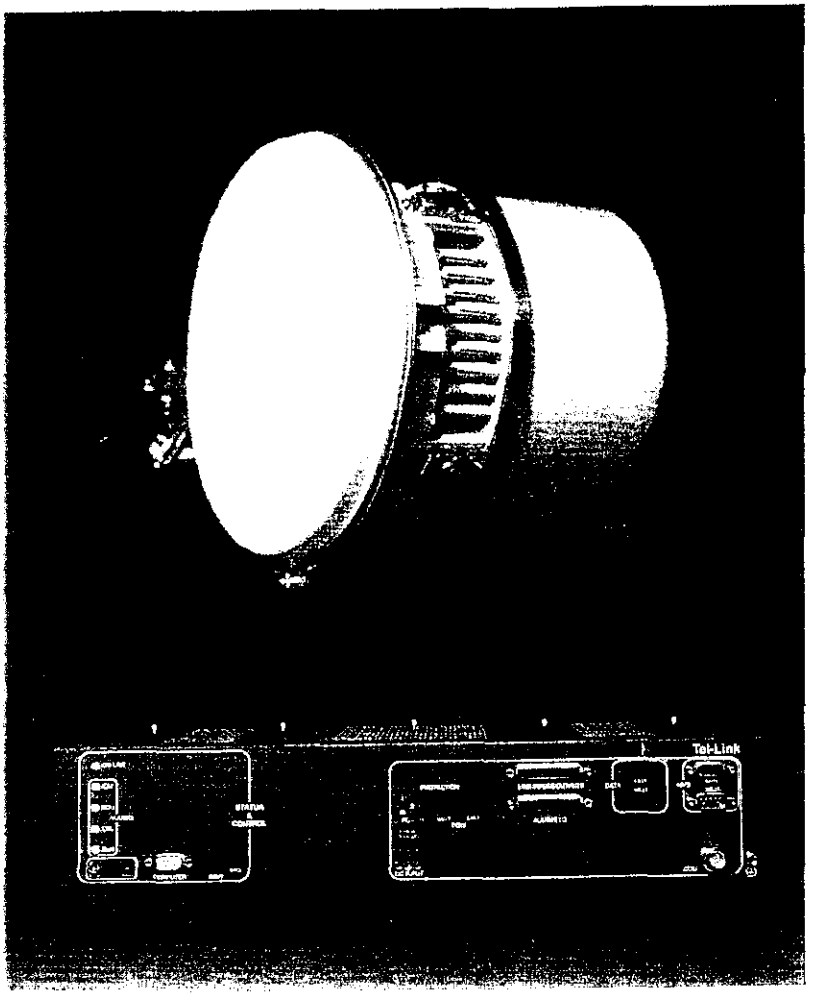
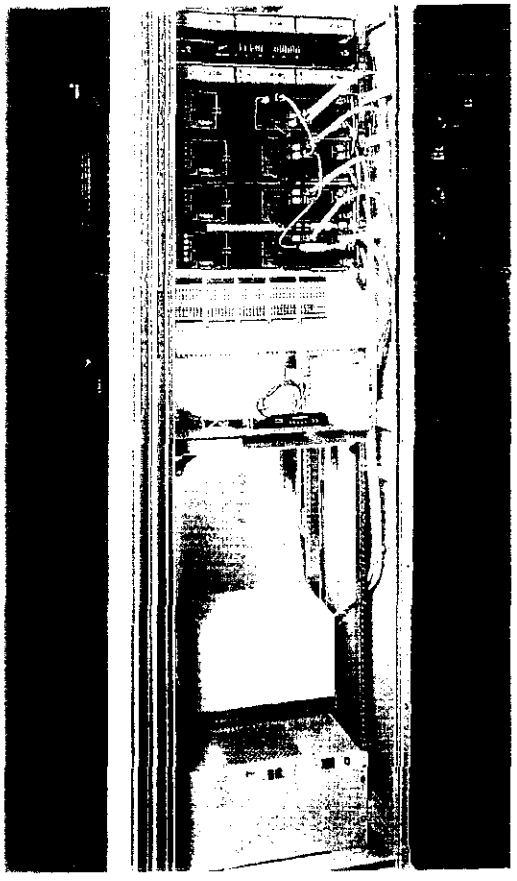
E

WinStar Elements





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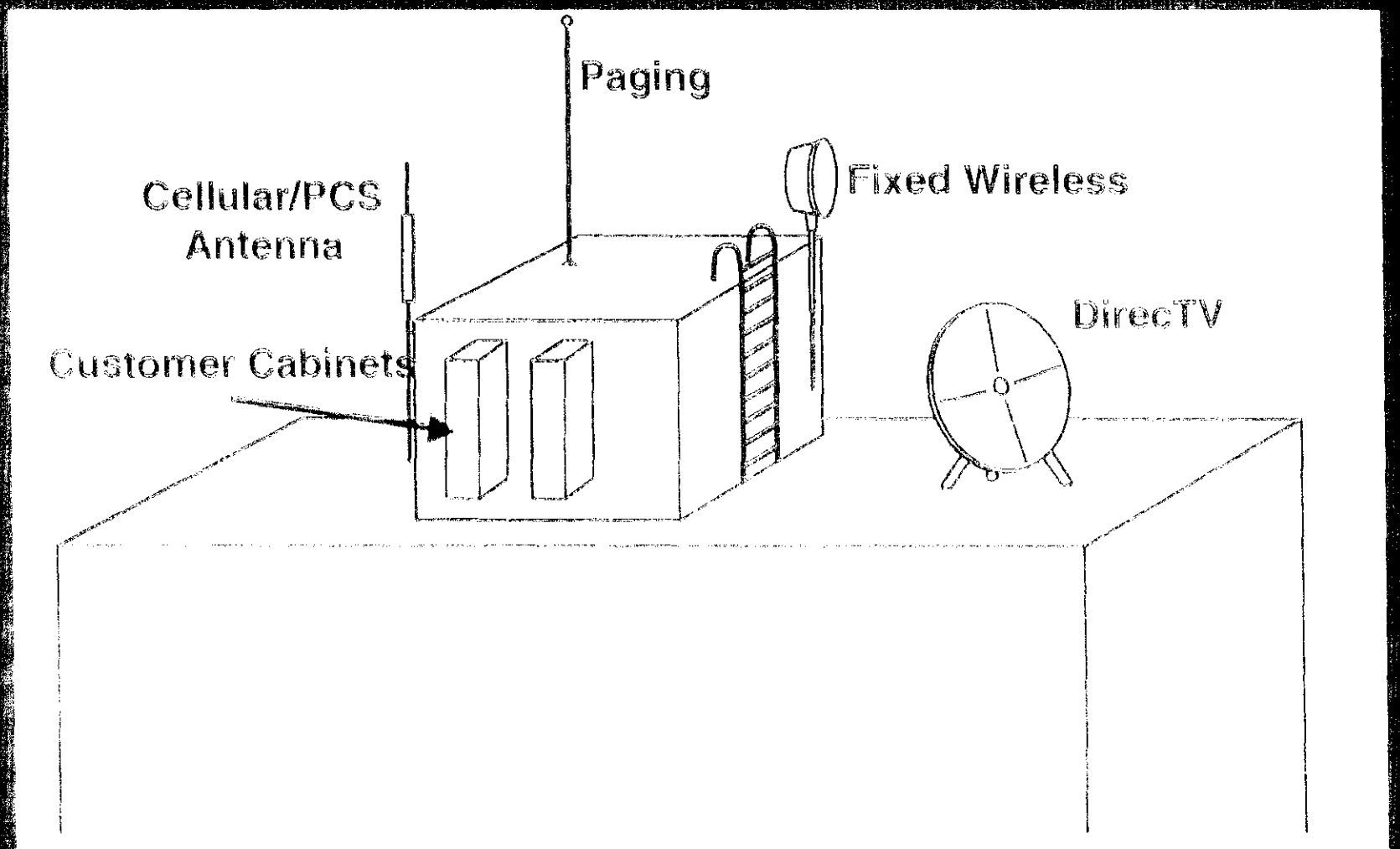
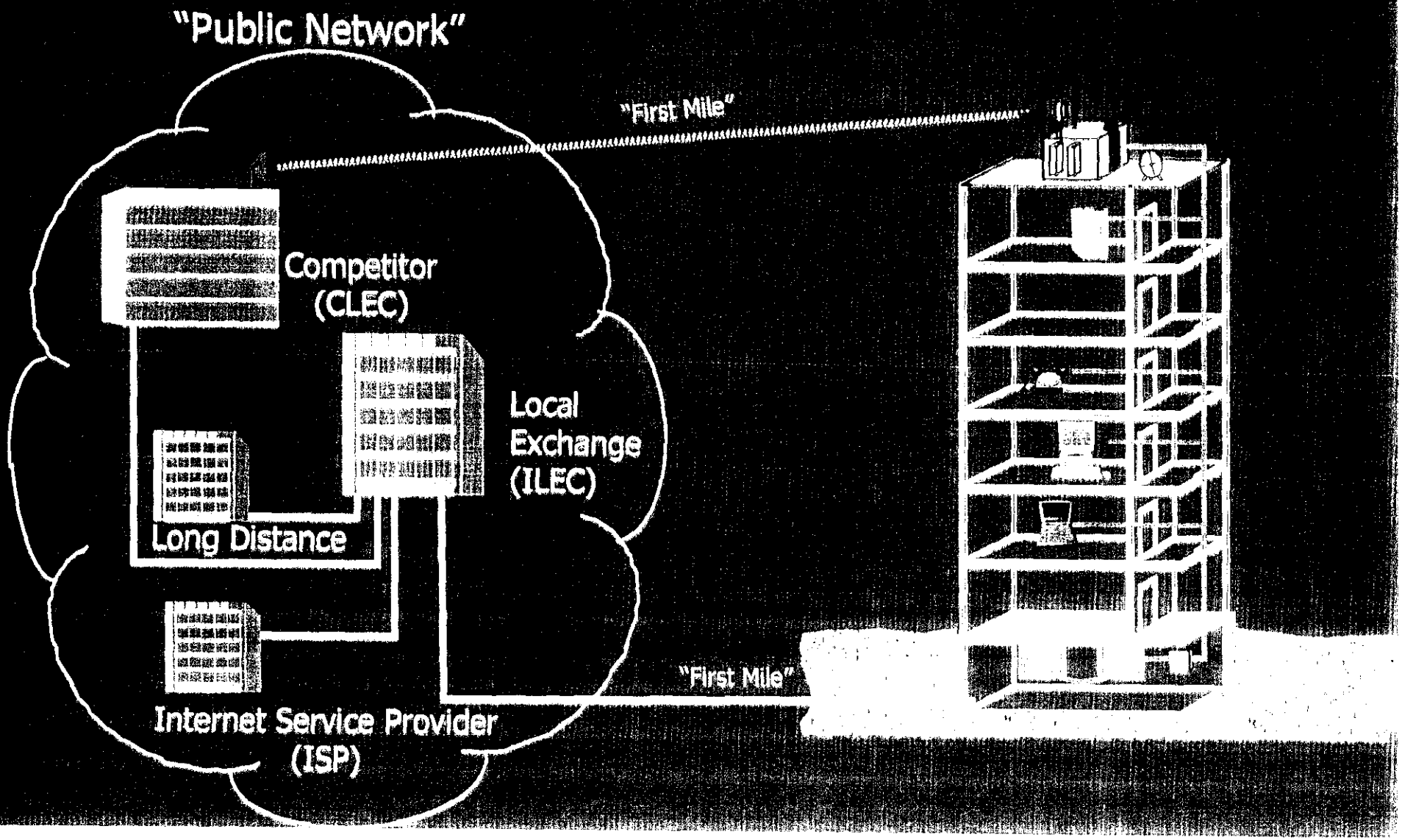
The rooftop audit



G

Connecting "first mile"



H

1

THOU SHALL NOT FORGET THAT THOU ART FIRST AND FOREMOST IN THE TENANT PLEASING BUSINESS.

Do not allow texts such as *Wired for Profit* to confuse you as to your core business. Property management professionals will continue to have as their lead responsibility the maintenance of a tenant friendly environment. The most aggressive strategic telecommunications plan you can ever employ will never rival the revenues generated by your traditional rents. As you negotiate with TSPs, remind them of this fact, especially TSPs that seek to use your building more as a platform from which to service their customers rather than serve your tenants (e.g. PCS, paging, and cellular.)

2

THOU SHALT TREAT A TELECOMMUNICATIONS TENANT LIKE EVERY OTHER TENANT, AND THAT SHALL NOT DISCRIMINATE AMONG TSPs.

If you simply remember that a TSP is a tenant or a prospective tenant, your relationship with that TSP will be off to a very good start. In other words, you should treat a TSP with the same respect and courtesy - and demand of them the same compliance with the rules and regulations of the building - that you would any non-telecommunications tenant. In addition, you should treat all TSPs in a non-discriminatory way. That does not mean that you must treat all TSPs identically, as you do not treat all traditional tenants identically. But as with traditional tenants, you should have a valid business reason for treating TSPs differently.

3

THOU SHALL NOT ALLOW ANY TENANT IN OR ON YOUR PROPERTY WITHOUT A WRITTEN AGREEMENT.

While this is a specific application of commandment number two, it bears highlighting. As a property management professional, you would not allow any other tenant to occupy your building without a governing document. Why would you treat a telecommunications tenant differently? Never permit any tenant access to your building without a written agreement.

[Note: *Wired for Profit* is not directing that this written agreement must include monetary compensation. That decision will be up to you.]

4

UTILIZE A LICENSE (TLA) RATHER THAN A LEASE TO GOVERN RELATIONSHIP WITH TELECOMMUNICATIONS TENANTS.[12]

Because lease language is based on the ancient body of real property law, lease terminology tends to be broad and complex and is likely to be interpreted broadly by courts. The awkwardness of the terms often will truly frustrate parties from reaching a "meeting of the minds" on what the terms mean. A license, on the other hand, will be interpreted with greater precision within the confines of the document and the parties are free to write what they think rather than adapting a lease clause to try and fit their needs. For these reasons, a telecommunications license agreement (TLA) is preferable.

If a lease governs your current relations with a TSP, by all means honor the terms of that agreement. When it comes time to renew, however, consider employing a license.

In your license you should also never grant an easement in favor of a TSP. By granting an easement you take away much of your ability to govern the conduct of the TSP, as well as their right to resell access to your building.

5

HONOR, ABIDE BY, AND INCLUDE THE TERMS FROM THIS BOOK'S MODEL LICENSES IN YOUR BUSINESS TRANSACTIONS WITH TSPs.

The model license agreements provided in this book are based on years of practical experience. They include governing language for every major concern a property management professional must address in conducting business with a TSP. These documents seek to protect not only the business interests of the building owner but also to provide for the needs of a TSP. Absent a compelling business need, it is not recommended that any of the terms be omitted from your agreements. You should, however, review the agreements with your legal counsel so as to ensure that the agreement meets your particular business and legal requirements.

The license agreement should be the only contract you maintain with a TSP, unless the TSP rents non-telecommunications space in the building. A separate and traditional lease that you reference in the license agreement should govern these rentals.

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[12] *Black's Law Dictionary* (6th Ed., 1995) defines a "lease" as: Any agreement which gives rise to the relationship of landlord and tenant (real property) or lessor and lessee (real and personal property.)

A "license," in contrast, is defined as: A personal privilege to do some particular act or series of acts on land, without possessing any estate or interest therein, and is ordinarily revocable at the will of the licensor and is not assignable.

In the context of real property, *Black's* goes on to add that: A license is ordinarily considered to be a mere personal or revocable privilege to perform an act or series of acts on the property of another. A privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title, interest or estate in property.

While explained in greater detail later, make sure that your license agreement:

- Addresses the terms, conditions and fees relating to cable and equipment deployment.
- Specifies what services are permitted under the license. For instance, a license granting a TSP the right to provide video should make clear that it does not automatically convey the right to provide phone service.
- Provides you, upon reasonable notice to the TSP, the right to move TSP equipment and cables. This will assist in your efforts to accommodate new and additional TSPs. Who pays for the move is subject to negotiation.
- Requires the right to review and approve cable runs, mandates detailed engineering drawings and records, and demands that all wires are clearly labeled. These actions will promote efficient operations within your risers as well as facilitate a TSP's departure from your building.
- Protects against granting unlimited rights to place cables within your building.
- Reserves the right to install a common, building-owned telecommunications distribution system.
- Ensures all parties understand that rights are being granted for either rooftop or riser, but not for both unless specially granted. In practice, disagreements have arisen as to what level of access parties feel they have been granted.

6

DO NOT HESITATE TO RELY UPON EXPERTS TO ASSIST IN YOUR RELATIONS WITH CURRENT OR PROSPECTIVE TELECOMMUNICATIONS TENANTS.

The property management profession has long relied upon professional brokers to assist owners and tenants in reaching mutually agreeable terms on space. Following the commandment of treating telecommunications tenants like every other tenant, it makes sense to continue the practice of hiring experts to assist in closing deals. Make sure that the consultants you hire:

- Possess knowledge of market values for access;
- Have experience in what issues are of paramount concern to both parties; and
- Does not have a conflict of interest as they also represent a TSP.

7

BE AN INFORMED AND FORMIDABLE NEGOTIATOR.

Should you choose to represent yourself in negotiations with TSPs, recognize that this book provides you with numerous tools to assist you to be both informed and formidable. Follow the steps in Chapter Three, "Preparing to Do Business," and use as a starting point *Wired for Profit*'s model license agreements. Place the burden on the TSP to explain why any such terms are not acceptable.

8

THOU SHALT NOT BE BULLIED BY PREEXISTING CONTRACTS BETWEEN TSPs AND CURRENT TENANTS.

If you have followed the advice in Chapter Three and informed all of your tenants of your new telecommunications space management program, this should not be as large a problem as it may have been in the past. A favorite marketing tactic of many TSPs is to sign up your tenants as clients before anything is said to you. Having contracts in hand, they then approach you (or have the tenant approach you) and demand access to the building. Do not be bullied – but then again, do not be bull-headed. If you cannot reach an accommodation with the TSP, you (not the TSP) should explain the reasons to your tenant.

Moving forward, understand that the best way to address this issue is to have a superior knowledge of your tenants' needs and communicate early and often with your tenants on your building's telecommunications policies.

9

THOU SHALL NOT BE A PROVIDER OF EXCLUSIVE CONTRACTS.

As a property management professional, your goals are to maximize choice for tenants, enhance the value of your property by increasing its telecommunications offerings, and maximize the return on your investment by charging numerous access fees. Therefore, it makes little if any business sense to grant any TSP an exclusive contract. It may make sense to offer "preferred status" to a TSP, wherein the TSP provides a bulk price program to your tenants. The only time that an exclusive contract for a TSP may be justified is if you are the manager or owner of a smaller property and the TSP must have an exclusive

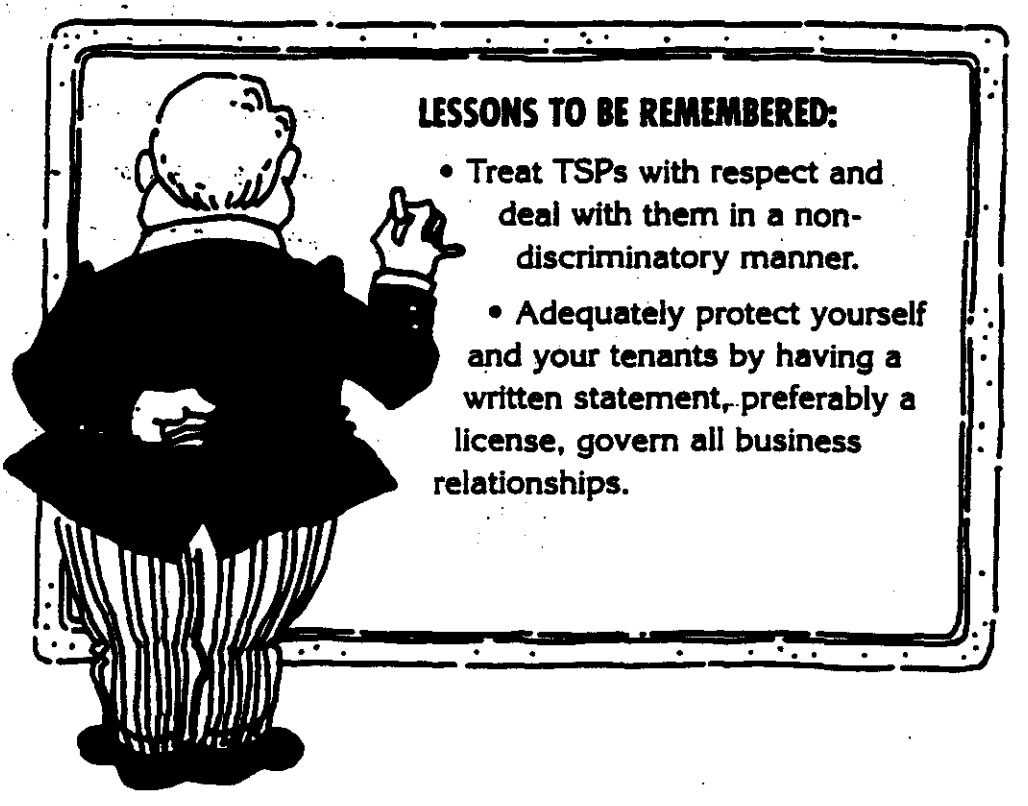
arrangement in order to justify its capital expense. Some smaller apartment and office buildings may find this is the case in the offering of video entertainment. If such a contract is necessary, make clear that it is for a limited period of time and that the exclusivity is limited to the video service and nothing more.

From both a public relations and business viewpoint, exclusive contracts will seldom, if ever, be attractive. Many aggressive TSPs are pleading with government agencies to mandate access. They claim that building owners are barring their access to tenants. Although BOMA and NAA are fighting to defend owners' rights to offer exclusive contracts, we strongly recommend against them as they may cripple your business and strategic planning.

10

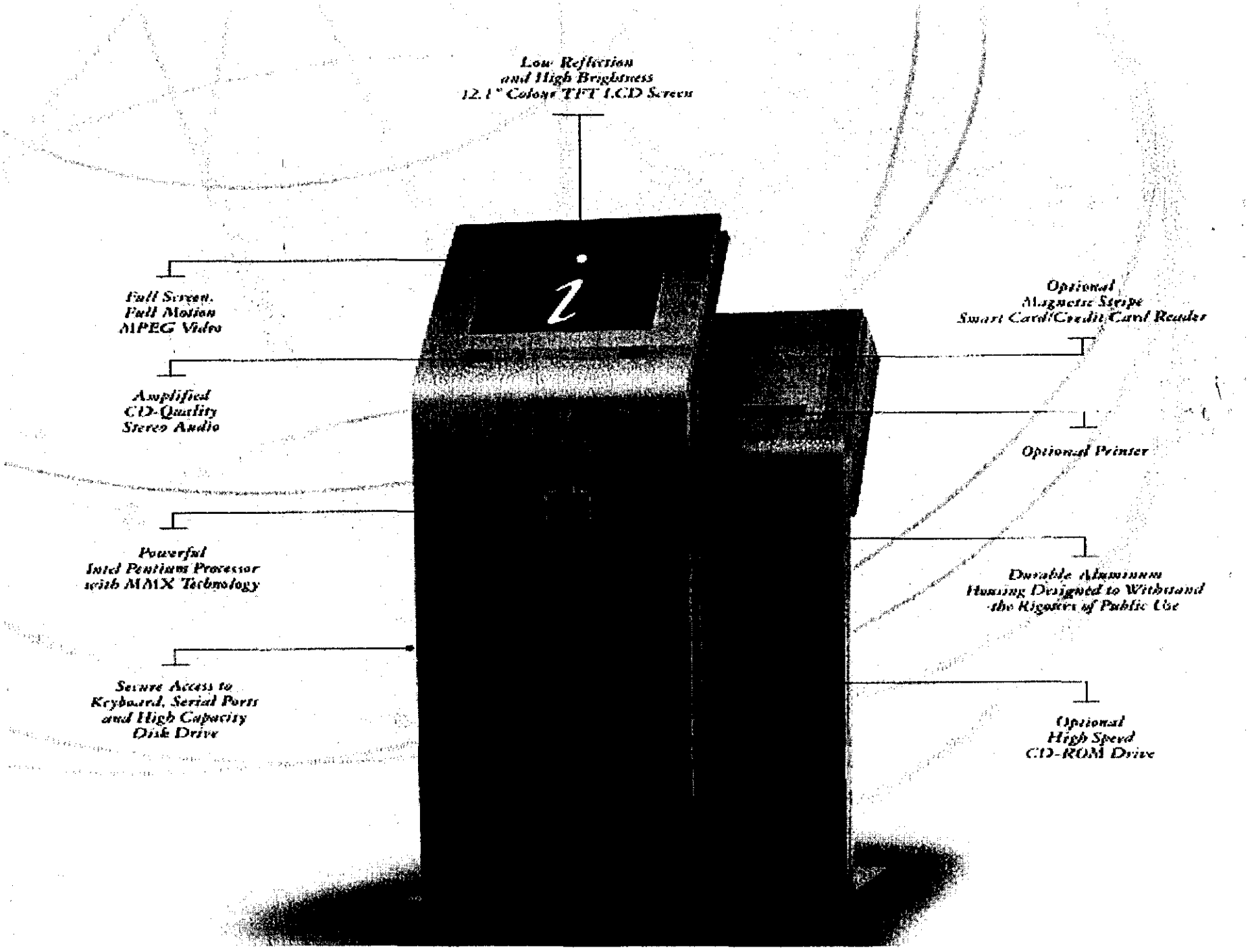
THOU SHALT PROTECT YOUR PROPERTY AND THE PROPERTY OF YOUR TENANTS FROM LIABILITY AND SAFETY CLAIMS ARISING FROM TSP ACTIVITIES.

As explained in greater detail in Chapters Five and Six, property management professionals must recognize that there are potential downsides to having any TSP, including the local phone company, in your building. While the benefits of additional TSPs far outweigh the threats posed by their presence, there are nonetheless real issues that must be addressed up front. Liability insurance, compliance certificates and proper licenses must be required.



Networked Kiosk Breakthrough

- A centrally served, broadband IP Kiosk Network
- Features:
  - "Live" news headlines feeds for constantly updated content
  - Interactive tenant directory and building information
  - Interactive restaurant and area information
  - Full motion video
  - Central 24x7 updating, monitoring and servicing
- Plus
  - New flat screen/touch screen hardware


Low Reflection
and High Brightness
12.1" Colour TFT LCD Screen
Full Screen,
Full Motion
MPEG Video
Amplified
CD-Quality
Stereo Audio
Powerful
Intel Pentium Processor
with MMX Technology
Secure Access to
Keyboard, Serial Ports
and High Capacity
Disk Drive
Optional
Magnetic Stripe
Smart Card/Credit Card Reader
Optional Printer
Durable Aluminum
Housing Designed to Withstand
the Rigours of Public Use
Optional
High Speed
CD-ROM Drive

WINSTAR

Main Screen

Building directory

Building Information

Restaurants

Shopping

WinStar

Touch the appropriate selection

Wine Tasters Association
Wine for Your Health.

Winners
Its a State of Mind.

Wind Runner
Best wind-surfers in the world

WinStar
The New Phone Company

Winther
Bicycles and more

Win
Clothes for the cold outside

WinWave
The Best Microwaves in the Whole Wide World

Search by company

Win

Search by

Company

People

NEXT q w e r t y u i o p DELETE

NUMERIC a s d f g h j k l ENTER

UPPERCASE z x c v b n m , . SPACE

J

Section 4.04 hereof. All additions to or improvements of the Leased Premises, whether of Building Standard Improvements or Tenant Extra Improvements installed pursuant to Section 4.04, shall be and become the property of Landlord upon installation and shall be surrendered to Landlord upon termination of this Lease by lapse of time or otherwise, subject to Tenant's rights of removal with respect thereto in the same manner as provided in Section 5.08 hereof. Although Tenant Extra Improvements become the property of Landlord upon installation, they are intended to be for the convenience of Tenant and are not intended to be a substitute for Rent or any part thereof.

5.04 **Taxes On Personal Property And Tenant Extra Improvements.** In addition to, and wholly apart from its obligation to pay Tenant's Proportionate Share of Basic Operating Costs, Tenant shall be responsible for and shall pay prior to delinquency taxes or governmental service fees, possessory interest taxes, fees or charges in lieu of any such taxes, capital levies, or other charges imposed upon, levied with respect to or assessed against its personal property, on the value of its Tenant Extra Improvements, on its interest pursuant to this Lease or on any use made of the Leased Premises or the Common Areas by Tenant in accordance with this Lease. To the extent that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord. Landlord may require by written notice to Tenant that Tenant shall install and maintain all required intrabuilding network cable and other communications wires and cables necessary to serve the Leased Premises from the point of presence in the Building of a telecommunications provider selected by Landlord in its sole and absolute discretion (and Tenant hereby acknowledges and agrees not to obtain any telecommunications services within the Building from vendors other than those so selected by Landlord).

5.05 **Repairs By Tenant.** Tenant shall maintain and repair the Leased Premises and keep the same in good condition. Tenant's obligation shall include, without limitation, the obligation to maintain and repair all walls, floors, ceilings and fixtures and to repair all damage caused by Tenant or Tenant Parties to the utility outlets and other installations in the Leased Premises or anywhere in the Project, whatever the scope of the work of maintenance or repair required. Tenant shall repair all damage caused by removal of Tenant's movable equipment or furniture or the removal of any Tenant Extra Improvements or Alterations (hereinafter defined) permitted or required by Landlord, all as provided in Section 5.19. At the request of Tenant, Landlord shall perform the work of maintenance and repair constituting Tenant's obligation pursuant to this Section 5.05 and as an "extra service" to be rendered pursuant to Section 4.02.(e) at Tenant's sole cost and expense including the administration fee referred to therein. Any work of repair and maintenance performed by or for the account of Tenant by persons other than Landlord shall be performed by contractors approved by Landlord prior to commencement of the work and in accordance with procedures Landlord shall from time to time establish. All such work shall be performed in compliance with all applicable laws, ordinances, rules and regulations and Tenant shall provide to Landlord copies of all permits and records of inspection issued or obtained by Tenant in connection therewith to establish such compliance. Nothing

K

Resolution Adopted at NARUC's Summer 1998 Committee Meetings

Resolution Regarding Nondiscriminatory Access to Buildings for Telecommunications Carriers

WHEREAS, Historically, local telephone service was provided by only one carrier in any given region; and

WHEREAS, In the historic one-carrier environment, owners of multi-unit buildings typically needed the local telephone company to provide telephone service throughout their buildings; and

WHEREAS, Historically, owners of multi-unit buildings granted the one local telephone company access to their buildings for the purpose of installing and maintaining facilities for the provision of local telephone service; and

WHEREAS, Competitive facilities-based providers of telecommunications services offer substantial benefits for consumers; and

WHEREAS, In order to serve tenants in multi-unit buildings, competitive facilities-based providers of telecommunications services require access to internal building facilities such as inside wiring, riser cables, telephone closets, and rooftops; and

WHEREAS, Facilities-based competitive local exchange carriers, including wireline and fixed wireless providers, have reported concerns regarding their ability to obtain access to multi-unit buildings at nondiscriminatory terms, conditions, and rates that would enable consumers within those buildings to enjoy many of the benefits of telecommunications competition that would otherwise be available; and

WHEREAS, All States and Territories, as well as the Federal Government, have embraced competition in the provision of local exchange and other telecommunications services as the preferred communications policy; and

WHEREAS, Connecticut, Ohio, and Texas already utilize statutes and rules that prohibit building owners from denying tenants in multi-unit buildings access to their telecommunications carrier of choice; and

WHEREAS, The President of NARUC testified before the Senate Judiciary Committee's Subcommittee on Antitrust, Business Rights, and Competition that "[f]or competition to develop, competitors have to have equal access. They have to be able to reach their customers and building access is one of the things that state commissions are looking at all across the country."; and

WHEREAS, The attributes of incumbent carriers such as free and easy building access should not determine the relative competitive positions of telecommunications carriers; and

WHEREAS, The property rights of building owners must be honored without fostering discrimination and unequal access; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1998 Summer Meetings in Seattle, Washington, urges State and Territory regulators to closely evaluate the building access issues in their states and territories, because successful resolution of these issues is important to the development of local telecommunications competition; and be it further

RESOLVED, That the NARUC supports legislative and regulatory policies that allow customers to have a choice of access to properly certificated telecommunications service providers in multi-tenant buildings; and be it further

RESOLVED, That the NARUC supports legislative and regulatory policies that will allow all telecommunications service providers to access, at fair, nondiscriminatory and reasonable terms and conditions, public and private property in order to serve a customer that has requested service of the provider.

Sponsored by the Committee on Communications

Adopted July 29, 1998

L

Phone Companies' Access to Offices Challenged
State Senate puts bill in slow lane

Greg Lucas, Chronicle Sacramento Bureau
Monday, July 26, 1999
©1999 San Francisco Chronicle

URL: http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/1999/07/26/MN107498.DTL

With the help of Senate leader John Burton, San Francisco real estate tycoon and Democratic campaign contributor Walter Shorenstein is trying to block a bill that would give free access to office building phone networks to the telecommunications industry.

The bill is worth millions to phone companies such as SBC Inc. and GTE, as well as to cable companies, AT&T and others eager to compete for customers.

Shorenstein and other major building owners oppose the measure, saying it allows phone companies the power to ride roughshod over their property rights.

``(The bill) boils down to a lopsided arrangement that takes away or severely constrains private property rights, without compensation, to the benefit of the telecommunications industry," said a letter from the Shorenstein Co. in opposition to the bill.

A copy of the letter was sent to Senate President Pro Tem John Burton, a San Francisco Democrat.

The measure is also opposed by the Building Owners and Managers Association, of which the Shorenstein Co. -- the largest office space landlord in Oakland and San Francisco -- is a key member.

Shorenstein owns or leases 10 million square feet in San Francisco and Oakland, in addition to 15 million square feet elsewhere around the country.

Its founder, Walter Shorenstein, 84, is a major contributor to national Democratic campaigns. In the last two-year election cycle, Shorenstein gave more than $463,000 to the Democratic National Committee.

He also gave $155,000 to help elect Gov. Gray Davis.

Shorenstein has been a power in San Francisco politics for many years, with close ties to Mayor Willie Brown, Burton's oldest political ally.

The telecommunications bill was approved unanimously -- 79 to 0 -- by the 80-member Assembly in May.

When it came to the Senate, its progress slowed, then stopped.

After Burton's intervention, the measure -- AB651 by Assemblyman Rod Wright, D-Los Angeles -- became a two-year bill, meaning it cannot take effect until 2001 at the earliest.

This also means that it will sit in the Senate Energy, Utilities and Communications Committee until at least next January, when the second year of the legislative session begins.

``I don't like the premise of people being able to go on other people's property without permission or compensation," Burton said in an interview. ``It ain't Shorenstein. He's a big holder, but if you took him out, there would still be a lot of buildings around the state affected. I just think there ought to be permission and compensation."

Wright, who received the same opposition letter Burton did from the Shorenstein Co., said he had heard Shorenstein's name mentioned as one of the key reasons for the bill stalling in the Senate.

``It's kind of like whispered," Wright said. But, Wright said, when he spoke to Burton about the fate of his bill, ``John didn't mention Shorenstein directly."

Burton said he has arranged a meeting between the building owners and telecommunications lobbyists to see if they can reach a compromise.

That may be a long time coming.

``Forced building entry for telecommunications companies is unnecessary and inappropriate," said Marc Intermaggio, executive vice president of the San Francisco building owners association.

``The bill is fair to building owners right now. It gives nondiscriminatory access and doesn't allow building owners to extract all profits from competitors," said Kath Thomas, a vice president of Advanced TelCom Group in Santa Rosa.

Wright is trying to keep his bill going by threatening to link its fate to a bill in his own committee, favored by the building owners, that restricts the ability of new phone service competitors to seize private property by using eminent domain.

That bill also has Burton's fingerprints on it. A section of the bill is devoted to thwarting the ability of utilities using that power at San Francisco International Airport.

The restriction stems from a battle between GTE and the airport over the phone company giant trying to use four public parking spots to house equipment the company needs to offer wireless phone service near the airport.

The phone company tried to take the spots using eminent domain after it balked at the rent the airport wanted to charge. In June, a judge ruled the phone company could not take the slots.

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Editorial Notebook:

Conflict of interest? No problem

TALLAHASSEE - Once upon a time, when most people knew only one telephone company, the cartoonist Jules Pfeiffer depicted a haughty clerk brushing off a customer's complaint with the remark, "Well, you can always go to one of our competitors."

By MARTIN DYCKMAN

© St. Petersburg Times, published April 28, 1999

TALLAHASSEE -- Once upon a time, when most people knew only one telephone company, the cartoonist Jules Pfeiffer depicted a haughty clerk brushing off a customer's complaint with the remark, "Well, you can always go to one of our competitors."

That would still be sarcasm where most customers are concerned. The local service competition Florida lawmakers confidently promised when they deregulated the industry four years ago hasn't materialized except for a handful of business customers.

One reason, among many, is that the landlords of shopping centers, office buildings, office parks and apartment houses have created their own telephone monopolies. They grant exclusive rights to one company or another in return for what can be a handsome percentage of the monthly billings. The tenant has no say. Landlords are harvesting the fruits of competition that were meant for telephone customers.

"The property owner becomes the telephone company," explains Sen. Tom Lee, R-Brandon, chairman of the Senate Regulated Industries Committee.

Lee intended to fix that through one of the provisions in comprehensive telephone legislation he brought to the

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comprehensive telephone legislation he brought to the Senate floor this week. Commercial landlords would have to negotiate in good faith with alternative carriers their tenants want.

It would be pleasing to report that Lee carried the day. Unfortunately, he did not. Rules chairman John McKay, R-Bradenton, opposed the provision, spent most of the day lobbying other senators against it and effectively whipped Lee before the debate began.

It speaks well of Lee's integrity and courage that he didn't give up. No senator relishes opposing the rules chairman, whose power to set the Senate's agenda determines whose bills have a chance to pass and whose do not.

To make it touchier, McKay had a strong personal stake in the debate. He is a developer of shopping centers and office parks. In short, he is one of the landlords whom Lee was talking about.

The major organizations representing commercial landlords had signed off on the bill, but McKay charged that they did so for the wrong reasons, "because the big property owners, the real estate investment trusts and insurance companies, don't want to go to court."

Lee had scant help from his own delegation. Sen. Jim Hargrett, D-Tampa, took the floor, never looking at Lee, with some platitudinous remarks about "private property rights, that's fundamental." Consumer advocates strained in vain to hear him acknowledge tenants' rights. Lee, standing two desks away, glared holes into the back of Hargrett's head.

As glaring as it may have seemed, McKay's wasn't the most egregious conflict of interest in Tallahassee on Tuesday. That dubious distinction belonged to Rep. Marjorie Turnbull, D-Tallahassee, who cast the deciding vote in a 58-56 House vote to give the Leon County School Board's police training academy to Tallahassee Community College. The Leon board has bitterly opposed the snatch, winning in the Supreme Court last year when the Legislature tried to do it through spending restrictions in an appropriations bill. TCC's president, T.K. Wetherell, is a former House speaker. Turnbull works for him.

As required by a House rule, she put a notice in the House Journal: "I am disclosing that I am an employee of Tallahassee Community College which may receive a

special gain if CS/SB 1664 should pass. However, pursuant to said Rule, I am required to vote."

That tells all there is to know about what the Legislature thinks about conflict of interest. She could, of course, have voted no.

Martin Dyckman is a Times associate editor.

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N

The Times-Union, Jacksonville, Wednesday, April 28, 1999

TELECOMMUNICATIONS

Spur competition

If the Legislature does not act on one piece of legislation, it means lower phone bills for many businesses in Florida will be delayed.

Businesses waiting to provide local competition are supporting a bill by Rep. Dudley Goodlett, R-Naples. It would grant phone companies access to multi-tenant buildings in exchange for reasonable fees to the property owner.

Currently, companies can provide service to buildings where the property owner is the tenant. But where an owner has several tenants, companies have had difficulty in gaining access, sometimes because unreasonable fees are demanded.

The Public Service Commission held hearings on the issue and recommended the legislation. It has been approved by two House committees.

But in the press of business, some legislation lapses in the final days of a legislation session.

This bill holds the potential for substantial cost savings for medium-size businesses in Florida and, obviously, their customers. It should pass.