Subsection (e)(3), notice of intent to install telecommunications equipment, addresses the notice of intent that the requesting carrier will provide the property owner. At the Public Hearing, UDRT was concerned that the 30-day timeline associated with subsection (e)(3) was woefully short. UDRT suggested that the property owner be given a minimum of 90 days to evaluate the requesting carrier's notice of intent. Camden, Kucera, and IREM generally agreed that the timelines are too short.

In its written comments, the Building Owners asserted that the 30 day time frame in subsection (e)(3)(A) conflicts with the 45 days given to negotiate the agreement set forth in section (f). The Building Owners explained that by requiring the notice of intent to be given "not fewer than 30 days before the proposed date of installation" subsection (e)(3)(A) can be viewed as permitting a requesting carrier to gain access to a property before negotiations are completed.

The commission concurs with the Building Owners' concern that the 30-day time frame in subsection (e)(3)(A) conflicts with the negotiation timeframe in section (f). The commission revises subsection (e)(3)(A) to require the requesting carrier to provide the property owner with the notice of intent no fewer than 30 business, rather than calendar, days prior to the proposed date of installation of telecommunications equipment. This revision is an effort to balance the requesting carrier's ability to promptly serve the requesting tenant versus providing a reasonable amount of time for the property owner to respond to the requesting carrier's request. The commission finds that a reasonable balance is created by the revision to subsection (e)(3)(A). In addition, the commission adds subsection (e)(3)(D),

which allows the requesting carrier and the property owner to extend the timeline upon agreement. The commission also revises section (f) accordingly.

In its written comments, the Building Owners suggested striking the phrase "on site" from subsection (e)(3)(B). The Building Owner proposed striking the language and making other modifications because not every property has an on-site manager, nor does every lease agreement identify a person for purposes of notice.

The commission does not adopt the Building Owners' recommendation. However, the commission revises subsection (e)(3)(B) to address the Building Owners' concern. The revised subsection requires that the notice of intent be sent to the property's on-site manager or designee, if the property has such a manager, and the person identified in the tenant's lease to receive notices. The commission finds that it is reasonable to expect a property to have, at a minimum, an on-site property manger *or* the identity of the person to receive notices in the tenant's lease.

Subsection (e)(3)(C) lists the information to be contained in the requesting carrier's notice of intent. The Building Owners proposed additional language to the subsection that would enable building owners to evaluate the requesting carrier's effect on the safety and security of the property. The items include the identity of the legal entity requesting entry and its parent, if any; a statement of the requesting carrier's financial net worth; identification of the contractors the requesting carrier plans to use to install the equipment; a list of the safety precautions the requesting carrier requires of its employees and contractors during construction; the length of

time the requesting carrier expects its equipment to remain on the property; and the length of time construction is expected to take.

In its reply comments, SWBT argued that the Building Owners' request to add several items to the list that the requesting carrier must include in the notice of intent should be rejected because the Building Owners do not explain why this additional information is necessary for them to evaluate the requesting carrier's effect on the safety and security of the property.

In its reply comments, the CLEC Coalition suggested that the list of items proposed by the Building Owners would be best addressed during negotiations because much of it is based on the space the requesting carrier will be able to access, if any.

The commission rejects the Building Owners' recommendation and concurs with SWBT's rationale that the Building Owners do not explain why this additional information is necessary to evaluate the requesting carrier's effect on the safety and security of the property. The commission also agrees with the CLEC Coalition to the extent that the list of items proposed by the Building Owners is addressed during negotiations.

Subsection (e)(3)(C)(i) requires the requesting carrier to identify the requesting tenant in its notice of intent. In its written comments, SWBT stated that this could enable the property owner to attempt to dissuade the requesting tenant from utilizing the services of the requesting carrier. SWBT suggests that this subsection be amended to state that the property owner shall not use the identity of the requesting tenant for any marketing purposes or that the property owner shall not

interfere with the tenant's right to choose its telecommunications services provider. In the alternative, SWBT suggested that the requirement be eliminated altogether and instead require the requesting carrier to provide an affidavit to property owner stating that the requesting carrier has received a tenant request for service requiring the installation of telecommunications equipment.

In the reply comments, the Building Owners urge the commission to reject SWBT's proposal to modify this subsection to preclude property owners from talking to the requesting tenant about telecommunications service providers.

The commission does not adopt SWBT's recommendation to amend subsection (e)(3)(C)(i) to prohibit the property owner from using the identity of the requesting tenant for any marketing purposes or that the property owner shall not interfere with the tenant's right to choose its telecommunications services provider. The commission believes that precluding property owners from talking to the requesting tenant about service providers could potentially violate the rights of both the requesting tenant and the property owner. The commission will rely on the cooperation of the property owners in not interfering with the tenant's right to choose their telecommunications services provider.

At the Public Hearing, SWCTA also suggested that the word "engineering" be deleted from subsection (e)(3)(C)(v). SWCTA believed that it should be left to the requesting carrier's discretion when "engineering" drawings are necessary.

The commission rejects SWCTA's recommendation to delete the word "engineering" from subsection (e)(3)(C)(v). As a matter of practice, technical drawings are generally approved by a certified engineer.

AT&T expressed concern with subsection (e)(3)(C)(v) which requires the requesting carrier to include the proposed location, space requirement, proposed engineering drawings, and other specifications of the telecommunications equipment in the notice of intent. AT&T explained that in many cases a tour of the property may be needed so that the requesting carrier can fairly propose a location; this same concern applies to the requesting carrier's ability to evaluate the type of equipment needed and to develop associated engineering drawings. Thus, AT&T asserted that the problem with this rule is that if the requesting carrier doesn't proffer the information required by subsection (e)(3)(C), then the property owner could argue that the notice of intent is insufficient and, therefore, that the notice process has not begun. The CLEC Coalition agreed with AT&T in its reply comments.

The CLEC Coalition asserted that requiring requesting carriers to have technical plans drawn up before beginning negotiations with the property owner would create unnecessary expense and result in lengthening the negotiation process. The CLEC Coalition explained that because the requesting carrier will not be able to produce detailed engineering drawings until after the property tour and receipt of drawings, it is not possible to send notice of intent concurrently with a request for a building tour. The CLEC Coalition suggested that subsection (e)(3)(C)(v) be revised accordingly. The CLEC Coalition reiterated its position in its reply comments.

The language in subsection (e)(1)(A) states that the request for a tour may be received *prior to or concurrently* with the requesting carrier's notice of intent. Therefore, the requesting carrier may request a tour of the property prior to submitting a notice of intent. The commission does not believe that subsection (e)(3)(C)(v) necessitates modification to alleviate the concerns of AT&T and the CLEC Coalition.

SWCTA suggested adding a subparagraph (viii) to subsection (e)(3)(C) which would state: "if a dispute is filed for resolution at the Commission, the Commission may proceed with resolution if all of the items required herein were not provided if the Commission concludes that items were not applicable."

The commission does not find SWCTA's recommended subparagraph necessary as the commission has the authority to proceed with dispute resolution regardless of the items included, or not included, in the requesting carrier's notice of intent.

Subsection (f) requires the property owner and the requesting carrier to attempt to reach a mutually acceptable agreement regarding the installation of the requesting carrier's telecommunications equipment and reasonable compensation due the property owner as a result of such installation within 45 days. TAA supported the extension of the period of negotiation to at least 90 days before either party could file for resolution with the commission.

At the Public Hearing, UDRT concurred with TAA and supported the extension of the negotiation period to 90 days. Camden generally agreed. In its written comments, the Building

Owners objected to the 45-day limit for negotiations, believing that 120 days is the minimum required to negotiate an agreement.

At the Public Hearing, Robert Cottingham suggested that the negotiation period be shortened to 30 days. In its written comments, the CLEC Coalition suggested reducing the negotiating period to 30 days and providing the engineering drawings during the negotiating period rather than prior to the beginning of negotiations.

The commission revises section (f) to require the requesting carrier and the property owner to negotiate for 30 business, rather than calendar, days following the property owner's receipt of the requesting carrier's notice of intent. This revision, along with the revision to subsection (e)(3)(A) that requires the requesting carrier to provide the property owner with the notice of intent no fewer than 30 business days prior to the proposed date of installation of telecommunications equipment, alleviates the Building Owners' concern that the 30-day time frame in subsection (e)(3)(A) conflicts with the negotiation timeframe in section (f). As revised, this rule requires the property owner and the requesting carrier to negotiate during the 30 business days prior to the proposed installation date. The commission finds that the revised timeframes are a reasonable balance between the concerns of the property owners and the requesting carriers.

Section (g) outlines the parameters for installation of the requesting carrier's telecommunications equipment. The section allows the property owners to deny access to the building when there is inadequate space or safety concerns. In the publication preamble, the commission solicited

comment as to whether this proposed rule provides the property owners with adequate measures to address the property's security, safety, liability and other concerns specified in PURA §54.260(a)(1)-(5).

AT&T asserted that this rule provides the property owners with adequate measures to address security, safety, liability and other concerns specified in PURA §54.260(a)(1)-(5).

The Building Owners argued that this rule is woefully inadequate as it forces the property owner to accept the requesting carrier onto the property, but does not permit the property owner to impose building specific obligations regarding security, safety, and liability issues.

The CLEC Coalition contended that this rule contains significantly more safeguards for the property owners than required by statute. The CLEC Coalition provided a listing of the specific provisions addressing safety, liability and other property owner concerns. The list includes subsections (c)(8), (d)(2), (d)(3)(B), (e)(3)(B), (e)(3)(C), (g)(2), (h)(3), (h)(4), and (i)(3)(B)(iii).

TAA argued that the parameters for installation of telecommunications equipment should be amended to allow the property owner to deny access or compel the requesting carrier serving the property to remove telecommunications equipment if the requesting carrier refused to comply with reasonable conditions. TAA contended that the section should be amended to give the property owner greater ability to deny requests due to a lack of space and to allow the property owner to deny access when installation by the requesting carrier would lessen the structural

integrity of any product, such as fire-rated building materials, below the manufacturer's specification.

The commission finds that this rule as proposed offers adequate measures to address the property's security, safety, liability and other concerns specified in PURA §54.260(a)(1)-(5). As such, the commission rejects TAA's argument and finds that its concerns are fully addressed in subsection (d)(2)(A), which allows the property owner to impose certain conditions and limitations on the requesting carrier and subsection (d)(3)(B), which requires the requesting carrier to comply with all applicable federal, state, and local codes and standards.

At the Public Hearing, Gables expressed concern that subsection (g) did not give the property owner any recourse in the instance that the requesting carrier did not agree to the reasonable conditions placed on it by the property owner, and as a result, negatively impacted the curb appeal of the property. Gables spoke generally and did not suggest specific language to be added to this rule.

The commission declines to incorporate Gables' recommendation because allowing the property owner to place conditions on the requesting carrier unreasonably broadens the property owner's rights and could possibly lead to discriminatory behavior. The commission acknowledges Gables' concern regarding the curb appeal of its property; however the commission finds that imposing any further restrictions are beyond those contemplated in PURA. The commission also finds that because the term curb appeal is an

undefined concept that, if placed in this rule, it could be used as a discriminatory measure against the requesting carriers.

In addition, Gables' argued that this rule should allow the property owners to deny access to the property if the requesting carrier has a financial default or is financially unstable.

The commission rejects Gables recommendation because the statute implemented by this rule, PURA §§54.259, 54.260, and 54.261, does not consider the requesting carrier's financial status when granting the right to access a property in order to provide telecommunications service to a requesting tenant. This rule provides two reasons for the immediate denial of access, inadequate space and safety concerns. If a property owner is concerned with the financial stability of the requesting carrier, it may seek resolution of the issue under subsection (i) of this rule. In addition, the commission notes that all requesting carriers are certificated telecommunications utilities whose financial statements are filed with the commission and have been reviewed prior to certification.

In its written comments, the Building Owners proposed that the following language be added to the end of section (g): "provided that the requesting carrier offers to reasonably compensate the property owner and agrees to the provisions of the property owner's standard form of telecommunications license or lease."

In its reply comments, the CLEC Coalition stated that adding the Building Owner's suggested provision would give the property owner the absolute right to inflict any manner of unreasonable

terms on the requesting carrier. Therefore, the CLEC Coalition asserted, the Building Owner's recommendation should be rejected.

The commission does not adopt the Building Owners' recommendation. The commission encourages parties to negotiate with equal bargaining power. Inserting the Building Owners' recommended language in subsection (g) could discriminate against the requesting carriers and may give the property owners more bargaining power.

The Building Owners also explained that the property owners must be free to evaluate requests for access in light of available space, which should include an owner's reasonable expectation to reserve space to accommodate late-arriving competitors and future innovations. The Building Owners proposed the following language be added to section (g): "The following shall not be considered available when determining the adequacy of available space: space reserved for prospective tenants with whom the Property Owner is negotiating a lease, space reserved pursuant to already executed agreements with telecommunications providers, or space reserved for expansion of existing electrical, HVAC, plumbing, security or other building operating systems."

The commission acknowledges that the property owner may have legitimate reasons to reserve space on the property. However, the commission finds that each property is unique and it would be difficult to determine a generic reasonable amount of space to be reserved. Therefore, the commission rejects the Building Owners' recommendation to give the property owners a blanket approval to reserve space on the property. The commission

believes that such an approval could lead to discriminatory practices. The commission recommends that the parties agree to an amount of space to be reserved when negotiating an agreement. Should the parties be unable to agree upon a reasonable amount of space to reserve, the issue can be resolved though the dispute resolution processes under subsection (i) of this rule.

TAA asserted that the property owners should have at least 30 days to evaluate a request to determine whether adequate space exists or if the request may compromise the safety of the property and/or persons on the property. The Building Owners asserted that the ten-day timeframe allowed for the demonstration of inadequate space in subsection (g)(1)(B)(ii) is too short and that a 15 day timeframe would be more workable.

The commission revises the timelines in subsections (g)(1)(A), (g)(1)(B)(ii), and (g)(1)(B)(iii) to reflect ten business, rather than calendar, days. The commission finds that these changes help alleviate TAA's concern that the timeline allowed to evaluate the request for access and the Building Owners' concern that the timeframe allowed for the demonstration of inadequate space is inadequate. In addition, these revisions are an effort to balance the requesting carrier's ability to promptly serve the requesting tenant versus providing a reasonable amount of time for the property owner to respond to the requesting carrier's request. The commission finds that a reasonable balance is created by these revisions to subsection (g)(1).

The Building Owners suggested that subsection (g)(1)(B)(iii) be clarified that if the requesting carrier fails to dispute the property owner's assessment that a space limitation exists within ten days, the requesting carrier is deemed to have withdrawn its notice of intent. The Building Owners proposed language stating this clarification.

In its reply comments, the CLEC Coalition stated that such limits were unprecedented and unnecessary.

Alternatively, the CLEC Coalition argued that the requirement that the requesting carrier seek commission resolution in ten days is an unprecedented statute of limitations and is an unwarranted denial of the requesting carrier's and the requesting tenant's rights. Therefore, the CLEC Coalition requested that the ten-day limitations period be deleted from this rule and that the language in the subsection simply state that if the requesting carrier disputes the property owner's assertion, that the requesting carrier may pursue a commission resolution pursuant to subsection (i) of this rule.

The commission does not adopt the Building Owners' recommendation. This rule is currently written to require the requesting carrier to request a demonstration or to dispute the property owner's assertion that there is inadequate space to install telecommunications equipment by requesting resolution under subsection (i) of this rule. Therefore, if the requesting carrier does not respond to the property owner's denial, the request will no longer be pursued. The commission finds that the ten-day limitation is necessary to avoid unreasonable delays, and does not delete the provision as suggested by the CLEC Coalition.

Subsection (g)(2) addresses safety concerns on the property in which the requesting carrier is seeking access. In its written comments, the Building Owners asserted that the property owner must have the final say as to whether installation of telecommunications equipment would compromise the safety of the property since it bears the ultimate legal and financial risk. The Building Owners also argued that the ten-day timeframe in subsection (g)(2)(A) is too short. The Building Owners believe that 30 days is more reasonable. TAA asserted that the property owners should have at least 30 days to evaluate a request to determine whether adequate space exists or if the request may compromise the safety of the property and/or persons on the property.

The commission does not find that modifications are necessary to address the Building Owners' concern that the property owner must have the final say as to whether installation of the requesting carrier's telecommunications equipment would compromise the safety of the property since the property owner bears the ultimate legal and financial risk. This rule gives the property owner the ability to deny the requesting carrier's access to the property if there is a legitimate safety concern.

The commission revises the timelines in subsection (g)(2) to reflect ten business, rather than calendar, days. The commission also revises subsections (g)(2)(A), (g)(2)(B)(ii), and (g)(2)(B)(iii) accordingly. The commission finds that these changes help alleviate the Building Owners' concern that the timeframes are too short. These revisions are an effort to balance the requesting carrier's ability to promptly serve the requesting tenant versus

providing a reasonable amount of time for the property owner to respond to the requesting carrier's request. The commission finds that a reasonable balance is created by the revisions to subsection (g)(2).

The CLEC Coalition requested that the word "unreasonable" in subsections (g)(2)(A) and (B), be replaced with the word "unavoidable."

The Building Owners suggested that the word "unreasonable" be deleted from subsection (g)(2)(B), as there is no need to limit the type of safety hazards that can be considered sufficient to deny access because of "unreasonable" safety hazards.

The commission rejects the proposals of both the CLEC Coalition and the Building Owners and therefore does not make the suggested changes to subsection (g)(2)(B). The commission finds that "unreasonable" establishes a balance between safety hazards that may be minor and easily correctable, and those that are insurmountable.

The Building Owners suggested that subsection (g)(2)(B)(iii) be clarified that if the requesting carrier fails to dispute the property owner's assessment that a space limitation exists within ten days, the carrier is deemed to have withdrawn its notice of intent. The Building Owners proposed language stating the clarification.

In response, the CLEC Coalition argued that the requirement that the requesting carrier seek commission resolution in ten days in subsection (g)(2)(B)(iii) is an unprecedented statute of

limitations and is an unwarranted denial of the requesting carrier's and the requesting tenant's rights. Therefore, the CLEC Coalition requested that the ten-day limitation period be deleted from this rule. In its reply comments, the CLEC Coalition stated that such limits were unnecessary.

The commission does not adopt the Building Owners' recommendation. This rule is currently written to require the requesting carrier to request a demonstration or to dispute the property owner's assertion that there is a safety concern by requesting resolution under section (i) of this rule. Therefore, if the requesting carrier does not respond to the property owner's denial, the request will no longer be pursued. The commission finds that the ten-day limitation is necessary to avoid unreasonable delays, and does not delete the provision as suggested by the CLEC Coalition.

Section (h) delineates the parameters for determining reasonable compensation payable to the property owner by the requesting carrier in exchange for access to the property. At the Public Hearing, Crescent suggested that this rule specifically recognize that it creates a taking under state law and that reasonable compensation would include fair market value based on highest and best use.

The commission believes that section (h) provides a guide for the property owner and the requesting carrier when negotiating reasonable compensation. The section does not exclude parties from presenting fair market value evidence during negotiations. Likewise, should a reasonable compensation dispute be brought to the commission under section (i)

of this rule, parties are not excluded from presenting fair market value evidence. Moreover, subsections (i)(3)(B)(iii)(VI) and (VII) state that the commission may consider the market value of the space or similar space.

Subsection (h)(3) addresses the removal of the requesting carrier's telecommunications equipment after the requesting tenant has left the property. TAA agreed with the language in subsection (h)(3), but suggested that it be clarified so that the property owner may compel the removal of the telecommunications equipment, unless parties agree otherwise. At the Public Hearing, TAA suggested that this rule prohibit the term of the contract between the requesting carrier and the property owner to exceed the remaining term of the requesting tenant's lease.

The commission finds that the property owner's ability to compel the removal of the requesting carrier's telecommunications equipment should be agreed upon in the contract between the requesting carrier and the property owner. The commission also finds that TAA's concern regarding the term of the contract is addressed in subsection (d)(3)(A)(i) of this rule which states that the requesting carrier may install telecommunications equipment on the property for a period of time no longer than the remaining term of the requesting tenant's lease. Therefore, the commission does not modify subsection (h)(3).

Subsection (h)(4) addresses the amount of a security deposit that the property owner may require from the requesting carrier. TAA suggested that the subsection be amended to ensure that the deposit or other mutually agreeable financial guarantee from either the requesting carrier or the requesting tenant is sufficient to cover the cost of removing the telecommunications equipment.

At the Public Hearing, TAA further recommended that the security deposit not receive interest, as suggested in SWBT's written comments, but instead, be handled either according to the contract between the property owner and the requesting carrier, or according to Chapter 92 of the Property Code.

In the written comments, the Building Owners suggested that subsection (h)(4) be revised to provide for security deposits not to exceed the sum of three months of fees or rents, plus a reasonable estimation of the cost to remove the requesting carrier's equipment if necessary. The Building Owners believed that the required security deposit, as proposed in subsection (h)(4), is a mere token and provides "no security" to the property owner.

In its reply comments, SWBT disagreed with the Building Owners' proposal for rewriting the security deposit requirement to require each requesting carrier to pay a security deposit not to exceed three months of fees, a reasonable estimate of the cost of removal, and a reasonable estimate of the cost to restore the property to its original condition. SWBT believed that this revision would give the property owner too much bargaining power and unfettered discretion to charge exorbitant security deposits. For the same reason, SWBT also disagreed with TAA's proposal of requiring a security deposit that is "sufficient to cover the cost of removing the equipment."

In its reply comments, the CLEC Coalition strongly objected to the Building Owners suggestion that the security deposit not only consist of three months' rent, but also include sufficient funds

to cover the cost of removing the telecommunications equipment. The CLEC Coalition argued that requiring an enormous capital outlay would deter competition.

At the Public Hearing, NAA/NMCJLP suggested that subsection (h)(4) be revised to make it absolutely clear that if the requesting tenant leaves a unit, the property owner gains immediate control over the unit and the wiring of the equipment.

The commission modifies subsection (h)(4) to allow the property owner and the requesting carrier more flexibility when determining the amount of the security deposit. The modified subsection allows parties to agree upon an amount other than one month of fees or rents. With respect to NAA/NMCJLP's suggestion, the commission does not believe it is necessary to add any further language to clarify that the property owner controls access to its rental units and the inside wiring associated with such units; the commission assumes this to be standard real estate practice.

Subsection (i) outlines the alternatives available to the property owner and the requesting carrier when a negotiated agreement cannot be reached. Subsection (i)(1) allows the requesting carrier and the property owner to seek alternative dispute resolution (ADR) rather than seeking commission resolution of a dispute. In the publication preamble, the commission solicited comment as to whether it would be appropriate to adopt a section that allows parties to opt-in to ADR, and if so, what procedures should the commission adopt for referral to mediation or arbitration.

AT&T supported the use of ADR processes, but noted that ADR processes cannot be made the exclusive means of resolution of disputes and parties must ultimately be given the opportunity to use contested case procedures. AT&T suggested that this rule direct parties that initiate a dispute at the commission and wish to participate in non-binding arbitration or mediation to make that request in their filing and deliver it to the other party who must then oppose the request within ten days or the dispute will be automatically referred to the requested ADR by the commission, using an established list of mediators and arbitrators. Further, AT&T suggested that this rule provide that the administrative law judge (ALJ) name an impartial third party within an additional reasonable time period unless the parties notify the ALJ that they have agreed upon one.

The Building Owners strongly objected to any form of mandatory ADR. The Building Owners asserted that all disputes were matters of contract and belonged in the courthouse.

The CLEC Coalition and SWBT agreed that ADR should be undertaken only if both parties agreed. SWBT disagrees, however, with AT&T's suggestion that ADR arbitration decisions be non-binding.

In its written comments, SWBT suggested that the phrase "controversy or claim under this subsection" be changed to "controversy or claim arising under this section" since the provision applies to any controversy or claim arising under any part of this entire rule. Further, SWBT suggested that this rule require the consent of both the requesting carrier and the property owner