categories of contingent liabilities will apply. These liabilities, (1) Maximum Termination Liability (MTL) and (2) Underutilization Liability (UL) are described as follows.
 - a. Maximum Termination Liability and Termination Charge, is a liability against the customer for whom facilities were constructed. If the customer prematurely discontinues the use of the facilities, the liability will be converted into a termination charge if it is determined at the time of disconnect that the facilities are not reusable.

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)**A5.2.2 Liabilities, Charges and Payments for Special Construction (Cont'd)****E. Types of Contingent Liabilities (Cont'd)**

1. (Cont'd)

a. (Cont'd)

- (1) A Maximum Termination Liability is equal to the nonrecoverable costs associated with specially constructed facilities and is the maximum amount which could be applied as a Termination Charge if all specially constructed facilities were discontinued before Maximum Termination Liability expires.
- (2) The liability period is equal to the average life of the account associated with the specially constructed facilities. The liability period is generally expressed in terms of an effective and expiration date.
- (3) A Termination Charge is applicable when all services using specially constructed facilities which have a written and signed agreement for a Maximum Termination Liability are discontinued prior to the expiration of the liability period. The charge reflects the unamortized portion of the nonrecoverable costs at the time of termination, adjusted for net salvage and possible reuse. Administrative costs associated with the specific case of special construction and any cost for restoring a location to its original condition are also included. A Termination Charge may never exceed the Maximum Termination Liability agreed to and signed by the customer in the initial contract.
- (4) The Maximum Termination Liability in the signed agreement is in decreasing amounts at ten-year intervals over the average account life of the facilities. In the event that the average account life of the facilities is not an even multiple of ten, the last increment will reflect the appropriate number of years remaining.

Example Illustrating A 27-year Average Account Life:

Maximum Termination Liability	Effective Date	Expiration Date
\$10,000	6/1/84	6/1/94
7,000	6/1/94	6/1/04
3,000	6/1/04	6/1/11

- (5) Prior to the expiration of each liability period, the customer has the option to (A) terminate the special construction case and pay the appropriate charges, or (B) extend the use of the specially constructed facilities for the new liability period.
- (6) The Company will notify the customer six months in advance of the expiration date of each ten-year liability period. The customer must provide the Company with written notification at least 30 days prior to the expiration of the liability period if termination is elected. Failure to do so will result in an automatic extension of the special construction case to the next liability period at the Maximum Termination Liability amount.

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)

A5.2.2 Liabilities, Charges and Payments for Special Construction (Cont'd)

E. Types of Contingent Liabilities (Cont'd)

1. (Cont'd)

a. (Cont'd)

- (7) A partial termination of specially constructed facilities will be provided, at the election of the customer. The amount of the Termination Charge associated with such partial termination is determined by multiplying the termination charge which would result if all services using the specially constructed facilities were discontinued, at the time partial termination is elected, by the percentage of specially constructed facilities to be partially terminated. A new written agreement will be made following a partial termination to list remaining Maximum Termination Liability amounts and the number of specially constructed facilities the customer will remain liable for.

Example:

A customer with a Maximum Termination Liability contract of \$100,000 for 3600 specially constructed facilities requests a partial termination of 900 facilities. The Termination Charge for all facilities, at the time of election, is \$60,000. The partial termination charge, in this example, is \$60,000 x 900/3600, or \$15,000.

- b. Annual Underutilization Liability and Underutilization Charge as specified in Section A5.2.2.F.2.b. denotes a per unit amount that will be billed annually if less than 70% of the specially constructed facilities are being utilized.

- (1) Prior to the start of special construction, the Company and the customer will agree on (1) the quantity of facilities to be provided, and (2) the length of the planning period during which the customer expects to place the facilities in service. The planning period is hereinafter referred to as the Initial Liability Period (ILP). The ILP is listed in the written agreement with an effective and expiration date.
- (2) Underutilization occurs only if, at the expiration date of the ILP and annually thereafter, less than 70 percent of the specially constructed facilities are in service per the written agreement at tariff service rates.
- (3) An annual underutilization liability amount is calculated on a per unit basis (e.g., per cable pair) for each case of special construction. This amount is equal to the annual per unit cost and includes depreciation, maintenance, administration, return, taxes and any other costs identified in the supporting documentation provided at the time the special construction agreement is signed.
- (4) Upon the expiration of the ILP, the number of underutilized facilities, if any, is multiplied by the annual underutilization liability amount. This product is then multiplied by the number of years (including any fraction thereof) in the ILP to determine the underutilization charge.
- (5) Annually thereafter, the number of underutilized facilities, if any, existing on the anniversary of the ILP expiration date will be multiplied by the annual underutilization liability amount to determine the underutilization charge for the preceding 12 month period.

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)**A5.2.2 Liabilities, Charges and Payments for Special Construction (Cont'd)****E. Types of Contingent Liabilities (Cont'd)**

1. (Cont'd)

b. (Cont'd)

(5) (Cont'd)

Example:

A customer orders 100 services and the special construction of a 600 pair building riser cable is agreed to, based on the customer's 5 year facility requirements. The ILP, in this example, would be 5 years. The annual underutilization liability is stated in the written agreement at \$2.00 per pair. If 400 pairs were in service at the end of the ILP, there would be an underutilization of 20 pairs, i.e., 420 (70% of 600) - 400 = 20. The total underutilization charge for the first 5 years would be \$200.00, or \$2.00 per pair x 20 pairs x 5 years.

If 420 pairs are in service at the end of the 6th year, there is no underutilization, i.e., $420 - 420 = 0$.

F. Types of Charges

Nonrecurring and/or Recurring Charges will be applicable for special construction. These categories are described as follows.

1. Nonrecurring Charges

One or more of the following nonrecurring charges will apply for each case of special construction or inquiry for special construction:

- quotation preparation
- case preparation
- termination
- cancellation
- rearrangements and/or removals
- expediting the construction
- optional payment plan
- supporting structures on private property/pole attachment fees
- special routing of service entrance facilities
- temporary facilities

a. Quotation Preparation Charge - Applicable prior to placing an order for service requiring special construction.

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)**A5.2.2 Liabilities, Charges and Payments for Special Construction (Cont'd)****F. Types of Charges (Cont'd)****1. Nonrecurring Charges (Cont'd)**

- a. Quotation Preparation Charge - Applicable prior to placing an order for service requiring special construction.
(Cont'd)

(1) A Nonrecurring Charge for the preparation of a quotation applies whenever a customer requests a detailed estimate of charges for special construction. The charge includes the costs associated with the development and preparation of the quotation and any applicable receipts and other taxes. The customer will be advised of the charge for quotation preparation and must agree to pay the charge before development of the quotation will commence.

(2) Application of Charge

If, after being advised of the charge, the customer requests the quotation, it will be developed and furnished. A bill for the quotation preparation will be rendered. The quotation is valid for 90 days and will identify all costs associated with the provision of the facilities needed to satisfy the customer's service requirements. The quotation will be considered to be accurate within +/-10 percent of the cost quoted. Any unforeseen extraordinary costs which might cause a deviation greater than +10 percent will require additional approval of the customer. The Quotation Preparation Charge is applicable regardless of whether service is ordered by the Customer/Company.

(3) If the customer cancels the request for a quotation prior to its completion, the customer will be billed the lesser of the amount for:

- the quotation preparation charge, which the customer was advised would apply, or
- the costs incurred, for quotation preparation plus any appropriate taxes through the cancellation date.

(4) Title or Ownership Rights

The payment of a charge for quotation preparation does not assign, confer, or transfer title or ownership rights to proposals or equipment, designed or furnished by the Company. Title and ownership rights for any item developed at the customer's request remains with the Company except as specifically provided by an agreement between all parties.

- b. Case Preparation Charge - Applicable after the customer receives the quote and places an order for service requiring special construction.

The charge for case preparation includes the administrative expense associated with preparing the proposal.

This expense includes such items as:

- preparation and processing
- gross receipts and other taxes

- c. Termination Charge

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS (T)

A5.2 Special Construction (Cont'd)

A5.2.2 Liabilities, Charges and Payments for Special Construction (Cont'd)

F. Types of Charges (Cont'd)

1. Nonrecurring Charges (Cont'd)

c. Termination Charge (Cont'd)

A termination charge applies when, at the customer's request, services (unless otherwise specified in the written agreement) provided on specially constructed facilities which have specified Maximum Termination Periods, are discontinued prior to the expiration of the liability period.

The charge reflects the unamortized portion of the nonrecoverable cost at the time of termination of the specially constructed facilities, adjusted for tax effects, net salvage and possible reuse. Administrative costs associated with the specific case of special construction and any cost for restoring a location to its original condition are also included. Termination charges will never exceed the Maximum Termination Charge.

d. Cancellation Charge

If the customer cancels the order prior to the start of service, a cancellation charge will apply. The charge will include all nonrecoverable costs incurred by the Company up to and including the time of cancellation.

e. Rearrangement and/or Removal Charges

When the Company is requested to move, change, rearrange or remove existing plant, for which no specific charge is quoted in this Tariff, the person/company at whose request such move or change is made will be required to bear the costs incurred.

(DELETED)

f. Expediting Charge

An expediting charge applies when a customer requests that construction be completed on an expedited basis and the Company incurs additional cost. The charge is equal to the difference in the estimated cost of construction on an expedited basis and construction without expediting.

g. Optional Payment Plan

All customers will be informed of and may elect to pay an optional nonrecurring charge when requesting special construction of facilities utilizing (1) a type of facility other than normal, (2) a route other than that which the Company would otherwise utilize in furnishing the requested service, or (3) a service that involves extraordinary conditions or circumstances. Payment of this charge will result in a lower recurring charge for the special construction. This election must be made in writing, before special construction starts.

(D)

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

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A5.2 Special Construction (Cont'd)**A5.2.2 Liabilities, Charges and Payments for Special Construction (Cont'd)****F. Types of Charges (Cont'd)****1. Nonrecurring Charges (Cont'd)****g. Optional Payment Plan (Cont'd)**

If this election is coupled with the actual cost option, the optional payment charge will reflect the actual cost of the specially constructed facilities.

If any portion of the specially constructed facilities, for which an optional payment charge has been paid, requires replacement, other than that caused by the Company, a charge for replacement will apply. This charge will be at the same ratio as the initial optional payment charge was to the installed cost of the specially constructed facilities. The customer will be notified in writing that the replacement is required. Replacement will not be made without the customer's order. If any portion of the facilities subject to the replacement charge fails, service will not be restored until the customer orders the replacement.

h. Supporting Structures on Private Property

These charges (when applicable as specified in Section A5.2.5) include the costs of planning and building supporting structure on private property. Supporting structure includes poles, conduit, trenching, backfilling and associated costs. Ownership and maintenance of supporting structure on private property is vested in the customer or property owner.

In cases where the customer or property owner is unable to provide the structure, the Company at its discretion will perform the work and bill the customer or property owner. Ownership and maintenance of supporting structure on private property is vested in the customer or property owner.

i. Service Entrance Facilities

Entrance facilities include all cable and wire required to reach the normal network interface. When, at the request of the property owner or customer, a special route, network location, network arrangement or duplicate facility is required, a nonrecurring charge will apply equal to the additional cost above that which would have normally been incurred if the special route, location or arrangement was not required. These costs can be billed on an actual or estimated basis in accordance with Section A5.2.2.D.

j. Temporary Facilities

Special Construction is considered to be "temporary" when one of the following conditions exists:

- The facilities are constructed to provide service to a customer for less than the minimum service period or less than one month, whichever is longer.
- The facilities are constructed and it is known in advance that the newly placed plant will be relocated or removed prior to the end of the normal service life of the plant.

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)

A5.2.2 Liabilities, Charges and Payments for Special Construction (Cont'd)

F. Types of Charges (Cont'd)

1. Nonrecurring Charges (Cont'd)

j. Temporary Facilities (Cont'd)

If a customer desires to change the service requested from temporary to permanent, such a change will be permitted if the request is made before any initial payment for the temporary service is received by the Company. The customer is liable for any nonrecurring charges for the construction of temporary facilities that cannot be reused or transferred to the permanent facilities. If the permanent facilities can not be reused then a contract for underutilization and maximum termination charge will apply for the permanent facilities in addition to Quotation and/or Case Preparation Charges, and any recurring charges associated with the special construction.

The nonrecurring charge for temporary facilities includes all nonrecoverable costs associated with the placement and removal of such facilities.

2. Recurring Charges

a. Recurring Charges will always apply for the following conditions:

- (1) When a customer uses fewer facilities (i.e., cable pairs) than originally forecasted (Underutilization Charge).
- (2) When a customer orders more facilities (i.e., cable pairs) than required to satisfy the demand projected in the Initial Liability Period (Excess Capacity Charge).
- (3) When a customer requests a facility route or type other than that which the Company would utilize to provide a service (Charges for route or type other than normal).
- (4) When a customer's request results in the Company's leasing transmission or other equipment from private vendors to provide service (Lease Charge).
- (5) When a customer requests service that involves extraordinary conditions (Excess Costs).

b. Underutilization Charge

An underutilization charge will apply at the end of the Initial Liability Period if less than 70% of the cable pairs placed is being utilized. The charges are calculated as outlined in A5.2.2.E.1.b.

c. Excess Capacity Charge

An excess capacity charge applies when the customer requests more cable pairs be placed than are required to satisfy the demand projected in the Initial Liability Period. The charge is based on the estimated cost per cable pair times the excess number of cable pairs requested. The charge applies monthly beginning with the contract service date until the customer orders service to be activated on 70% of the cable pairs placed. The Excess Capacity Charge will not apply to cable pairs identified in the Forecasted amount.

d. Charge for Route or Type Other Than Normal

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BELLSOUTH
TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

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FLORIDA
ISSUED: July 1, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: July 15, 1996

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)**A5.2.2 Liabilities, Charges and Payments for Special Construction (Cont'd)****F. Types of Charges (Cont'd)****2. Recurring Charges (Cont'd)****d. Charge for Route or Type Other Than Normal (Cont'd)**

When the customer requests special construction using a route or type of facilities other than that which the Company would normally use, a monthly recurring charge is applicable. The charge is the difference between the estimated recurring costs of the specially constructed facilities and the estimated recurring costs of the facilities the Company would normally use. The charge will be no greater than the recurring costs of the specially constructed facilities.

If the customer has elected the actual cost option, the Recurring Charge will be adjusted to reflect the actual cost of the new construction when the cost is determined. This adjusted Recurring Charge is applicable from the start of service.

e. Lease Charge

A monthly and/or nonrecurring lease charge applies when the Company leases equipment (e.g., portable microwave equipment) in order to provide service to meet the customer's requirements. The amount of the charge is the total added cost to the Company caused by the lease.

f. Excess Costs

When a customer requests service that involves extraordinary conditions or circumstances and the anticipated 5 year revenue to be derived is not sufficient to support the costs associated with the service provision, then a monthly recurring charge is applicable as specified in A5.4. The customer may also elect an optional payment charge as outlined in F.i.g. preceding with this condition.

A5.2.3 Deferral Of The Start Of Service**A. General**

The customer may request the Company to defer the start of service on specially constructed facilities for a cumulative period of no more than eighteen months. If the deferral exceeds eighteen months, the special construction case is considered to be cancelled and cancellation charges apply. Requests for deferral must be in writing and are subject to the following regulations:

B. Construction Has Not Started

If the Company has not incurred any costs (e.g., engineering and/or installation) before receiving the customer's request for deferral, no charge applies other than the Quotation Preparation Charge and/or Case Preparation Charge. However, the original quotation is subject to Company review at the time of reinstatement to determine if the original charges are still valid. Any change in charges requires the concurrence of the customer in writing. Additional Quotation Preparation and Case Preparation Charges will also apply.

C. Construction Has Started But Is Not Complete

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
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BY: Joseph P. Lacher, President - FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)**A5.2.3 Deferral Of The Start Of Service (Cont'd)****C. Construction Has Started But Is Not Complete (Cont'd)**

If the construction of facilities has started, but has not been completed, before the Company receives the customer request for deferral, charges will apply. The charges vary depending on whether all or some of the services ordered are deferred.

1. All Services Are Deferred

When all services involving special construction are deferred, a charge equal to the costs incurred during each month of the deferral applies. Those costs include the recurring costs for that portion of the facilities already completed and any other costs associated with the deferral. The Quotation Preparation Charge and Case Preparation Charge also apply.

2. Some But Not All Services Are Deferred

When some, but not all, services utilizing the specially constructed facilities are deferred, the special construction case will be completed. Underutilization and Maximum Termination Charges will apply in addition to Quotation and Case Preparation Charges, and any recurring charges associated with the special construction.

D. Construction Complete

If the construction of facilities has been completed before the Company receives the customer's request for deferral, the Quotation Preparation Charge, Case Preparation Charge, Underutilization and Maximum Termination Charge, as originally determined, and any recurring charges associated with the special construction will apply.

A5.2.4 Construction On Public Highways or Public Rights-of-Way

- A.** No special construction is applicable for the reasonable provision of new network distribution facilities where the facilities are used for subscribers in general. However, if the provision of such facilities is determined to be unreasonable, then special construction will apply. The Florida Public Service Commission ultimately determines if special construction is applicable. If the subscribers request the Company begin construction prior to the Florida Public Service Commission's determination, then special construction charges will apply subject to refund.
- B.** Where facilities are used to serve an individual subscriber, the subscriber may be required to pay recurring and/or nonrecurring construction charges.
- C.** The charge in either event will be the amount by which construction cost exceeds the amount of five times the annual exchange revenue.
- D.** Ownership and maintenance of such facilities is vested in the Company.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

BELLSOUTH
TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

FLORIDA
ISSUED: July 1, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: July 15, 1996

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)

A5.2.5 Construction on Private Property Across Which Rights-of-Way and Easements Satisfactory to the Company are Provided Without Cost to the Company

- A. No special construction is applicable for the reasonable provision of new network distribution facilities where the facilities are used for subscribers in general. However, if the provision of such facilities is determined to be unreasonable, then special construction will apply. The Florida Public Service Commission ultimately determines if special construction is applicable. If the subscribers request the Company begin construction prior to the Florida Public Service Commission's determination, then special construction charges will apply subject to refund.

When facilities are used to serve an individual subscriber, the subscriber will be required to pay recurring and/or non-recurring construction charges under the following conditions:

1. When five times the annual exchange revenue derived from the services utilizing the facilities is not expected to exceed the cost to construct the facilities.
2. The charge shall be the amount by which the construction cost exceeds the amount of five times the annual exchange revenue.

Ownership and maintenance of such circuits on private property is vested in the Company.

- B. Supporting structures on private property beyond a mutually agreeable terminating point is the responsibility of the customer.
- C. Requests for moves and rearrangements of poles, cables, and distribution terminals will be accommodated on the basis of cost.
- D. Service Charges as specified in Section A4 of this Tariff will apply to moves or rearrangements of drop wire (aerial or buried). Moves and rearrangements exceeding these limitations will be accommodated on the basis of cost.
- E. The regulations for extending service onto residential and commercial properties are detailed following. Where a building or property is mixed residential/commercial the rules for commercial property will apply.

1. Residential Properties

In areas where buried service is normally furnished by the Company, the Company will open and close necessary trenches providing that suitable easements and rights-of-way may be obtained at no cost to the Company; or, the subscriber or property owner may open and close the trench to the specifications of the Company.

In areas where aerial service is normally furnished by the Company, the Company will provide all poles necessary for the provision of basic exchange service, subject to A. preceding, or the subscriber or property owner may provide poles to the specifications of the Company.

In lieu of buried service, in areas where buried service is normally furnished by the Company, the subscriber or property owner may provide a conduit, equipped with pullwire, to a service point designated by the Company.

In cases where the subscriber or property owner requests service in other than the normal manner (e.g., buried in an aerial service area), excess costs to provide service will be billed to the person requesting service.

2. Commercial Properties

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BELLSOUTH
TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

FLORIDA
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BY: Joseph P. Lacher, President - FL
Miami, Florida

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.2 Special Construction (Cont'd)

A5.2.5 Construction on Private Property Across Which Rights-of-Way and Easements Satisfactory to the Company are Provided Without Cost to the Company (Cont'd)

- E. The regulations for extending service onto residential and commercial properties are detailed following. Where a building or property is mixed residential/commercial the rules for commercial property will apply. (Cont'd)
2. Commercial Properties (Cont'd)

Property owners and/or subscribers are responsible for the provision of an underground conduit system from a service point designated by the Company to a mutually agreeable termination point inside commercial buildings. The entrance conduit system will include the necessary handholes, pullboxes, pullwires, manholes and other associated structure to enable the Company to install the cable or wire.

Where the terrain or other conditions are such that, in the judgement of the Company, a conduit system will not serve as a feasible entrance method, the property owner or subscriber may open and close a trench to the specifications of the Company; or, at the subscriber's request and Company's discretion, the Company will perform the trenching work and apply appropriate special construction charges.

In areas served by aerial cable, the Company will provide all necessary poles, subject to A. preceding.

A5.3 Additional Engineering, Additional Labor and Miscellaneous Charges

A5.3.1 Additional Engineering

A. Definition and Application

1. Additional engineering is that engineering or engineering consultation requested by the customer as described in a. through c. following. The Company will notify the customer in writing that additional engineering charges as specified in B. following, will apply before any additional engineering is undertaken.

a. Engineering Consultation

Engineering consultation is the securing of technical advice from the Company by the customer not in connection with a specific order, and situations in which the customer requests the Company to provide information or to perform a function which will entail additional engineering by the Company. This does not include inquiries of a short duration where no significant engineering time is required or inquiries associated with customer service forecasts.

b. Expedited Engineering

Expedited engineering is that time required to meet a customer request for a less than normal engineering design interval.

c. Engineering of Connections with Other Telephone Companies

Engineering of connections with other telephone companies, if not Concurring Carriers, is the engineering activity of contacting, coordinating and designing with another telephone company, portions of facilities which connect to facilities provided by another telephone company.

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TELECOMMUNICATIONS, INC.
FLORIDA
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Miami, Florida

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.3 Additional Engineering, Additional Labor and Miscellaneous Charges (Cont'd)

A5.3.1 Additional Engineering (Cont'd)

B. Charges for Additional Engineering

1. Engineering Consultation, Expedited Engineering and Engineering of Connections with other telephone companies (if not Concurring Carriers)

	First Half Hour Or Fraction Thereof	Each Additional Half Hour Or Fraction Thereof	USOC
(a) Basic rate	\$66.00	\$39.79	AEH
(b) Overtime rate, outside of normal business hours	73.41	47.20	AEH

A5.3.2 Additional Labor

A. Definition

1. Additional labor is that requested by the customer on a given service as described in a. through f. following. The Company will notify the customer in writing that additional labor charges as specified in B. following, will apply before any additional labor is undertaken.
 - a. Overtime Installation
Overtime installation is that Company installation effort outside of regularly scheduled working hours.
 - b. Overtime Repair
Overtime repair is that Company maintenance effort performed outside of regularly scheduled working hours.
 - c. Additional Installation Testing
Additional installation testing is that testing performed by the Company at the time of installation which is in addition to pre-service acceptance testing. Pre-service testing includes testing for dialing, answering and talking capabilities.
 - d. Stand By
Stand by includes all time in excess of one-half (1/2) hour during which Company personnel stand by to make coordinated tests on a given service.
 - e. Testing and Maintenance with Other Telephone Companies
Additional testing, maintenance or repair of facilities which connect to facilities of other telephone companies (if not Concurring Carriers) which is in addition to effort required to test, maintain or repair facilities provided solely by the Company.
 - f. Other Labor

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BELLSOUTH
TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.3 Additional Engineering, Additional Labor and Miscellaneous Charges (Cont'd)**A5.3.2 Additional Labor (Cont'd)****A.** Definition (Cont'd)

1. (Cont'd)

f. Other Labor (Cont'd)

As agreed by the Company and the customer, additional labor not included in a. through e. preceding may be undertaken.

B. Charges for Additional Labor

1. Overtime Installation or Repair

a. Provided at the same Rates and Charges as the Time and Material Charge Plan found in Section A4 of this Tariff.

2. Additional Installation Testing, Stand By, Testing and Maintenance with other telephone companies (if not Concurring Carriers) or Other Labor

a. Provided at the same Rates and Charges as the Time and Material Charge Plan found in Section A4 of this Tariff.

A5.3.3 Miscellaneous Charges**A.** Trouble Location Charge

1. For Trouble Location Charge see section A15.4.1.

B. (OBSOLETE, See Section A105.)**A5.4 Charges for Unusual Installations****A5.4.1 Special Types of Installation**

When a special type of installation is desired by a subscriber or where the individual requirements of a particular situation make the installation unusually expensive, the subscriber is required to bear the excess cost of such installation. Recurring monthly charges will be calculated on the actual cost of provisioning, normal maintenance, taxes, and in addition, any special maintenance expense that may from time to time occur will be borne by the subscriber except that maintenance of buried service wire, including trench where required, will be at the expense of the Company.

A subscriber may also be required to pay the amount of additional costs incurred by the Company resulting from the subscriber's special requests. Such special requests may include, but are not limited to, expedited shipping.

A5.4.2 Reserved for Future Use

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

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TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

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BY: Joseph P. Lacher, President - FL
Miami, Florida

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS¹

(N)

A5.5 Special Service Arrangements

A5.5.1 General Regulations

- A. Special service arrangements² (Special Assemblies) may be provided by the Company, at the request of a customer on an individual case basis if such service or arrangements meet the following criteria:
1. The requested service or arrangements are not offered under other sections of this Tariff.
 2. The facilities utilized to provide the requested service or arrangements are of a type normally used by the Company in furnishing its other services.
 3. The requested service or arrangements are compatible with other Company services, facilities, equipment and its engineering and maintenance practices.
 4. This offering is subject to the availability of the necessary Company personnel and capital resources.
- B. Rates, Charges, and additional regulations if applicable, for special service arrangements are developed on an individual case basis, and will include all costs, plus an appropriate level of contribution, associated with the provision of the service.
- C. Costs for the specialized service or arrangements will include one or more of the following items:
1. Labor, engineering and materials
 2. Supervision
 3. Operating expenses, e.g., maintenance, administration, etc.
 4. Return on investment
 5. Taxes
 6. Depreciation
 7. Charges associated with construction provided by another Company
 8. Charges for securing private rights-of-way
 9. Charges for securing use of poles and pole line attachments on other company poles
 10. Equipment or space rental
 11. Expenses made necessary by damages caused by the customer or his agents
 12. Any other identifiable associated cost
 13. Cost for rearrangements and changes
 14. Supporting structures

A5.5.2 Reserved for Future Use

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

Note 2: In order to meet Open Network Architecture (ONA) requirements, the Company, upon customer request, will produce a special arrangement for Performance and Fault Management Service based upon criteria in A5.5.1.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

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Cancels First Revised Page 20

ISSUED: November 10, 2003
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: November 24, 2003

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS

A5.6 Bulk Facility Terminations for Secretarial Service Facilities

Secretarial service firms generally have sufficient activity (e.g., installations of secretarial service lines terminated in telephone answering bureau switchboards) to warrant the provision of a bulk facility termination which will enable the Company to more readily meet the customer's service needs. For this reason, where in the Company's judgment such termination of a bulk facility is required, on and after March 25, 1974 cable facilities will be provided as fixed terminations on secretarial line jacks of telephone answering bureau switchboards at charges based on costs at the time this work is done. These charges will be applicable to the secretarial service firm and will be in addition to all other appropriate tariff rates and charges for work done and services provided.

A5.7 Contract Service Arrangements

A5.7.1 General

- A. Contract service arrangements may be offered to meet offerings by any competitive provider of the same, or functionally equivalent, non-basic services in a specific geographic market or to a specific customer.
- B. Rates, Charges, Terms and additional regulations, if applicable, for the contract service arrangements will be developed on an individual case basis, and will include all relevant costs, plus an appropriate level of contribution. *For customers with service locations in multiple rate groups within the State, the Contract Service Arrangement may include a composite statewide rate based on a weighted average of the applicable business line rates for the rate groups in which the lines are located.* (C)
- C. Costs for the contract service arrangements will include one or more of the following items:
 1. Labor, engineering and materials
 2. Operating expenses, e.g., maintenance, administration, etc.
 3. Return on investment
 4. Taxes
 5. Depreciation
 6. Any other identifiable associated cost
- D. Unless otherwise specified, the regulations for contract service arrangements are in addition to the applicable regulations and rates specified in other sections of this Tariff.
- E. Contract Service Arrangements may be offered on any non-basic service in this Tariff that satisfies the requirements specified in this section of the Tariff. Contract Service Arrangements may be offered for a basic service only if the basic service is offered as part of a package with non-basic services.

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TELECOMMUNICATIONS, INC.
FLORIDA
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BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS

A5.7 Contract Service Arrangements (Cont'd)

A5.7.1 General (Cont'd)

- F. The subscriber and the Company may elect to enter into an agreement where certain rates and/or charges for contract service arrangements are applicable for a fixed period of time. The Company will continue to offer such contract service arrangements without change in the applicable rates and/or charges unless mutual consent has been reached between the Company and the subscriber to undertake such changes. The Florida Public Service Commission will not adjust contract service arrangement rates and/or charges during this period. At the completion of this period, the agreement may be renewed at the option of the Company and the subscriber. Revised rates and/or charges may apply to any renewed agreement. (T)

A5.8 Emergency Service Continuity Plan (N)

A5.8.1 General (N)

The Company will provide Emergency Service Continuity as described in this Section subject to the rates, terms and conditions stated. Service is provided subject to a determination by the Commission, either upon petition by the Company or upon the Commission's own motion, that an Alternative Local Exchange Company (ALEC) has effectively abandoned its end users or that some other sufficient emergency exists to justify use of this tariff. (N)

A5.8.2 Explanation of Terms (N)

ABANDONMENT DATE (N)

The date determined by the Commission that an ALEC abandoned its end users, or the date that some other sufficient emergency exists to justify use of this tariff. (N)

ABANDONED END USER (N)

The former subscriber of an ALEC that receives service under A5.8 of this Tariff. (N)

ALEC (N)

Alternative Local Exchange Company. (N)

EMERGENCY SERVICE CONTINUITY (N)

The service provided pursuant to this tariff. (N)

NEW SERVICE PROVIDER (N)

The service provider affirmatively chosen by an Abandoned End User. A New Service Provider can be either an ALEC or the Company. (N)

UNE-P (N)

The unbundled network element-platform service provided by the Company to an ALEC under an interconnection agreement. (N)

BELLSOUTH
TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

FLORIDA
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Miami, Florida

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A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS

A5.8 Emergency Service Continuity Plan (Cont'd)

A5.8.3 Application

- A. From the abandonment date until an Abandoned End User is transitioned to a New Service Provider, or until denial or disconnection of service as provided in A5.8.4 following, the Company will provide each Abandoned End User with the telecommunications service existing at the end user premises at the time of the Company's assumption of responsibility under this Tariff. Abandoned End Users will not be able to modify the telecommunications service until electing a New Service Provider. (N)
- B. The Company will provide maintenance and repair services while providing Emergency Service Continuity. (N)

A5.8.4 Notice

- A. Promptly after receipt of the Commission determination of abandonment or other emergency, the Company will provide notice to each Abandoned End User through the Company's service facilities and/or public media. The notice will inform each Abandoned End User that: (N)
1. Each Abandoned End User may continue to receive telecommunications service through the Emergency Service Continuity Plan for a minimum period of fourteen (14) days from the date initial notice is given while each Abandoned End User decides upon and transitions to a New Service Provider. (N)
 2. After notice has been given to the Abandoned End User and the time period in 1. preceding has transpired, service will be denied unless the Abandoned End User has transitioned to a New Service Provider, or the Abandoned End User has placed an order to transition to a New Service Provider and the order is being processed. When service is denied, the Abandoned End User will be able to call 911 Service, but will be unable to make or receive other calls; (N)
 3. After the time period in 1. preceding has passed and a minimum of fourteen (14) additional days have transpired, service will be disconnected unless the Abandoned End User has transitioned to a New Service Provider, or the Abandoned End User has placed an order to transition to a New Service Provider and the order is being processed. (N)
- B. Use of Company facilities may be discontinued without notice at any time after an Abandoned End User has transitioned to a New Service Provider that does not require use of Company facilities. (N)
- C. The Company will provide notice on at least one (1) occasion during the period prescribed in A. preceding. (N)

A5.8.5 Conditions

- A. Emergency Service Continuity will be provided only where the Company has been the underlying facilities provider through a resale or a UNE-P arrangement with an ALEC. Service Continuity will be provided through other service arrangements (i.e., UNE Loop) upon mutual agreement with the Commission and the ALEC. (N)
- B. The Company must have permission, either directly or through Commission order, to use the customer service record information of an Abandoned End User. (N)
- C. The Company must have a waiver of the Commission requirements for third-party verification of a change in service provider. (N)
- D. The Company must have permission, either directly or through Commission order, not to honor a "preferred carrier freeze" on the Abandoned End User's existing service. (N)
- E. The Company may request permission for an emergency declaration and waiver of the retail Service Rules (F.A.C.), the retail Service Guarantee Plan (Order No. PSC-01-1643-AS-TL), and/or the wholesale Performance Assessment Plan. (N)
- F. The Company shall not be liable for damages or injury to other local exchange or interexchange carriers arising out of the provision of Emergency Service Continuity pursuant to this Tariff. (N)
- G. The Company's liability to Abandoned End Users will be governed by the provisions of A2.5 of this Tariff. (N)

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TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

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FLORIDA
ISSUED: July 17, 2006
BY: Marshall M. Criser III, President -FL
Miami, Florida

EFFECTIVE: August 1, 2006

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS

A5.8 Emergency Service Continuity Plan (Cont'd)

A5.8.6 Rates

- A. For each Abandoned End User that selects a New Service Provider other than the Company, the Company will charge the New Service Provider a rate equivalent to the appropriate 2-wire loop, port and feature rates in that provider's interconnection agreement for the period from the abandonment date through the last date the Company provides Emergency Service Continuity. If no interconnection agreement for such rate exists, the Company will charge the rates approved by the Commission for the appropriate 2-wire loop, port and feature rates. Thereafter, the applicable rates, terms and conditions of the interconnection agreement for services ordered by the New Service Provider shall be charged, collected and observed.
- B. For each Abandoned End User that selects the Company as its New Service Provider, the Company may charge the rates applicable to the services provided to the end user by the Company consistent with the Company's General Subscriber Service Tariff from the abandonment date.

A5.9 Conversion of Overhead Telecommunications Facilities to Underground

(N)

A5.9.1 Explanation of Terms

(N)

- A. For purposes of this Part A5.9, the following definitions shall apply:
 1. Applicant – Any person or entity, including any association, municipality, county or other local government, that requests the conversion of overhead Company facilities to underground. (N)
 2. Conversion – Installation of underground facilities where underground facilities will be substituted for existing overhead facilities. (N)
 3. Cost Estimate – A cost estimate for conversion work prepared by the Company following receipt of the applicable cost estimate preparation charge. (N)
 4. Cost Estimate Preparation Charge – The charge an applicant pays to the Company to secure a cost estimate for conversion. (N)
 5. Overhead Facilities – Company aerial cable and Company poles. (N)
 6. Underground Facilities – Direct buried facilities or facilities in underground conduit. (N)

A5.9.2 General Regulations

(N)

- A. The special construction tariff provisions set forth in Part A5.2 of this tariff shall not apply to requests for conversion of overhead facilities or to any work for or related to conversion. The provisions set forth in this Part A5.9 shall apply to requests for conversion of overhead facilities. (N)
- B. An applicant shall request conversion in writing and specify in detail the overhead facilities that are the subject of the requested conversion. Upon receipt of a written request, the Company will determine the feasibility of converting the overhead facilities. If the written request requires revision to determine the feasibility of conversion, the Company will so notify the applicant. If the Company determines that the requested conversion is feasible, then the Company will so notify the applicant. If the applicant wishes to secure a cost estimate for the requested conversion, the applicant will request the cost estimate in writing, and the Company will thereafter notify the applicant of the cost estimate preparation charge that the applicant must pay to the Company in advance to secure a cost estimate. If the conversion is not feasible, the Company will notify the applicant and will have no obligation to proceed with the applicant's request or with the requested conversion. The Company shall have the sole discretion to determine whether the conversion is feasible. (N)
- C. If an applicant requests a cost estimate for conversion, a charge for the preparation of a cost estimate will apply. The applicant will pay the cost estimate preparation charge before development of the cost estimate commences. The charge includes the costs associated with the development of the cost estimate. The cost estimate preparation charge is non-refundable and is applicable whether or not the conversion work occurs. If an applicant cancels a request for a cost estimate prior to its completion, the Company will return to the applicant any portion of the previously paid cost estimate preparation charge that is in excess of costs incurred by the Company to prepare the cost estimate. (N)
- D. If an applicant wishes to proceed with conversion, the applicant may only do so following receipt of a cost estimate and, in such case, shall notify the Company in writing of its desire to proceed with conversion. Thereafter, the applicant must execute a written agreement prepared by the Company governing such conversion work within 180 calendar days of the date of the cost estimate or, if not executed within the 180-day period, must request a new cost estimate. A cost estimate preparation charge shall again apply for a new cost estimate. The payment for the conversion work in the agreement shall be based upon the cost estimate. (N)
- E. If an applicant requests engineering consultation work for a proposed conversion and if the applicant has not previously paid for such work via a cost estimate preparation charge or a conversion agreement, then engineering consultation charges will apply as provided in Part A5.3.1 of this tariff. In advance of the work, the applicant, at the Company's request, will sign an agreement agreeing to pay those charges. (N)

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:)
) Docket No. 070126-TL
Petition of AT&T Florida for Relief)
from Carrier-of-Last-Resort Obligations)
Pursuant to Florida Statutes §364.025(6)(d))
(Avalon))
_____) Filed: August 6, 2007

AFFIDAVIT OF ELIZABETH R. A. SHIROISHI

Elizabeth R. A. Shiroishi, being duly sworn, deposes and says the following:

1. I am a resident of the State of Georgia. I am over the age of 18 and am competent to make this Affidavit.
2. I am currently employed by BellSouth Telecommunications Inc. d/b/a AT&T Southeast (“AT&T Southeast”) as Senior Director - Regulatory Policy & Planning. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.
3. In my current role, I have responsibility for Network and Services Transformation, which includes issues dealing with Carrier-of-Last-Resort (“COLR”) and regulatory policy issues related to the transformation of AT&T Southeast’s network to an IP network providing an advanced suite of services.
4. I have previously testified before the Florida Public Service Commission (“Commission”) and the North Carolina Utilities Commission. Most recently, I testified before this Commission in Docket No. 060822-TL. Additionally, I have proffered testimony before the Georgia Public Service Commission and the South Carolina Public Service Commission.

5. The purpose of this affidavit is to address on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”) (1) whether AT&T Florida has established good cause to be relieved of its COLR obligations for a development called the Villages of Avalon, Phase II (“Avalon, Phase II”) in Hernando County, Florida; and (2) various policy arguments supporting AT&T Florida’s request to be relieved of its COLR obligation for Avalon, Phase II.

Introduction and Summary

6. In summary, the overriding policy question in this case is whether developers can manipulate Florida’s COLR statute to force traditional phone companies to make uneconomic investments where consumers have access to voice services from other providers while also stifling consumer choice for the suite of communications and entertainment services that residents expect. AT&T Florida supports the idea that consumers should be free to choose any company they want for video, data, and voice service. Indeed, AT&T Florida has invested, and will continue to invest, hundreds of millions of dollars in Florida to be able to offer consumers meaningful video, data, and voice competition. And that is exactly why AT&T Florida takes such issue with the current situation at Avalon, Phase II. AT&T Florida wants to use its investment dollars wisely to bring Florida residents all of its advanced services instead of using those dollars to bring a single, unnecessarily duplicative service.

7. AT&T submits that this is a case of great importance and the Commission should take whatever action is within its power to discourage this type of developer conduct. Although the Commission does not have regulatory authority over developers, or over broadband data and video services, the Commission is in a position to influence

the outcome of this situation. By granting COLR relief under this particular set of facts, the Commission sends a message to developers that exclusive service arrangements are not in the best interests of the public. Such a message will certainly get the attention of developers.

8. Further, by requiring AT&T Florida to invest substantial amounts of money in a duplicative network limited to providing voice service, the Commission will effectively shift those investment dollars away from other consumers in the state who would stand to receive the full suite of advanced services from AT&T Florida.

Issue 1: Under Section 364.025(6)(d), Florida Statutes, has AT&T Florida shown good cause to be relieved of its Carrier-of-Last-Resort Obligation to provide service at the Villages of Avalon, Phase II, located in Hernando County?

COLR Statute

9. The underlying purpose of COLR is for consumers to have access to voice service, not necessarily voice service from a LEC.

10. In recognition of the advance of competition from traditional communications providers and non-traditional, unregulated alternative providers (e.g. wireless, cable companies, VoIP providers), the Florida Legislature recently modified the COLR obligation and created several exceptions to a LEC's COLR obligation in the 2006 legislative session. The revised COLR statute now provides two avenues for a LEC to obtain relief from its historic COLR obligation. The first avenue provides for automatic relief in four specific scenarios generally applicable when property owners or developers have entered into some type of arrangement with a communications services provider, as defined in § 364.025(6)(a)(3), F.S., other than the LEC. See 364.025(6)(b), F.S. The second avenue applies only when none of those four specific automatic relief scenarios

are present. In that situation, the LEC may petition the Commission for COLR relief, which shall be granted upon "good cause" shown:

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.

§ 364.025(6)(d). It is this second avenue that serves as the basis for AT&T Florida's Petition.

Voice-Only Easement

11. Through a voice-only easement, the Developer is prohibiting AT&T Florida from providing anything other than voice service to Avalon, Phase II. As a result of this voice-only easement, AT&T Florida will not be allowed to provide residents of Avalon, Phase II AT&T Florida's full panoply of services that exist today and that will exist in the future including data and video services. This easement arrangement is the same as what was provided to AT&T Florida for Phase I, to which AT&T Florida acquiesced for the reasons explained in Mr. Bishop's Affidavit. The Developer has provided no evidence to suggest that it has any intention of changing its voice-only restriction.

Every Resident of Avalon, Phase II Will Have Voice Service

12. Every resident of Avalon, Phase II will have the option of voice service even if AT&T Florida is relieved of its COLR obligation in this development.

13. Beyond Communications' voice service appears to be a fixed VoIP service, which is very similar to fixed wireline from a consumer's standpoint. Residents of Avalon, Phase II will have access to other VoIP providers (e.g. over-the-top VoIP) and wireless cellular service to meet their voice service needs.

14. Accordingly, no resident of Avalon, Phase II will be without voice service if AT&T Florida's Petition is granted.

Take Rate for Avalon, Phases I and II

15. Based on AT&T Florida's experience with the Villages of Avalon, Phase I, which is a single-family, sister development where the Developer has restricted AT&T Florida to providing voice service only pursuant to a voice-only easement, AT&T Florida believes that the take rate for its voice only services in Avalon, Phase II will be 20% or less. Upon completion, Avalon, Phase I will contain approximately 320 residential units and is adjacent to Avalon, Phase II in Hernando County, Florida. Similar to Avalon, Phase II, the Developer restricted AT&T Florida to only being able to provide voice service in the development through a voice-only easement.

16. Because of these restrictions, only 15.5% of the built and occupied homes in Avalon, Phase I have ordered AT&T Florida's voice service (as of April 2007). A similar take-rate can be expected in Avalon, Phase II.

Issue 2: May AT&T Florida impose charges on the developer, Avalon, Phase II, as a condition of installing facilities? If so, under what conditions and what kind of charges?

17. If the Commission determines that AT&T Florida is not relieved of its COLR obligation, the Commission must then determine whether AT&T Florida is required to install facilities prior to the Developer paying AT&T Florida charges pursuant

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to AT&T Florida's Tariff, § A5 (see Exhibit "H" attached to AT&T Florida's Motion for Summary Final Order). This analysis and decision is entirely independent of the good cause analysis under Section 364.025, F.S. but equally important because it has wide-ranging ramifications on the historical and ongoing business operations of the industry.

18. AT&T Florida has offered to share in the economic burden associated with providing voice service only by charging the Developer, pursuant to its special construction tariff and the Commission's line extension rule, special construction costs that exceed AT&T Florida's five year estimated revenue. The Developer has refused to pay this or any amount and thus has not agreed to take on any financial burden associated with its COLR request.

19. Here, as stated by Mr. Bishop, AT&T Florida conducted the five times revenue analysis and determined that the Developer should be responsible for \$171,606 of AT&T Florida's costs to deploy facilities to serve residents in Avalon, Phase II with voice service. Notwithstanding the restrictions imposed by the Developer, AT&T Florida has agreed to be responsible for the remainder of the costs or \$155,213.¹

Line Extension Rule

20. Historically, the Line Extension Rule has primarily applied to individual subscribers. However, in this situation, where developers are effectively acting as agents for future, yet-to-be-identified residents of a property, the Line Extension Rule applies to

¹ This amount is the estimated five times annual revenue for Avalon, Phase II. As stated by Mr. Bishop, the project's five year annual exchange revenue was based upon consideration of the following factors: (1) Average Revenue per Unit ("ARPU") of \$█, which is based upon actual historical revenue as of September 2006 associated with residential lines in Florida, including custom calling and long distance service revenue; (2) a 20% take rate, that rationale for which Mrs. Shiroishi explains in detail; and (3) occupancy forecast based on when homes are expected to be occupied based upon developer-provided construction schedules. Regarding ARPU, AT&T Florida included the monthly recurring revenues associated with local voice service, any monthly revenue associated with Area Plus, the subscriber line charge, and long distance service revenue.

Developers. Indeed, if developers can use COLR to force AT&T Florida to make uneconomic investments by installing duplicative facilities in properties where consumer choice is restricted, developers also must be responsible for the liabilities associated with such use. Stated another way, if a developer can trigger COLR before any residents exist on the property, then the developer, for all practical purposes, is in fact the subscriber for the entire development.

AT&T Florida's Tariff

21. AT&T Florida's Tariff allows it to charge the developer the above-referenced costs. Pursuant to Section A5.2.2.D of AT&T Florida's Tariff, the customer has the option of having the liabilities and charges billed based on either estimated or actual costs. Estimated costs will be billed unless the customer notifies AT&T Florida of the selection of the actual cost option in writing prior to the start of special construction. The Tariff provides that the estimated or actual costs for special construction may include one or more of the items specified in Section A5.5.1. Section A5.2.2(D)(1). Section A5.5.1 identifies recoverable costs as the following: labor, engineering and materials; supervision; operating expenses, e.g. maintenance, administration, etc.; return on investment; taxes, depreciation, charges associated with construction provided by another company; charges for securing private rights-of-way; charges for securing use of poles and pole line attachments on other company poles; equipment or space rental; expenses made necessary for damages caused by the customer or its agents; any other identifiable associated cost; cost for rearrangements and changes; and supporting structures.

22. In summary, AT&T Florida's cost to construct line extension facilities pursuant to the developer's request exceeds the estimated five year exchange revenue.

Consequently, AT&T Florida is entitled to charge the developer per Rule 25-4.067(1), F.A.C. and AT&T Florida's Tariff § A5. And, per AT&T Florida's Tariff, payment of special construction "is due upon presentation of a bill for the specially constructed facilities." § A5.2.2.2(B). If the party requesting special construction fails to pay in advance, then AT&T Florida has no obligation to deploy facilities. The Commission should find that, in this situation, AT&T Florida's Tariff governs and that AT&T Florida has no obligation to proceed with installing facilities irrespective of any COLR obligation, should the developer refuse to pay the requested construction charges. There is no justification for treating developers any differently than every other customer that is required to pay special construction for facilities. Such customers should all be treated in a non-discriminatory manner pursuant to AT&T Florida's Tariff.


Further affiant sayeth not.

This 6th day of August 2007.

Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.


ELIZABETH R. A. SHIROISHI

Sworn to and subscribed
before me this 6th
day of August 2007.


Michele F. Bixler
Notary Public

My commission expires: _____

MICHEALE F. BIXLER
Notary Public, Douglas County, Georgia
My Commission Expires November 3, 2009