

**Dorothy Menasco**

**From:** Woods, Vickie [vf1979@att.com]  
**Sent:** Monday, August 13, 2007 4:28 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 070126-TP AT&T Florida's Prehearing Statement  
**Importance:** High  
**Attachments:** Preheari.pdf; LEGAL-#687282-v1-070126-TL\_Prehearing\_Statement.DOC

**ORIGINAL**

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B. 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)

C. AT&T Florida  
on behalf of Manuel A. Gurdian

D. 15 pages (.pdf) total (includes letter, pleading and Certificate of Service)  
12 pages (word .doc)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Letter to FPSC (Cole) re: Objections to Staff's First Set of Interrogatories and First Request

for Production of Documents

.pdf word .doc

<<Preheari.pdf>> <<LEGAL-#687282-v1-070126-TL\_Prehearing\_Statement.DOC>>

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DOCUMENT NUMBER-DATE

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8/13/2007

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**ORIGINAL**

August 13, 2007

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 BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Prehearing Statement, 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

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

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**CERTIFICATE OF SERVICE**  
**Docket No. 070126-TL**

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

(\*) Electronic Mail, (\*\*) Federal Express and First Class U. S. Mail this 13th day of August, 2007 to the following:

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Manuel A. Gurdian

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of AT&T Florida for Relief from ) Docket No: 070126-TL  
Carrier-of-Last-Resort Obligations Pursuant )  
To Florida Statutes §364.025(6)(d) (Avalon) )  
\_\_\_\_\_ ) Filed: August 13, 2007

**AT&T FLORIDA'S PREHEARING STATEMENT**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), in compliance with the Order Establishing Procedure (Order No. PSC-07-0606-PCO-TL) issued on July 30, 2007, hereby submits its Prehearing Statement for Docket No. 070126-TL.

**A. Witnesses**

AT&T Florida proposes to call the following witnesses to offer testimony on the issues in this docket:

<b><u>Witness</u></b>	<b><u>Issue</u></b>
Larry Bishop	1, 2
Elizabeth R.A. Shiroishi	1, 2, 3

AT&T Florida reserves the right to file rebuttal testimony, to call additional witnesses to respond to and address Florida Public Service Commission ("Commission") inquiries, to issues raised in Avalon Development LLC ("Developer") or Staff's testimony, to issues raised in any potential rebuttal testimony (which has not been filed), and to issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on August 20, 2007. Further, because the deadline for AT&T Florida to file rebuttal testimony is August 17, 2007, AT&T Florida reserves the right to supplement and revise this list as appropriate.

DOCUMENT NUMBER-DATE

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## **B. Exhibits**

- \* LB- 1 attached to the Direct Testimony of Larry Bishop  
Diagram of fiber-to-the-curb architecture
- \* LB- 2 attached to the Direct Testimony of Larry Bishop  
Cost Comparison Summary for Copper vs. FITL Distribution
- \* LB- 3 attached to the Direct Testimony of Larry Bishop  
Estimated build-out costs for Avalon, Phase II
- \* LB- 4 attached to the Direct Testimony of Larry Bishop  
OSPCM report for Avalon, Phase II
- \* LB- 5 attached to the Direct Testimony of Larry Bishop  
May 15, 2007 correspondence from AT&T Florida to Developer
- \* LB- 6 attached to the Direct Testimony of Larry Bishop  
AT&T Florida's five year annual exchange revenue calculation
- \* ERAS- 1 attached to the Direct Testimony of Elizabeth R.A. Shiroishi  
Connexion Technologies f/k/a Capitol Infrastructure ("Connexion Technologies")  
Website Pages
- \* ERAS- 2 attached to the Direct Testimony of Elizabeth R.A. Shiroishi  
Connexion Technologies Website Page
- \* ERAS- 3 attached to the Direct Testimony of Elizabeth R.A. Shiroishi  
May 23, September 21 and September 25, 2006 correspondence between  
Developer's attorney and AT&T Florida attorney
- \* ERAS- 4 attached to the Direct Testimony of Elizabeth R.A. Shiroishi  
Smart Resorts a/k/a Beyond Communications' ("Beyond Communications")  
website pages
- \* ERAS- 5 attached to the Direct Testimony of Elizabeth R.A. Shiroishi  
Connexion Technologies Document
- \* ERAS- 6 attached to the Direct Testimony of Elizabeth R.A. Shiroishi  
AT&T Florida's A5 Tariff-- Charges Applicable Under Special Conditions
- \* Any exhibits attached to AT&T Florida's rebuttal testimony to be filed on August 17,  
2007.

\* AT&T Florida's Responses to all Data Requests issued by Staff, including but not limited to AT&T Florida's Responses to Staff's Data Request No. ATT-1 (Nos. 1 to 7) and AT&T Florida's Responses to Staff's Data Request No. ATT-2 (No. 1).

\* AT&T Florida's Responses to all Interrogatories and Requests for Production issued by Staff or the Developer, including but not limited to Staff's First Set of Interrogatories and First Request for Production of Documents, Staff's Second Set of Interrogatories and Second Request for Production of Documents, Staff's Third Set of Interrogatories and Staff's Fourth Set of Interrogatories.

\* Developer's Responses to Staff's Data Requests and any discovery issued by Staff or AT&T Florida.

\* Staff's Responses to any discovery issued by AT&T Florida or the Developer.

\* All transcripts of any depositions that may take place prior to the discovery cut-off date.

AT&T Florida expressly reserves the right to file exhibits to its rebuttal testimony to be filed on August 17, 2007. Moreover, AT&T Florida reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. AT&T Florida also reserves the right to utilize any exhibit introduced by any party or Staff and the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

### **C. Statement of Basic Position**

During the 2006 legislative session, 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 enacted legislation that, in certain instances, provides relief for a local exchange carrier ("LEC") from Carrier-of-Last-Resort ("COLR") obligations. The COLR statute provides two avenues for a LEC to obtain COLR relief. See Florida Statutes § 364.025(6).



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), Florida Statutes, other than the LEC. *See* Florida Statutes § 364.025(6)(b)(1)-(4). The second avenue applies when none of those four specific automatic relief scenarios are present. *See* Florida Statutes § 364.025(6)(d). 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.

Florida Statutes § 364.025(6)(d). It is this second avenue that serves as the basis for AT&T Florida's Petition for relief of its carrier-of-last-resort obligations.

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 Villages of

Avalon, Phase II (“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.

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 interest of the public. Such a message will certainly get the attention of developers.

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.

Generally speaking, AT&T Florida believes that it should be relieved of its COLR obligation for two primary reasons: (1) the residents of Avalon, Phase II can obtain voice service from other alternative providers, including but not limited to Beyond Communications; and (2) serving Avalon, Phase II with voice service only results in an uneconomic investment for AT&T Florida and effectively denies advanced services to even more Florida consumers.

**D. AT&T Florida's Position on the Issues**

**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?

**Position:** Yes.

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 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.

AT&T Florida has shown “good cause” under Section 364.025(6)(d), Florida Statutes, for the Commission to relieve AT&T Florida of its COLR obligations for the provision of basic local telecommunications service to Avalon, Phase II based upon the following facts and circumstances:

- Through a voice-only easement, the Developer is prohibiting AT&T Florida from providing anything other than voice service to Avalon, Phase II.
- The Developer has entered into an agreement with Connexion Technologies who in turn contracted with Beyond Communications for the provision of voice service at Avalon, Phase II.
- 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.
- 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.
- 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. 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.

- Residents of Avalon, Phase II will be able to obtain voice service from Beyond Communications, VoIP providers, or wireless carriers.

- AT&T Florida estimates that it will cost approximately \$326,819 to deploy facilities to provide voice service to Avalon, Phase II.

- 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.

- 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.

- 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.

Accordingly, based upon the foregoing facts and circumstances, AT&T Florida has shown "good cause" under Section 364.025(6)(d), Florida Statutes, and AT&T Florida should be relieved of its COLR obligation to provide basic local telecommunications service to 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?

**Position:** Yes. AT&T Florida may impose charges pursuant to its Tariff, § A5 as a condition of installing facilities in Avalon, Phase II.

In the event that 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 to AT&T Florida's Tariff, § A5. This analysis and decision is entirely independent of the good cause analysis under Section 364.025, Florida Statutes, but equally important because it has wide-ranging ramifications on the historical and ongoing business operations of the industry.

AT&T Florida is entitled to charge the developer per Rule 25-4.067(1), F.A.C. and AT&T Florida's § A5 for the cost to construct line extension facilities to the extent the cost exceeds the estimated five year exchange revenue. 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). Should the requesting party fail 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.

Accordingly, based upon the language of Rule 25-4.067(1), F.A.C. and AT&T Florida's Tariff § A5, the Commission should find that AT&T Florida is not required to install facilities to Avalon, Phase II until the Developer pays AT&T Florida's charges pursuant to AT&T Florida's Tariff.

**Issue 3:** Should this docket be closed?

**Position:** Yes, after a decision is obtained.

**E. AT&T Florida's Notice of Intent to Use Confidential Information at Hearing**

AT&T Florida was requested to provide and has provided confidential information to Commission Staff in response to data requests and discovery requests by Staff, and may provide additional confidential information in response to future discovery or in connection with its Rebuttal Testimony. AT&T Florida has requested or intends to request confidentiality for the following:

1. AT&T Florida's Response to Staff's Data Request No. ATT-1, Item No.2;
2. AT&T Florida's Response to Staff's Data Request No. ATT-2, Item No.1;
3. Direct Testimony of Elizabeth R. A. Shiroishi – p.17, footnote 2;
4. Direct Testimony of Larry Bishop – Exhibits LB-2, LB-3, LB-4 and LB-6;
5. AT&T Florida's Response to Staff's First Request for Production of Documents Nos. 1 and 5;
6. Affidavit of Larry Bishop – Exhibits LB-2, LB-3, LB-4 and LB-6; and
7. Affidavit of Elizabeth R. A. Shiroishi – p. 6, footnote 1.
8. AT&T Florida's Supplemental Response to Staff's First Request for Production of Documents No. 1

AT&T Florida reserves the right to use any such information at hearing, subject to appropriate measures to protect its confidentiality.

**F. Stipulations**

AT&T Florida is unaware of any stipulations at this time.

**G. Pending Motions**

AT&T Florida has filed a Motion for Summary Final Order which is pending in this proceeding. AT&T Florida is not aware of any other pending motions at this time.

**H. Objections to Witness Qualifications**

AT&T Florida is unable to address witness qualifications at this time, since no testimony has been filed by the Developer nor has the Developer or Staff designated a witness as an expert. AT&T Florida expressly reserves the right to object to a witness' qualifications should the Developer or Staff designate a witness as an expert.

**I. Other Requirements**

AT&T Florida does not know of any requirement of the Order Establishing Procedure with which it cannot comply.



Respectfully submitted this 13th day of August, 2007.

AT&T FLORIDA



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