

Subsection (e)(3), notice of intent to install telecommunications equipment, addresses the notice  
2 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  
4 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  
6 timelines are too short.

8 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  
10 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  
12 requesting carrier to gain access to a property before negotiations are completed.

14 **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  
16 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  
18 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  
20 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  
22 revision to subsection (e)(3)(A). In addition, the commission adds subsection (e)(3)(D),**

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

4 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  
6 modifications because not every property has an on-site manager, nor does every lease  
agreement identify a person for purposes of notice.

8

**The commission does not adopt the Building Owners’ recommendation. However, the  
10 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  
12 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  
14 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.**

16

Subsection (e)(3)(C) lists the information to be contained in the requesting carrier’s notice of  
18 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  
20 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  
22 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  
2 time construction is expected to take.

4 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  
6 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.

8

In its reply comments, the CLEC Coalition suggested that the list of items proposed by the  
10 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.

12

**The commission rejects the Building Owners' recommendation and concurs with SWBT's  
14 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  
16 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.**

18

Subsection (e)(3)(C)(i) requires the requesting carrier to identify the requesting tenant in its  
20 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.  
22 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  
2 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  
4 has received a tenant request for service requiring the installation of telecommunications  
equipment.

6

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

10

**The commission does not adopt SWBT's recommendation to amend subsection (e)(3)(C)(i)  
12 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  
14 choose its telecommunications services provider. The commission believes that precluding  
property owners from talking to the requesting tenant about service providers could  
16 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  
18 tenant's right to choose their telecommunications services provider.**

20 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  
22 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

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

4 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  
6 to 30 days and providing the engineering drawings during the negotiating period rather than prior  
to the beginning of negotiations.

8

**The commission revises section (f) to require the requesting carrier and the property owner  
10 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  
12 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  
14 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).  
16 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  
18 that the revised timeframes are a reasonable balance between the concerns of the property  
owners and the requesting carriers.**

20

Section (g) outlines the parameters for installation of the requesting carrier's telecommunications  
22 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  
2 to address the property's security, safety, liability and other concerns specified in PURA  
§54.260(a)(1)-(5).

4  
AT&T asserted that this rule provides the property owners with adequate measures to address  
6 security, safety, liability and other concerns specified in PURA §54.260(a)(1)-(5).

8 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  
10 impose building specific obligations regarding security, safety, and liability issues.

12 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  
14 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).

16  
TAA argued that the parameters for installation of telecommunications equipment should be  
18 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  
20 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  
22 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  
2 specification.

4 **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).**

6 **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  
8 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  
10 and standards.**

12 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  
14 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  
16 to this rule.

18 **The commission declines to incorporate Gables' recommendation because allowing the  
property owner to place conditions on the requesting carrier unreasonably broadens the  
20 property owner's rights and could possibly lead to discriminatory behavior. The  
commission acknowledges Gables' concern regarding the curb appeal of its property;  
22 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**

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

4 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.

6

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

16

18 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  
20 telecommunications license or lease."

22 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  
2 recommendation should be rejected.

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

8

The Building Owners also explained that the property owners must be free to evaluate requests  
10 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  
12 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  
14 prospective tenants with whom the Property Owner is negotiating a lease, space reserved  
pursuant to already executed agreements with telecommunications providers, or space reserved  
16 for expansion of existing electrical, HVAC, plumbing, security or other building operating  
systems."

18

**The commission acknowledges that the property owner may have legitimate reasons to  
20 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.  
22 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  
2 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  
4 reserve, the issue can be resolved through the dispute resolution processes under subsection  
(i) of this rule.

6  
TAA asserted that the property owners should have at least 30 days to evaluate a request to  
8 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  
10 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.

12  
The commission revises the timelines in subsections (g)(1)(A), (g)(1)(B)(ii), and (g)(1)(B)(iii)  
14 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  
16 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  
18 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  
20 request. The commission finds that a reasonable balance is created by these revisions to  
subsection (g)(1).

1 The Building Owners suggested that subsection (g)(1)(B)(iii) be clarified that if the requesting  
2 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  
4 Owners proposed language stating this clarification.

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

8  
Alternatively, the CLEC Coalition argued that the requirement that the requesting carrier seek  
10 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  
12 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  
14 owner's assertion, that the requesting carrier may pursue a commission resolution pursuant to  
subsection (i) of this rule.

16  
**The commission does not adopt the Building Owners' recommendation. This rule is  
18 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  
20 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  
22 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.**

2 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  
4 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  
6 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  
8 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  
10 property.

12 **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  
14 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  
16 gives the property owner the ability to deny the requesting carrier's access to the property  
if there is a legitimate safety concern.**

18

**The commission revises the timelines in subsection (g)(2) to reflect ten business, rather than  
20 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  
22 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

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

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

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

20 **The commission believes that section (h) provides a guide for the property owner and the  
21 requesting carrier when negotiating reasonable compensation. The section does not  
22 exclude parties from presenting fair market value evidence during negotiations. Likewise,  
23 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.**

2 **Moreover, subsections (i)(3)(B)(iii)(VI) and (VII) state that the commission may consider  
the market value of the space or similar space.**

4

Subsection (h)(3) addresses the removal of the requesting carrier's telecommunications  
6 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  
8 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  
10 carrier and the property owner to exceed the remaining term of the requesting tenant's lease.

12 **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  
14 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  
16 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  
18 requesting tenant's lease. Therefore, the commission does not modify subsection (h)(3).**

20 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  
22 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,  
2 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  
4 Property Code.

6 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  
8 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  
10 a mere token and provides "no security" to the property owner.

12 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  
14 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  
16 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  
18 proposal of requiring a security deposit that is "sufficient to cover the cost of removing the  
equipment."

20

In its reply comments, the CLEC Coalition strongly objected to the Building Owners suggestion  
22 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  
2 that requiring an enormous capital outlay would deter competition.

4 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  
6 control over the unit and the wiring of the equipment.

8 **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  
10 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  
12 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  
14 this to be standard real estate practice.**

16 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  
18 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  
20 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  
22 arbitration.

AT&T supported the use of ADR processes, but noted that ADR processes cannot be made the  
2 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  
4 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  
6 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  
8 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  
10 one.

12 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.

14

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

18

In its written comments, SWBT suggested that the phrase "controversy or claim under this  
20 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  
22 suggested that this rule require the consent of both the requesting carrier and the property owner