

Teleport Communications Group, Inc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Undocketed Special Project:)
Access by Telecommunications)
Companies to Customers in)
Multi-Tenant Environments)
_____)

Special Project No. 980000B-SP

Filed: July 29, 1998

**TELEPORT COMMUNICATIONS GROUP INC./
TCG SOUTH FLORIDA'S COMMENTS
ON ISSUES CONCERNING ACCESS TO
CUSTOMERS IN MULTI-TENANT ENVIRONMENTS**

Teleport Communications Group, Inc. and its Florida affiliate, TCG South Florida (hereinafter referred to collectively as "TCG"), by and through their undersigned counsel, hereby submit TCG's comments on staff's list of issues reflected in the July 14, 1998 Notice for the August 12, 1998 workshop in this proceeding.

INTRODUCTION

TCG welcomes the opportunity to participate in this Special Project and file comments addressing staff's issues. TCG is a certificated alternative local exchange company ("ALEC") and a facilities-based provider of local exchange telecommunications services. In addressing the issues for this Special Project and preparing its report to the Legislature, the Florida Public Service Commission ("Commission") should abide by two underlying principles. First, it is the tenants and occupants of multi-tenant buildings or environments ("MTEs") whose interests are paramount in this proceeding. These MTE tenants and occupants remain stranded from the benefits of local exchange service competition--separated from access to competitive local exchange companies by the arbitrary

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and discriminatory actions and positions of MTE owners and managers. Second, any legislation and Commission action implementing mandated access for tenants and occupants of MTEs must incorporate and adhere to the principle of nondiscrimination for both tenants/occupants and providers of local exchange telecommunications services.

ISSUES AND COMMENTS

- 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.)**

Broad Legislative and Policy Considerations Demonstrating the Need for Access

Telecommunications companies should have direct access to customers in MTEs. Customers in MTEs have a right to access any telecommunications provider they want. This right is conferred upon customers by the Telecommunications Act of 1996 ("the Act") and by Florida's 1995 amendments to Chapter 364, Florida Statutes.

The Act clearly expresses the policy of promoting competition for the benefit of telecommunications consumers.¹ The same policy is expressed in Section 364.01, Florida Statutes (1997):

(3) The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications services, is in the public interest and will provide customers with freedom of choice....

¹As stated in the preamble of the Act: "An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers...." Pub. L. No. 104-104, 110 Stat. 56 (1996).

(4) The commission shall exercise its exclusive jurisdiction in order to:

(b) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest range of consumer choice in the provision of all telecommunications services.

...

(g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

§§ 364.01(3) and (4)(b) and (g), Fla. Stat. (1997) (emphasis supplied).

Notwithstanding this clear expression of federal and state law, MTE owners and managers continue to take the position that it is they who will choose between competing providers of facilities-based telecommunications services - - not their tenants and occupants.

Where competitive providers require access to install facilities to provide telecommunications services to customers in a MTE such as a modern commercial office building, building owners and managers have acted individually and in concert to prevent competition by denying access or by demanding discriminatory compensation from competitive service providers and their customers as tenants. Such actions deny consumers of telecommunications services the benefits of the competition intended by the federal and state laws and Commission policy.

In addition to the Florida Legislature's clearly expressed intent to bring the benefits of local telecommunications competition to all consumers, the Legislature has enacted specific telecommunications legislation which would be rendered meaningless unless

consumers in MTEs have the right to choose the local provider of their choice. For example, Section 364.0361, Florida Statutes (1997), requires every local government in the State of Florida to "treat each telecommunications company in a nondiscriminatory manner when exercising its authority to grant franchises...or to otherwise establish condition or compensation for the use of rights-of-way or public property...." Thus, a competing local provider must be granted nondiscriminatory access to city or county rights-of-way. Yet the MTE owners take the position that it is their right to pick and choose which local providers may serve their tenants or occupants. This leaves the competing provider in the untenable and frustrating position of being able to secure legislatively-mandated nondiscriminatory access to local government rights-of-way only to find the door to a MTE slammed shut at the whim or caprice of an MTE owner.

A second example can be found in the Legislature's 1998 Amendments to Section 364.339, Florida Statutes, governing shared tenant services ("STS").² Section 364.339(5) was amended in 1998 as follows:

The offering of shared tenant service shall not interfere with or preclude a residential or commercial tenant's right to obtain direct access to the lines and services of the ~~serving local exchange~~ telecommunications company or the right of the ~~serving local exchange~~ telecommunications company to serve the residential or commercial tenant directly under the terms and conditions of the commission-approved tariffs.

² See Sec. 15, Ch. 98-277, Laws of Florida.

The 1998 Amendments to the STS statute confirm the Legislature's intent to ensure that both residential and commercial tenants are provided the opportunity to obtain direct access to and service from their local telecommunications provider of choice - - not just the local exchange company chosen by the building owner. Again, if MTE owners are left with the discretion to anoint the local provider(s) that they deem fit to provide service to their tenants, there is simply no way for residential and commercial tenants to secure the right of choice guaranteed under Section 364.339(5), Florida Statutes.

The Legislature's unequivocal and express intent to foster local exchange service competition for all consumers underlies the Commission's current rulemaking docket opened for the purpose of promulgating a "fresh look" rule. (See Docket No. 980253-TX). The Commission staff has preliminarily proposed a fresh look rule intended to give all consumers of local exchange services the opportunity to terminate their contracts with incumbent LECs entered into under a monopoly environment, subject to terms and conditions outlined in the proposed rule, in favor of service from a competing local exchange service provider. Without legislation requiring MTE owners and managers to provide non-discriminatory access to all local exchange telecommunications providers, the Commission's anticipated fresh look rule and the benefits of consumer choice and competition intended therein, will be foreclosed to tenants and occupants of MTEs.

Finally, the continued efforts of MTE owners and managers to arbitrarily and unlawfully control and limit access to MTEs undercuts the intent of Section 271 of the Act

and Section 364.161, Florida Statutes (1997) to develop facilities-based local exchange service competition. Facilities-based local exchange providers place less reliance on the incumbent local exchange company's ("ILEC") network allowing them to offer innovative service options, enhanced quality and services and lower prices--prices driven not only by their competitors' prices but by their own costs of providing service (rather than discounts off of the ILEC's retail prices). Section 271 of the Act authorizes BellSouth to provide interLATA service if BellSouth meets the competitive checklist and demonstrates the presence of a facilities-based competitor. Section 364.161, Florida Statutes (1997)³, requires the ILECs to provide unbundled network features, functions and capabilities to ALECs, a clear expression of the Legislature's intent to promote facilities-based competition. The Commission has implemented the Legislature's intent by establishing interim and permanent rates for specific unbundled network elements.⁴ The discriminatory actions of MTE owners and managers in depriving their tenants and occupants access to their local provider of choice eviscerates the benefits of facilities-based competition intended by the federal Act and the Commission.

³In 1998, the Legislature amended Section 364.161, Florida Statutes, by adding a new subsection (4) requiring ILECs, *inter alia*, to provide unbundled network elements in a timely manner.

⁴ See Order No. PSC-96-1531-FOF-TP issued December 16, 1996; Order No. PSC-96-1579-FOF-TP issued December 31, 1996; and Order No. PSC-98-0604-FOF-TP issued April 29, 1998.

TCG's Need for Access

TCG is a facilities-based provider of local exchange telecommunications services, including local exchange service, private line service, special access services, internet services, and intra LATA toll calling services. TCG's services are tailored for and offered to the needs of telecommunications-intensive business customers in 83 markets in the United States, including the south Florida LATA. TCG has invested substantially in the telecommunications infrastructure of Florida by installing (over 400) route miles of fiber optic cable and associated electronics as well as (three) state-of-the art digital switches. TCG will continue to invest in Florida and deploy its own network, but TCG's ability to market its services to potential customers is limited by the refusal of some building owners and managers to grant access on a non-discriminatory basis to TCG to deploy facilities to serve customers in MTEs.

The typical facilities installed by TCG in a modern commercial office building to provide services to business customers consist of fiber optic cable entering a building's common telecommunications closet and extending along common conduit to the customer's premises,⁵ together with such additional facilities as may be installed in the customer's premises. TCG's facilities are operated, and may be removed, without consequence to any other tenant or to the building. These facilities are capable of and are being used to provide

⁵ The fiber optic cable is less than one inch in diameter, and is typically installed in a conduit approximately two inches in diameter.

Centrex service, PBX trunking and associated local and intra LATA calling plans, and a full range of dedicated transport services at the DS0, DS1 and DS3 levels, as well as fractional DS1 services (e.g. 56 kbps).

In south Florida, TCG's efforts to market its services to customers and potential customers in MTEs have been prevented and undermined by MTE owners and managers who have engaged in a variety of actions (and inactions) which have effectively prevented TCG from gaining access to tenants and occupants in numerous MTEs. TCG will provide updated documentation and data reflecting these experiences for submission in this Special Project.

A modern commercial office building cannot function without its telecommunications network infrastructure, and the actual cost of providing access to the space required to install and maintain telecommunications facilities in such a building is negligible. However, if MTE owners and managers are permitted to deny access or to extract rents for the provision of the space required for telecommunications facilities on terms that discriminate between providers, the excess costs thereby imposed on competitive telecommunications service providers will undermine and defeat the intent of the federal and state laws to provide consumers with freedom of choice.

In the 1995 amendments to Chapter 364, Florida Statutes and the federal Act, the Legislature and Congress created comprehensive statutory schemes designed to bring the benefits of local exchange competition to all consumers including tenants/occupants in

MTEs. MTE owners and managers now threaten to shrink the scope of these legislative mandates by refusing to provide access on non-discriminatory terms to facilities-based providers of local exchange telecommunications service.

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

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" may be defined as: "public and private buildings and premises in which tenancy is offered for residential or commercial purposes, including, without limitation, apartments, condominiums and cooperative associations, office buildings, and commercial malls."

Transient occupancies, such as guests in hotels or motels, do not create a tenancy and thus are not included in the suggested definition of "multi-tenant environment."

TCG recommends no distinction between new construction and existing buildings, except as may result in the rare instance of demonstrated physical space constraints of existing buildings referenced under II.C.

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?

All services accessed by a customer's local loop should be included in the consideration of direct access, including "information service" and "telecommunications" as

they are defined in subsections (20) and (43) of Section 153 of the Act , and "basic local telecommunications service" as defined in Section 364.02(2), Florida Statutes (1997). For the purpose of requiring non-discriminatory access to evolving telecommunications services by customers in MTEs, TCG recommends no limitation of these broad definitions.

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?*

A fair, equitable and lawful statutory scheme for mandated access to MTEs for all telecommunications providers should allow the public or private property owner to:

- (1) Impose nondiscriminatory conditions on providers that are reasonably necessary to protect the safety, security, appearance, and condition of the property, and the safety and convenience of other persons;
- (2) Impose nondiscriminatory, reasonable limitations on the time in which providers may have access to the property to install or repair a telecommunications service facility;
- (3) Impose nondiscriminatory, reasonable limitations on the number of such providers that have access to the owner's property, if the owner can demonstrate a space constraint that requires limitation;⁶

⁶The telecommunications facilities installed within MTEs typically occupy limited space. In the rare event of legitimate space constraints, the Commission could impose limitations on the warehousing of reserved but unused space, as the Commission did in the expanded interconnection docket, See In Re: Petition for expanded interconnection for alternate access vendors within local exchange company central offices by

- (4) Require tenants or providers to bear the entire cost of installing, operating, repairing or removing a facility;
- (5) Require providers to agree to indemnify the owner for damage caused in the installation, operation or removal of a facility; and
- (6) Require that the payment of compensation, if any, be reasonable, reasonably related to the de minimus nature of any taking, and nondiscriminatory among such telecommunications providers.

On the other hand, MTE owners and managers should not be permitted to deny the right of MTE tenants and occupants to choose between competing telecommunications service providers by:

1. Denying a telecommunications service provider physical access to install cable to a building's common telecommunications space to serve a tenant/customer's premises.
2. Interfering with a telecommunications service provider's installation of telecommunications facilities as requested by a tenant.
3. Demanding payment from a tenant for exercising the right to choose any particular telecommunications service provider.

INTERMEDIA COMMUNICATIONS OF FLORIDA, INC., 94 F.P.S.C. 3:399, 414 (1994), and/or require sharing of facilities.

4. Demanding payment from a telecommunications service provider on terms that discriminate between providers.
 5. Demanding payment from a telecommunications service provider on any basis other than the actual cost of providing access to the space required to install the facilities necessary to provide the services requested by the tenant/customer.
 6. Entering into exclusive contracts with any telecommunications service provider.
- 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)?*

Any legislative mandate that tenants and occupants of MTEs be allowed to select their local exchange service provider of choice will be fruitless if competitive providers are not permitted non-discriminatory access to MTEs. Part and parcel of such non-discriminatory access is a definition of "demarcation point" which ensures equal access to house and riser cable and precludes the imposition of excessive, discriminatory costs on competitors. Simply put, competitors must have the same access to house and riser cable as that provided to the ILEC. To achieve such non-discriminatory, equal access, the Commission should consider amendments to Rule 25-4.035, F.A.C., which would designate the minimum point of entry as the inside wire demarcation point for all MTEs - - but only if the Legislature enacts legislation mandating MTE owners and property managers to provide non-discriminatory

access to house and riser cable. Such a definition would place competitors on equal footing in gaining access to house and riser cable, and remove the prohibitive costs placed on facilities-based providers of rewiring multi-tenant buildings.

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

- 1. landlords, owners, building manager, condominium associations*
- 2. tenants, customers and 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.

Landlords, Owners and Manager of MTEs

To the extent that landlords and owners of MTEs may have a right under the Fifth Amendment of the Constitution of the United States to receive just compensation for physical occupation of their premises resulting from installation of facilities used to provide telecommunications services to tenants, that right may only be exercised in a manner that does not discriminate between competing service providers on any basis other than the actual cost of providing access to the space required for the specific facilities. Historically, building owners have seldom or never exercised any claimed right to compensation from monopoly providers of local exchange telecommunications services, and have designed and constructed buildings to accommodate telecommunications facilities. The policy of the Act and of the 1995 amendments to Chapter 364, Florida Statutes, to promote competition by authorizing

competitive or alternative local exchange carriers, requires that any system of compensation be administered in a non-discriminatory manner between carriers.⁷

At minimum, parameters for any compensation paid to MTE owners and managers must be predicated on principles of reasonableness, a reasonable relationship between the level of compensation and the minimal extent of the taking, and non-discriminatory treatment of all providers. In addition, any rates or prices established for the use of the MTE owner's property should be cost based rather than based on percentages of gross revenues of the provider or other non-cost based formulas for providing revenue enhancements to MTE owners and managers at the expense of competing local exchange service providers and MTE customers who desire their services.

Landlords and owners of MTEs, and building managers as their agents, do not have the right to select on behalf of their tenants between competing providers of telecommunications services on behalf of their tenants; rather, they have the obligation under the Act and pursuant to Chapter 364, Florida Statutes, to not interfere directly or indirectly with the exercise of their tenants' freedom of choice between competing providers of telecommunications services.

⁷ Section 253(2) of the Act, concerning Removal of Barriers to Entry, provides: "No State or local statute or regulation, or other State or local legal requirement, may prohibit or *have the effect of prohibiting* the ability of any entity to provide any interstate or intrastate telecommunications service. (Emphasis supplied).

During the 1998 Legislative session, MTE property owners attempted to justify their disparate treatment of incumbent and competing local service providers by referencing the ILEC's obligation to serve as the carrier of last resort. This supposed justification for discriminatory treatment is specious. As previously discussed and emphasized, the intent of the Act and the recent amendments to Chapter 364, Florida Statutes, is to promote competition and provide a choice of local service providers to all consumers. There is no indication anywhere in the federal or Florida law that MTE owners or managers are somehow entitled to increased revenues as a result of local service competition. Nor is there any indication in federal or Florida law that the advent of local exchange service competition gave rise to two disparate classes of consumers - - one given free access to the ILEC and a second forced to pay increased costs in order to gain access to an ALEC. Finally, it should be noted that Section 364.025(5), Florida Statutes (1997), authorizes an ALEC to petition the Commission to become the carrier of last resort for specified service areas after January 1, 2000. This statutory provision confirms the Legislature's hope and intent that the level of competition in local exchange markets will reach the point where alternative local exchange companies will be positioned to seek and assume the obligation of carrier of last resort after January 1, 2000. The willingness of MTE owners to impede such competition undermines the intent of Section 364.025(5) and serves only to feed the misplaced notion that the ILEC's current carrier of last resort obligation justifies discriminatory treatment of tenants and occupants in MTEs.

Tenants, Customers and Users in MTEs

Tenants in MTEs, as end users of telecommunications services and as customers and potential customers of competing telecommunications service providers, have the right under the Act and pursuant to Chapter 364, Florida Statutes, to choose between competing service providers and to select the combination of offerings of services that suits their needs. The competition resulting from the exercise of consumers' right to choose will act as a check on excessive prices for services and as motivation for the provision of new and innovative services so long as MTE owners and managers do not undermine or defeat that competition by denying access or by extracting excessive rents from competing telecommunications service providers. End-user customers, including tenants in MTEs, have such obligations concerning the telecommunications services they receive as provided under contract, tariffs and applicable federal and state regulations.

Telecommunications Companies

Telecommunications companies have the right to market their services to customers in MTEs, and to obtain access to premises in order to install facilities to serve such customers. With respect to the installation and maintenance of facilities to provide service to customers in MTEs, telecommunications companies have obligations to protect the safety, security, appearance, and condition of the property used in the installation, maintenance and operation of their facilities; and to indemnify MTE owners and managers for damage caused by installing, operating, repairing or replacing their facilities. To the extent that MTE

owners have a Fifth Amendment right to compensation for physical occupation of premises resulting from the installation of facilities to provide telecommunications services and that right is exercised in a non-discriminatory manner between telecommunications service providers, then providers have the obligation to pay reasonable, reasonably related (to the limited extent of the taking), and non-discriminatory compensation to MTE owners for such use of their property.

Obligations of telecommunications service providers concerning matters such as safety, quality of service, and maintenance, set forth in applicable sections of federal and state regulations such as Rules 25-4.038, 25-4.069 and 25-24.835, Florida Administrative Code, would not appear to require amendment or restatement in the context of competing providers of service to customers in multi-tenant environments.

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

Yes. If building owners may require telecommunications service providers to pay reasonable and non-discriminatory compensation for physical occupation of common property by facilities used to provide service to customers in MTEs, the Commission should be authorized to determine just compensation for purposes of the Fifth Amendment Takings Clause, subject to judicial review. Gulf Power Co. v. U.S., 998 F. Supp. 1386 (N.D. Fla.

1998).⁸ If the amount of such compensation is not agreed between the building's owners or managers and the telecommunications service provider, the amount should be determined in the first instance pursuant to non-discriminatory rates set by the Commission reflecting the actual cost to the MTE owner of making the required space available for the installation of the telecommunications facilities of the particular service provider. Either party could petition the Commission if that party believes that circumstances existed justifying compensation different from the rates set by the Commission, with the Commission's determination subject to judicial review. In Gulf Power Co., *supra*, the court held that a similar statutory scheme under which the Federal Communications Commission determined compensation to be paid to certain electric utilities by cable and telecommunications companies for pole attachments was "not only constitutionally sound, but...the more practical approach to a just compensation decision made pursuant to the Pole Attachment Act." 998 F. Supp. at 1397. Here, the Commission could perform a similar function subject to judicial

⁸ Gulf Power involved a constitutional challenge by a group of electric utilities to the "nondiscriminatory access" provisions of the Telecommunications Act of 1996's amendments to the Pole Attachment Act, at 47 U.S.C. §224. The amendments require a utility to provide a cable television system or any telecommunications carrier with non-discriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by the utility. The District Court granted summary judgment against the constitutional challenge of the electric utilities, finding that the availability of judicial review of the FCC's determination of rates for access to the electric utilities' poles overcame the constitutional objections raised in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S. Ct. 3164, 73 L.Ed. 2d 868 (1982).

review by the Florida Supreme Court pursuant to s. 3(b)(2), Art. V of the Florida Constitution and Section 350.128(1), Florida Statutes (1997).

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

TCG has no comments at this time concerning E911 services in this proceeding.

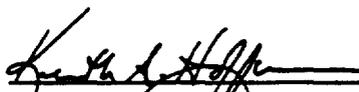
III. Other issues not covered in I and II.

TCG has no other issues at this time.

CONCLUSION

TCG requests the Commission to submit a report to the Legislature seeking legislation which will provide the benefits of local service competition to all consumers, including tenants and occupants of multi-tenant environments, by recommending action consistent with the principles and proposals stated herein.

Respectfully submitted this 29th day of July, 1998.



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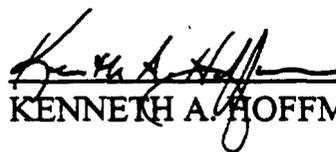
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Co-counsel for Teleport Communications Group
Inc. and TCG South Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery to the following this 29th day of July, 1998:

Catherine Bedell, Esq.
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July 29, 1998

BY HAND DELIVERY

Ms. Blanca Bayo, Director
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Re: Docket No. 980000B-SP

Dear Ms. Bayo:

Enclosed for filing in the captioned docket are an original and fifteen copies of the Comments and Responses of OpTel (Florida) Telecom, Inc. Also enclosed is a 3 1/2" diskette with the document on it in WordPerfect 6.0/6.1 format.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,


Norman H. Horton, Jr.

NHH/amb
Enclosures

cc: Michael E. Katzenstein, Esq.
Florida House Committee on Utilities and Communications

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Undocketed Special Project Access)
by Telecommunications Companies)
to Customers in Multi-Tenant)
Environments)

Docket No. 980000B-SP

**COMMENTS AND RESPONSES OF
OPTEL (FLORIDA) TELECOM, INC.**

July 29, 1998

INTRODUCTION

This proceeding was initiated to comply with the requirements of Section 5 of Chapter 98-277 Laws of Florida requiring the PSC to “study issues associated with telecommunications companies serving customers in multi-tenant environments . . .” The Commission is to submit its report by February 15, 1999. The responses and comments which follow were prepared to provide information and assistance to the Commission in this project.

BACKGROUND

OpTel (Florida) Telecom, Inc., itself and through affiliates (“OpTel”) is a leading network based provider of integrated communication services, including local and long distance telephone and cable television services to residents of multiple dwelling units (“MDUs”). In each of its markets OpTel seeks to provide facilities based competition to the incumbent local exchange carrier (“ILEC”) and the incumbent franchised cable television operator by offering services at competitive prices. Substantially all of the MDUs OpTel serves are campus style, or garden style complexes. OpTel enters into service agreements with MDU property owners and ownership associations to provide services to the residents of the MDU. As part of its agreements OpTel often upgrades and maintains all telecommunications architecture on the line side of the demarcation point, including premises wiring and campus distribution. OpTel has substantial experience with the concepts and issues being considered by the Florida Public Service Commission both through its dealings with BellSouth on the issue and its activities in the markets of other ILECs.

COMMENTS AND RESPONSES

Issue 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.)

RESPONSE: It is essential that certificated telecommunications companies have direct access to residents in multi-tenant environments, whether high rise, campus style or other building architecture, if a competitive telecommunications market to end users is to be promoted. The Legislature has found the competitive provision of telecommunications services to be in the public interest and that it will provide customers with choices, encourage introduction of new service and technological innovation (§364.01, Fla. Stats). To reach this objective, the Commission must insure not only that competitive providers have open, nondiscriminatory access to end users but that ILECs not be allowed to thwart the development of competition through delay, unnecessary requirements and by hiding behind network configuration established by the ILECs themselves with the effect, and possibly intent, of thwarting facilities based competition.

In order to advance the objective of competition the Commission should support efforts that will insure open, nondiscriminatory access to multi-tenant unit facilities. Competitive providers must have the ability to access multi-tenant unit facilities at a single point on the property, proximate to the property boundary line and ILECs must be required to provide the means of connection at this single demarcation point timely and without delay. Currently alternative local exchange

companies ("ALECs") are at the mercy of ILECs for necessary elements and are constantly blocked by ILEC delays in provisioning. Virtually all of the current building facilities were installed by ILECs or in a configuration designated by them and substantially all the network remains controlled by the ILEC. The inability of ALECs to utilize these facilities all but stops any facilities based competitive effort. BellSouth has acknowledged informally to OpTel that it designs property network so that it can control the customer at the BellSouth switch, obviating the need for a trunk roll, and also effectively foreclosing access by a competitor that does not wish to collocate at the BellSouth switch. BellSouth's position accordingly is that the demarcation point for each unit in an MDU should be the first jack in the unit. Collocation is expensive and inefficient, requiring a competitor to buy loops from the ILEC, rather than to use its own facilities. If an ALEC does not have the ability to use existing cable and wire a duplicative system must be put in place. This is expensive, inefficient and not acceptable to property owners. It simply will not happen in the real world. Customers of the ILECs have paid for the wire and cable through regulated rates over the years and should now be able to enjoy the benefits of their investment through free choice, unfettered by ILEC anticompetitive behavior.

To properly accommodate competition in the MDU environment there should be a single point of demarcation, without regard to when facilities were installed and without reference to what operating practices the ILEC has followed to date. The single point of demarcation must be at a minimum point of entry ("MPOE") into the MDU, which should be defined as the closest practical accessible point to where the

ILEC network wiring crosses the MDU property line. The ILEC must be required timely and without unreasonable expense to reconfigure network on the property to the demarcation point. This demarcation point should include a network interface device ("NID") accessible to all certificated carriers which would be the single gateway between a customer and its selected carrier's network. At a subscriber's choice, carrier selection can then be accomplished by a simple and single cross-connect at the NID.

In Florida, OpTel has experienced resistance and, it believes, anti-competitive behavior, by BellSouth in connection with OpTel's efforts to date to provide telecommunication services to MDUs. OpTel's requests for trunking have been met with roadblocks and delays. Attempts to establish a single demarcation point for all competitive carriers on MDUs it wants to serve have similarly been resisted, under color of Florida Commission requirements. OpTel's experience as well as that of other ALECs make it abundantly clear that competitors and the Commission cannot rely on the cooperation of the ILEC to facilitate competition. Commission action to clarify and simplify establishment of a single demarcation on each MDU property is justified and essential.

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

Issue IIA. 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?

RESPONSE: In order to further the development of competition in the market, the PSC should adopt a broad definition which includes business and commercial complexes as well as residential facilities. A multi-tenant environment should include:

- a. Both new and existing facilities;
- b. Residential , business, or mixed residential and business tenant facilities, which would include any form of rental, transient, condominium, cooperative, mobile home community, or owner-occupied units; and
- c. A complex of one or more buildings under common ownership, control or management.

Only by defining the environment broadly will there be increased opportunities for competition.

Issue IIB. What telecommunications services should be included in "direct access", i.e., basic local service (Section 364.02.(2), Florida Statutes), Internet access, video, data, satellite, other?

RESPONSE: Direct access should be construed broadly but for purposes of this study should include only those services that require a certificate of public convenience and necessity from the Florida Public Service Commission.

Issue IIC. 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?

RESPONSE: In general, certificated telecommunications carriers should have no restrictions on their ability to have competitive access to all tenants in a multi-tenant environment. This access will be facilitated by the establishment of a single demarcation point for the entire facility, as is further discussed in Issue IID below.

All exclusionary contracts that predate the effective date of any statutory or rule change implementing these policies should be voidable upon bona fide request of a certificated telecommunications company for direct access to the customers of such facility. Other than direct agreements between an end user and a carrier, the Commission should not allow any carrier to enter into an exclusionary contract that prohibits a customer from being able to select a competitive alternative.

Issue IID. How should "demarcation point" be defined, i.e., current PSC definition (Rule 25-4.0345, F.A.C.) or federal MPOE?

RESPONSE: The establishment of a single demarcation point on any property is critical to the furtherance of competitive choice. A certificated telecommunications company should have direct access to residents in multi-tenant environments through equal and nondiscriminatory direct access to a property NID that is located at a single demarcation point at the MPOE and that serves all residents within the entire MDU property.

Upon a bona fide request of any certificated telecommunications providers to an incumbent carrier, the incumbent carrier should be required

to promptly and within prescribed time periods establish the single demarcation point. All facilities on the customer side of the NID, including interbuilding cabling and riser wire, should be customer premise equipment ("CPE"). For competitive access to customers, including any changes in carrier for services, there would be pin and jack coordination at the NID.

If the demarcation point is allowed to remain at the wall jack for single line customers in multi-customer buildings, which BellSouth has urged, alternative carriers will be required to build facilities throughout the property and to each units requiring duplicative, cost prohibitive, often infeasible and unacceptable overbuild of facilities. BellSouth would have each facilities based carriers, run plant and pairs into every unit that is seeks to serve, which could never happen as a matter of economics and reality. In any event such an overbuild would not in OpTel's experience be suffered by property owners whose property would be required to be trenched and rewired.

A single demarcation point on each MDU property, as urged by OpTel, on the other hand, would be established in consultation with the property owner and could be done, in OpTel's experience, at relatively low cost.

In addition, the definition of CPE in Rule 25-4.0345(1)(a) should be amended to include interbuilding wiring and riser cable in multi-tenant multi-

building situations. This is necessary to ensure and clarify that all network on the property is accessible by competitors.

For this report the Commission should define the "demarcation point" as the point of demarcation and/or interconnection between the telephone company communications facilities and the CPE, and it should include, in the multi-unit environment, a network interface device ("NID") that interconnects the CPE with the telephone company network. The demarcation point in the multi-tenant unit environment should, without regard to when the facilities were installed or the telephone company's standard operating practices, be the MPOE onto the premises, which, as noted above, should be defined as the closest practical and accessible point to where the telephone company's wire crosses the property line. The NID should be accessible by all certificated carriers on a non-discriminating basis.

Buildings in which several NIDs have been installed and at which the telephone company maintains multiple demarcation points should be retrofitted, at the incumbents expense, upon a *bona fide* request by a competitive carrier seeking access to the premises and on a strict time frame, not to exceed 90 days from date of request. OpTel is willing to consider sharing a part of this cost, on a parity basis with all other competitive providers seeking to have access.

In the past, ILECs have used the establishment of the demarcation point to impede the growth and development of competition. By claiming

that each individual unit in a multi-unit building has a separate demarcation point, or by limiting access to the NID, ILECs have been able to make it cost prohibitive for a new entrant to provide service to residents to the building.

By establishing a single demarcation point at the MPOE and requiring that all certificated carriers must be given access to the NID such that a change in service providers by any resident in the building can be effectuated by a single cross-connect at the NID, the PSC will help to make facilities based competitive local exchange service a reality in the multi-tenant environment.

Issue IIE. 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 IIE., 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.

RESPONSE: Tenants, customers, and end users should have the right to select a carrier to serve that customer, and for that carrier to not suffer any competitive disadvantage created by the incumbent carrier serving the property. The ILEC should not have the ability to impose any physical barriers to access by other companies nor should the ILEC

by able to advance any carrier of last resort ("COLR") argument in order to insure access for itself or deny access to other carriers. The COLR requirement address situations where there is no competition and this issue in the MDU context is precisely to enable competition which BellSouth hopes to avoid.

Landlords, owners, building managers, and condominium associations or their agents should be able to impose reasonable and nondiscriminatory charges for the use of CPE (as defined above) by carriers. Such reasonable and nondiscriminatory charges for CPE may cover both the use and maintenance of such CPE.

Telecommunications carriers should be required to install all equipment based upon common standards. Such standards will ensure that the type of facilities at a location would not prejudice the ability of a customer to choose an alternative carrier.

Issue 2F. 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?

RESPONSE: Compensation would be permitted but not required for the situations described in Issue IIE above.

Issue 2G. What is necessary to preserve the integrity of E911?

RESPONSE: The consumer should in all cases have access to E911. This will require trunking, transfer of consumer information and coordination between

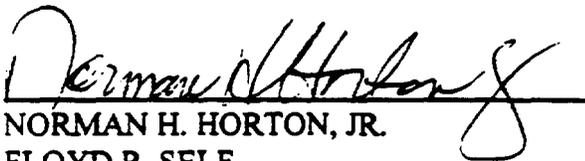
providers. The ILEC must provision E911 in the same time frames and on the same basis for others as it does for itself.

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

RESPONSE: OpTel does not have any additional comments or issues to discuss at this time.

Dated this 29th day of July, 1998.

Respectfully submitted,



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