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FLORIDA  
PUBLIC  
SERVICE  
COMMISSION

REPORT ON

**Access by  
Telecommunications  
Companies to  
Customers in  
Multitenant  
Environments**

February 1999

VOLUME TWO



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## TABLE OF CONTENTS

INTRODUCTION .....	1
STAFF WORKSHOP II ISSUES .....	3
PARTICIPANT COMMENTS	
Time Warner Telecom .....	9
Cox Florida Telecom L.P. ....	17
Teleport Communications Group, Inc. ....	27
OpTel (Florida) Telecom, Inc. ....	51
WorldCom Technologies, Inc. ....	67
e.spire Communications, Inc. ....	81
International Council of Shopping Centers .....	95
Florida Apartment Association .....	133
Intermedia Communications, Inc. ....	149
Sprint-Florida, Inc. and Sprint Communications Company, L.P. ....	155
Community Associations Institute .....	167
The Central Florida Commercial Real Estate Society and the Greater Orlando Association of REALTORS .....	185
GTE Florida, Inc. ....	191
Teligent, Inc. ....	203
BellSouth Telecommunications, Inc. ....	239
The Building Owners and Managers Association of Florida, Inc. ....	257
Florida Association of Homes for the Aging .....	279

## INTRODUCTION

This volume contains copies of the comments received by the participants in response to the six primary issues identified in the first workshop. Given the diversity of affected interests in this project, all participants were encouraged to communicate among themselves and to seek grounds for a reasonable settlement. To expedite such communication, the majority of documents filed by the participants were posted on the FPSC's Internet homepage and will remain available on the homepage until the 1999 legislative session has adjourned. These documents can be accessed by following these steps:

1. Go to the FPSC homepage at <http://www.scri.net/FPSC>
2. Scroll down to DOCKETS.
3. Click on CURRENT DOCKET ACTIVITY.
4. Click on OPEN GENERIC DOCKETS.
5. Scroll down to 980000B-SP.
6. Click on DOCUMENT FILINGS INDEX.
7. Click on the appropriate document number (one of the numbers in bold type on the left side of the screen).

Copies of these documents can also be obtained by contacting the FPSC's Division of Records and Reporting at the following telephone number: (850) 413-6770.

## **PARTICIPANT COMMENTS**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: ISSUE IDENTIFICATION WORKSHOP  
FOR UNDOCKETED SPECIAL PROJECT:  
ACCESS BY TELECOMMUNICATIONS  
COMPANIES TO CUSTOMERS IN  
MULTI-TENANT ENVIRONMENTS

DATE FILED: JULY 29, 1998

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COMMENTS OF TIME WARNER TELECOM

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- I. In general, should telecommunications companies have direct access to customers in multi-tenant environments? Please explain. (Please address what need there may be for access and include discussion of broad policy considerations.)

**ANSWER:** Yes. Incumbent local exchange carriers ("ILECs") have often pointed out that a large and disproportionate share of the revenues generated from providing local exchange telephone service is derived from a very small percentage of total customers served. These customers can generally be identified as business customers and some residential customers located in urban areas. A large number of these customers are located in a multi-tenant environment such as high rise buildings in highly populated business districts or residential communities. Most rent their spaces and purchase local exchange telecommunications services from the service area ILEC which made its original arrangements as a monopoly provider of these essential services.

In order for competition to develop, competing carriers must have direct access to the customers which comprise these most lucrative markets. Access must be on a nondiscriminatory and competitively neutral basis as compared to the ILEC so that new competitors are not unfairly disadvantaged in their efforts to win market share. In many instances, alternative local exchange carriers ("ALECs") have been denied free access to multi-tenant facilities by property owners who have no particular motivation to accommodate the ALEC's request since tenants are already receiving required services. Of course, in many cases, the ALEC is offered an opportunity to purchase such access; however, these arrangements make it difficult, if not impossible, for the ALEC to compete for new business when it incurs costs not charged to its ILEC competitor. In the current environment, property owners are not in a position to demand similar fees from the incumbent provider at the risk of losing its service. The policy issue for consideration in this circumstance becomes abundantly clear. The solution to this issue will require a balancing of the legislative commitment to promote competition in the telecommunications markets and the private

property owners right to use their property without undue government restriction or interference. Potentially, there are a number of alternative solutions which could be designed through the legislative and/or regulatory process. It would seem that at least two alternatives exist:

- (1) to require all providers to pay reasonable compensation to property owners for the use of the asset necessary to support the telecommunications operations; any successful resolution, however, must ensure that its impact is nondiscriminatory and competitively neutral to all providers; or
- (2) to not require payment from any carrier providing competitive, alternative and new services to the tenant end users because these services increase the value of the property.

**II. What must be considered in determining whether telecommunications companies should have direct access to customers in multi-tenant environments?**

**ANSWER:** As discussed in the preceding answer, it is imperative to survival that ALECs be permitted access. Equal access to the market place is the most fundamental concept of competition. The decision of whether to permit access must be answered affirmatively. Only the rules for permitting such access should be the subject of debate in this proceeding. Considerations for the formulation of these rules should include, without limitation the following:

- (1) the demand by providers for building space and the availability of space;
- (2) tenant demands for telecommunications services and the availability of services;
- (3) the number of providers willing and capable of providing services;
- (4) costs and operational concerns associated with providing building access to multiple providers; and
- (5) calculation of fair and reasonable compensation to be paid property owners, if appropriate.

**A. How should "multi-tenant environment" be defined? That is, should it include residential, commercial, transient, call aggregators, condominiums, office buildings, new facilities, existing facilities, shared tenant services, other?**

**ANSWER:** If the desired end result is a truly competitive market, competing carriers should not be restricted or prohibited from offering any service at any location, or to any end-users. For this reason, "multi-tenant environment" should be defined broadly so as to include any and all building facilities occupied or to be occupied by two or more tenants which require and purchase or will require and purchase telecommunications services from an

authorized telecommunications service provider.

- B. What telecommunications services should be included in "direct access", i.e., basic local service (Section 364.02(2), F.S.), internet access, video, data, satellite, other?**

**ANSWER:** As the ability to combine and package services becomes more critical to marketing strategies and a provider's ability to compete, customers will become less conscious of the components of their telecommunications package which are necessary to service their particular business operations or personal needs. In order to compete, therefore, it will be necessary for providers to be capable of packaging a wide variety of services. For this reason, all telecommunications services under the jurisdiction of the Florida Public Service Commission should be included.

- C. In promoting a competitive market, what, if any, restrictions to direct access to customers in multi-tenant environments should be considered? In what instances, if any, would exclusionary contracts be appropriate and why?**

**ANSWER:** As the number of competing providers and demand for building access increases, there are certain logistical, operational, technical and safety issues which will inevitably require consideration. In a vast majority of instances, property owners and their vendors resolve these issues by way of oral or written agreements, and by complying with local municipal ordinances and building rules, outside of legislative or regulatory arenas. It would logically follow, therefore, that many of these issues could be resolved by agreement. Access to the regulatory process should be reserved as a vehicle for dispute resolution in a similar manner as provided for interconnection agreements. Reasonable restrictions will not adversely impact the development of competition so long as all such restrictions are applied to all providers in a nondiscriminatory and competitively neutral manner.

Exclusionary contracts would be appropriate only if all the following circumstances existed:

- (1) two or more providers are willing to provide services to the facility;
- (2) the exclusive contract is subject to a bid process;
- (3) all providers are afforded an equal opportunity to bid;
- (4) the term of the contract is limited to two years; and
- (5) all tenants of the building, at the time the contract is opened for bids, consent to the exclusive arrangement.

- D. How should "demarcation point" be defined, i.e., current PSC definition (Rule 25-4.0345, F.A.C.) Or federal Minimum Point of Entry (MPOE)?**

**ANSWER:** The demarcation point should be consistent with the federal Minimum Point of Entry ("MPOE") definition, as defined in the FCC's Report and Order in CC Docket No. 88-57 RM 5643. While the Florida Rule does mandate a minimum point of entry, it does not mandate access to building wiring nor does it provide the logistical details of building access as do the orders in the federal proceeding.

**E. With respect to actual, physical access to property, what are the rights, privileges, responsibilities or obligations of:**

- 1) landlords, owners, building managers, condominium associations
- 2) tenants, customers, end users
- 3) telecommunications companies

**In answering the questions in Issue II.E., please address issues related to easements, cable in a building, cable to a building, space, equipment, lightning protection, service quality, maintenance, repair, liability, personnel, (price) discrimination, and other issues related to access.**

**ANSWER:** Time Warner incorporates by reference its answers to the previous questions and in addition, offers the following:

**Rights:**

**Private Property Owners** have the right to own and enjoy the use of their property without unreasonable or unduly burdensome governmental interference or restriction.

**Tenants, Customers and End-Users** have the right to access state-of-the-art telecommunications services which will become necessary to their business and personal endeavors, at a quality and at a price offered by a competitive market.

**Telecommunications Companies** have a right to provide the full array of telecommunications services for which authority has been granted to them by the State and to compete with other providers on a fair and equal basis.

**Obligations:**

**Private Property Owners** are obligated to comply with all federal and state laws as enforced by rules of the regulatory agencies in order to promote the general welfare of the citizens of the state.

**Tenants, Customers and End-Users** have the obligation to negotiate their contracts in good faith and comply with building regulations, contract terms and all applicable laws.

**Telecommunications Companies** have the obligation to comply with all laws, rules and regulations and provide quality services competently and responsibly.

**F. Based on your answer to Issue II.E. above, are there instances in which compensation should be required? If yes, by whom, to whom, for what and how is cost to be determined?**

**ANSWER:** The issue of compensation will undoubtedly become the most contentious issue in this proceeding. Historically, local exchange telephone service, a service critical to the property owner's ability to lease space, was offered by only one provider. The issue of compensation for use of building space or facilities was never considered. The difficulty for regulators is balancing the rights of the property owners with the intent of the state and federal statutes to promote competition in the local exchange market. If compensation is to be paid, the dispute will most likely arise in the calculation of "just and reasonable" compensation. Telecommunications service providers will contend that the rate of compensation should be based on the loss incurred by the property as a result of allowing the physical access. Since these providers will usually occupy a small number of square feet in any particular building, generally less than five hundred square feet, the telecommunications service providers will argue that the compensation should be minimal. Property owners will submit that the use of their space by telecommunications service providers is unique and should be treated as a licensing arrangement. Many owners will contend that these licensing fees should be calculated based upon a percentage of gross receipts. This proposal is tantamount to a tax and is inappropriate under Florida law.

Under the basic principles applied to the calculation of compensation in eminent domain cases, property owners would only be entitled to any actual loss incurred as a result of the fair market value of the property taken for use by the condemning authority. Given this, Time Warner urges the adoption of the following broad policies in calculating compensation:

- (1) Affirm the Commission's jurisdiction over the matter of building access and affirm its role as adjudicator/arbitrator/mediator of disputes between providers and building owners over the terms and conditions under which access will be provided.
- (2) Define the term "building access" to mean access to an entire building or commercial complex under common ownership, so that whatever terms and conditions apply to a providers' placement of facilities will also operate to allow it to serve all tenants on the property. (This definition would ensure that only one agreement need be negotiated per property, so that the expense and delay inherent to the process will not be incurred again just to serve tenants on additional floors in the same facility.)
- (3) Declare that reasonable compensation for the use of equipment space in the common areas of a building (e.g., the basement/utility and rooftop area) and for the installation

of conduit and wiring in the raceways and ceiling space in a building shall be presumed to be diminus unless property owner offers evidence to rebut the presumption with respect to the individual properties.

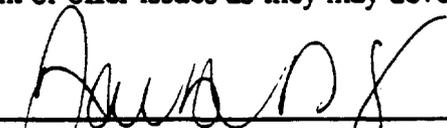
- (4) Further, prohibit the imposition of any fee for the use of raceways and ceiling space. And, permit building owners and carriers to offer evidence to rebut the presumptions stated in (3) with respect to any individual property.
- (5) Prohibit building owners from requiring competitive service providers to pay for building access unless the incumbent is immediately subject to the same compensation terms for both existing facilities and new facilities in the building.
- (6) Establish a dispute resolution process under which both carriers and property owners may seek expeditious arbitration or mediation of disputes regarding compensation and other terms and conditions under which the building access is granted.

**G. What is necessary to preserve the integrity of E911?**

**ANSWER:** The ALECs in Florida are already required to provide 911 and E911 services for their end user customers. Allowing access to additional customers in multi-tenant buildings will not change that requirement.

**III. Other issues not covered in I and II.**

**ANSWER:** Time Warner has not identified any additional issues at this time, but respectfully requests the right to comment or offer issues as they may develop in this project.



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**PETER M. DUNBAR, ESQ.**

Fla. Bar No. 146594

**BARBARA D. AUGER, ESQ.**

Fla. Bar No. 946400

Pennington, Moore, Wilkinson,

Bell & Dunbar, P.A.

Post Office Box 10095

Tallahassee, Florida 32302-2095

(850) 222-3533

(850) 222-2126 (fax)

Counsel for: Time Warner AxS of  
Florida, L.P., d/b/a Time  
Warner Communications

**Cox Florida Telecom L.P.**

**Cox Florida Telcom, L.P. d/b/a Cox Communications**  
**Response to Staff Data Request**  
**FPSC Special Project No. 980000B-SP**  
**July 29, 1998**

- i. In general, should telecommunications companies have direct access to customers in multi-tenant environments? Please explain. (Please address what need there may be for access and include discussion of broad policy considerations.)**

Yes. In general, with the exception of the customers for which the Commission has already found that no alternative provider is appropriate (such as in transient situations like hotels, nursing homes, etc.), telecommunications companies should all have direct access to end user customers in multi-tenant environments through minimum point of entry ("MPOE") cross connect facilities established at the most convenient point possible at the multi-tenant property. This issue needs to be addressed in Florida and elsewhere, to carry out the intent of the federal Telecommunications Act of 1996, as well as the 1995 revisions to Chapter 364, Florida Statutes.

Historically, local exchange telephone service was provided by only one franchised carrier in any given geographic area. As such, the issue of access to buildings or multi-building continuous property by multiple carriers was not an issue for building owners. The incumbent local exchange carrier ("ILEC") was given access to the property and/or building(s) for the purpose of installing and maintaining the wiring to provide local exchange and other services for the tenants. If the building owner did not give the incumbent local exchange company access to the building, the building owner could not provide for any phone service, thus, the building, as a marketing entity, had a major disadvantage when it came to competing for tenants. The (one) telephone company was able to get access to the building, and building owners did not view the telephone company as a revenue source but rather as allowing them to neutralize telephone service as a marketing tool against them.

Today there are multiple providers of local telephone service, some of which are facilities-based providers such as Cox. However, in most buildings, the ILEC attempts to continue its control of the wiring between the entrance to the building (or the entrance to the property) and the customers (interbuilding and intrabuilding wiring). Further, building owners, while seeing the provision of telephone service as a profit center, do not treat all facilities-based providers equally. The result is that facilities-based CLECs are not able to obtain access to some multi-tenant buildings at all, and are requested to pay discriminatory compensation in others, making it difficult, if not impossible, to provide service to

customers in multi-tenant buildings or campus situations. This means that end users in multi-tenant buildings do not have the same opportunities to select a competitive local exchange company as do single-tenant building customers. Single-tenant building customers can change local service providers (either resellers or facilities-based providers), without being concerned about the need for the installation of multiple sets of telephone wiring in their premises.

This issue is a problem unique to facilities-based providers. Even where a facilities-based local service provider extends its network to a multi-tenant building, or group of buildings on continuous property at the request of the building owner, it cannot provide service unless the ILEC allows it to use the building wiring or the building owner allows it to retrofit the building and/or property with additional cabling. Cox's experience has shown that building owners frequently resist having multiple sets of wires, and ILECs are not inclined to allow the new entrant to use the existing building wiring, over which they allege control. This ILEC action has the effect of denying the tenants of multi-tenant buildings or of multiple buildings on continuous property the opportunity to use the services of competitive facilities-based ALECs. Cox does not believe that this was the intent of the Florida legislature or of the Congress.

A related problem can and does arise from the behavior of building owners themselves: in other states, some building owners have denied Cox the ability to serve customers in the building, or have demanded ridiculously high payments, in the form of large up front fees and a percent of all revenues (including non-telecommunications revenues) to do so. These requests for payments generally occur while the incumbent LEC is allowed to provide service with no such payments. Such behavior is discriminatory at best, has the effect of holding the customers hostage, and denies customers the benefits intended by federal and state telecommunications legislation.

**II. What must be considered in determining whether telecommunications companies should have direct access to customers in multi-tenant environments?**

- Whether policy decisions the Commission makes are consistent with the goals of providing consumers the substantial benefits of facilities-based competition, as intended by Chapter 364, Florida Statutes, and the federal Telecommunications Act. CLEC access to customers in multi-tenant buildings or on multi-building continuous property is integral to the growth of facilities-based competition. To accomplish this, the Commission should follow the FCC's directives that the MPOE should be used as the demarcation point, and that the MPOE should be as close to the property line as practical so that CLECs may connect without retrenching or adding wiring

to access the end user. This means that the remaining inter and intrabuilding wiring on the property is held out for competitive use without discrimination.

- Whether the Commission intends that all end users have their choice of telecommunications providers. In general, subject to specific exceptions where technical or operational factors render such choice impractical (e.g., service to end users in hospitals, nursing homes, dormitories, vacation rentals, and the like), the Commission should require that multi-tenant unit end users on single or continuous properties should have the same opportunities to obtain service from multiple competitive local service providers as do single building end users. .
- The rights of property owners to be able to control their property, without fostering discrimination and unequal access.
- That in a shared tenant service environment, the Commission's current rule requires individual end users to be able to obtain service from the local exchange company individually. In a multiple service provider environment, the Commission should extend this policy to enable any individual tenant to obtain service from any certificated local exchange company -- either ALEC or CLEC.
- The impact on competition of building owners who stand in the way of customers being able to choose the local service provider of their choice, either by blocking access totally or by charging the consumer or provider unreasonable fees.

**A. How should "multi-tenant environment" be defined? That is, should it include residential, commercial, transient, call aggregators, condominiums, office buildings, new facilities, existing facilities, shared tenant services, other?**

Multi-tenant environment means a building or group of buildings on continuous property, which may be crossed by a public right of way, that is under common management or ownership, in which end users (separate from the owner or manager) may individually purchase telecommunications services. This includes commercial, residential, and mixed commercial and residential applications, including apartments and condominiums, and makes no differentiation between new and existing facilities.

From a customer perspective, transient facilities, and the types of exceptions identified in the Commission's Order No. 17111 regarding shared local exchange telephone service, should not be included in the definition of a multi-

tenant environment, in that there is no need in this proceeding, to change whether such individual end users in the Commission's already-existing exceptions may obtain local exchange service from a different provider.

However, from the perspective of a new entrant obtaining access, such "transient" applications should be included. This is because Florida's existing demarcation point rule gets in the way of a facilities-based new entrant's access to any building or group of buildings that have what is referred to as intrabuilding wiring or interbuilding wiring. For example, a nursing home with 50 units that is served by an ILEC, a PBX, or a centrex-type service today, may want to avail itself of the service offered by a CLEC. In this situation, with centrex or individual lines, the wiring to the individual units, under Florida's existing demarcation point rule, would not be available to the new entrant. So the nursing home itself could not easily choose to change local exchange carriers. Thus, the building access issue exists in multi-tenant buildings whether it is a transient application or not.

**B. What telecommunications services should be included in "direct access", i.e., basic local service (Section 364.02(2), F.S.), Internet access, video, data, satellite, other?**

Telecommunications service included in "direct access" should include local and intra/inter LATA long distance telephone services (both switched and nonswitched) under the jurisdiction of the Florida Public Service Commission. Video and Internet access provided by cable television companies, as well as satellite services, are under the jurisdiction of the FCC, and not under the purview of this Commission.

**C. In promoting a competitive market, what, if any, restrictions to direct access to customers in multi-tenant environments should be considered? In what instances, if any, would exclusionary contracts be appropriate and why?**

The only restrictions the Commission should allow for direct access to customers in a multi-tenant environment should be those "transient" exceptions already noted above. In general, if customers prior to the existence of local competition were able to obtain service individually from the ILEC, they should today be able to obtain service from any certificated CLEC that offers service to their building.

**D. How should "demarcation point" be defined, i.e., current PSC definition (Rule 25-4.0345, F.A.C.) or federal Minimum Point of Entry (MPOE)?**

The demarcation point should be defined consistent with the federal Minimum Point of Entry ("MPOE") definition, as defined in the FCC's Report and Order in CC Docket No. 88-57 RM-5643. That is, the MPOE should facilitate the existence of competition. To do otherwise disadvantages facilities-based providers—the very companies, who are investing in new facilities, that both federal and Florida legislation encourages.

The Florida demarcation point definition in a multi tenant environment places the demarcation point at a point just inside the individual apartment (or office). Section 25-4.0345, Florida Administrative Code.

- (B) "Demarcation point" is the point of physical interconnection (connecting block, terminal strip, jack, protector, optical network interface, or remote isolation device) between the telephone network and the customer's premises wiring. Unless otherwise ordered by the Commission for good cause shown the location of this point is:
1. Single Line/Single Customer Building - Either at the point of physical entry to the building or at a junction point as close as practicable to the point of entry.
  2. Single Line/Multi Customer Building - Within the customer's premises at a point easily accessed by the customers.
  3. Multi Line System/Single or Multi Customer Building - At a point within the same room and within 25 feet of the FCC registered terminal equipment or cross connect field.

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- (3) Network facilities up to and including the demarcation point are part of the telephone network, provided and maintained by the telecommunications company under tariff.

This definition was adopted at a time when the Commission was not aware that being denied access to building wiring would hinder the development of facilities-based competition. The primary emphasis, it appears, when this definition was adopted and later reviewed, was not putting a third (unregulated) party between an end user and the (regulated) telephone company. This gave building owners the opportunity to have wiring installation or maintenance provided competitively.

The federal Telecommunications Act gives competitive local exchange

companies three options for providing service: they can provide it over their own facilities (using their choice of technology), they can purchase unbundled network elements from the incumbent local exchange company, or they can resell the services of the local exchange company. These options give three viable ways that a new entrant can compete in the market.

These options do not exist when it comes to access to building wiring in an MDU situation. If the new entrant cannot use the existing wiring in a building or building complex, there generally are no other options because building owners do not approve of multiple and overlapping wiring installations.

In addition, there is the issue of business feasibility for the ALEC. If the ALEC is required (and permitted) to run a whole new set of telephone wires in order to serve some customers in a building, either the ALEC must totally wire the building to be able to provide service to any customer it is able to win from the ILEC, or it must wire the building one customer at a time -- neither of which makes good economic (or aesthetic) sense for either the CLEC or the building owner.

This becomes even more cost prohibitive in a campus-type environment with multiple buildings on a single piece of property. What Cox has encountered is that the ILEC will designate a demarcation point at the entrance to the property, which is consistent with the FCC's definition, but then it will also designate "secondary" demarcation points at each individual building. This leaves the interbuilding wiring, which should be turned over to the property owner for use by all competing service providers, still within the control of the ILEC. Wiring on multi-unit property should be classified, or reclassified if necessary, in a manner that allows maximum and nondiscriminatory access to the customers it serves.

**E. With respect to actual, physical access to property, what are the rights, privileges, responsibilities or obligations of**

- 1) **landlords, owners, building managers, condominium associations**
- 2) **tenants, customers, end users**
- 3) **telecommunications companies**

**In answering the questions in Issues II.E., please address issues related to easements, cable in a building, cable to a building, space, equipment, lightning protections, service quality, maintenance, repair, liability, personnel, (price) discrimination, and other issues related to access.**

1) landlords, owners, building managers, condominium associations:

- have the obligation to allow facilities-based local exchange providers to obtain access to end user customers.
- have the obligation to provide reasonable conditioned space for equipment placement.

2) tenants, customers, end users:

- have the right to obtain service from any local exchange company willing to provide service to that customer
- have the obligations laid out in Florida's telecommunication rules, and any payment and use obligations imposed by their serving local exchange companies.

3) telecommunications companies:

- allow other facilities-based companies to cross connect to them to reach individual customers
- have the obligation to meet all safety standards, including providing lightning protection;
- must meet Commission maintenance expectations
- as common carriers, may not unduly discriminate in service and pricing to various customers.

**F. Based on your answer to Issue II.E., above, are there instances in which compensation should be required? If yes, by whom, to whom, for what and how is cost to be determined?**

The building owners should provide access to interbuilding wiring and intrabuilding wiring at no cost to the service providers. Access to phone service should be treated similarly to other utility services, which do not pay the owner to be able to provide service. If it is applied to all telecommunications service providers on a nondiscriminatory basis, a reasonable fee for equipment space rental (only) may be appropriate.

**G. What is necessary to preserve the integrity of E911?**

The issues surrounding 911 do not change because there are multiple local exchange providers. Both Section 364.337(2), Florida Statutes, and Commission Rule 25-24.840, F.A.C., already require all ALECs to ensure that 911 and E911 are fully functional for their customers. This is true in multi-tenant as well as single family environments.

**OTHER SUBJECTS:**

- **LANDLORD TENANT ACT: Are landlords required to provide telephone service to tenants?**

**No. See Section 83.51, Florida Statutes. Cox believes that the landlord-tenant statutes (Chapter 83, Florida Statutes) should be amended to require that landlords must provide non-discriminatory access for all telecommunications service providers to provide service to tenants.**