

**BellSouth Telecommunications, Inc.**

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July 29, 1998

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Special Project No. 980000B-SP

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunication's Inc.'s Positions, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,

*Nancy B. White (ae)*

Nancy B. White

Enclosures

cc: A. M. Lombardo  
R. G. Beatty  
William J. Ellenberg II

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Access by Telecommunications ) Special Project No.: 9800008-SP  
Companies to Customers in Multi-Tenant )  
Environments )  
\_\_\_\_\_ ) File Date: July 29, 1998

**POSITIONS OF BELLSOUTH TELECOMMUNICATIONS, INC.**

COMES NOW, BellSouth Telecommunications, Inc. ("BellSouth"), through counsel, in response to the Florida Public Service Commission's (the "Commission") Notice of Second Staff Workshop, dated July 14, 1998, and hereby provides its Positions as follows.

**POSITIONS**

**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. Telecommunications companies should have "direct access" to customers. BellSouth proposes that "direct access" be defined as the provision of a carrier's services to a demarcation point located within the end user's (customer's) premises.. Such direct access could be attained via:**

- a) premises wiring that is owned by the serving carrier, or**
- b) premises wiring that is owned by another party but used by the serving carrier in lieu of its own wiring in a manner in which the carrier retains full service responsibility to the end user even though the carrier has chosen to utilize another party's facilities.**

**Both scenarios result in "direct access".**

**Of particular note in support of the need for "direct access" is a position statement listed on the web page of the Building Owners & Managers Association (BOMA), International (see [www.boma.org](http://www.boma.org)). In support of its position that that carriers should not be free to unilaterally declare an MPOE demarcation point policy, BOMA states that "Building owners incur substantial**

difficulty and expense because they lack the knowledge and technical information necessary to properly handle inside wiring responsibilities." BellSouth understands BOMA's concerns and agrees that owners' core business is real estate, not telecommunications. BellSouth's limited experiences with MPOE demarcation in other states fully supports BOMA's contention that owners do not appear ready yet to "properly handle inside wiring responsibilities."

It is BellSouth's firm belief that end users want and deserve the ability to hold their chosen carrier fully responsible for total service delivery to their premises. Furthermore, it is BellSouth's understanding that the Florida Commission's current "premises demarc" rule (25-4.0345, F.A.C.), and service indices imposed by the Commission on BellSouth, assume that the carrier has full service responsibility to the end user. In this respect, BellSouth believes that this rule is in the best interests of the general subscriber body. However, these efforts by the Commission to ensure carrier-specific quality of service will continue to be effective only if the carrier has full control over the facilities used to deliver service. "Direct access" is best achieved when a carrier is able to utilize its own telecommunications facilities rather than another party's. In Section III, Other Issues, B. "Access To Wiring And Equipment", BellSouth explains in detail the circumstances under which it would consider using another party's facilities and, by doing so, maintain "direct access" and full responsibility for service delivery to the end user.

Conversely, BellSouth proposes that the term "indirect access" be used (at least for purposes of these workshops) to describe the delivery of a carrier's services to the Minimum Point Of Entry (MPOE) of a property. In an "indirect access" scenario, extension of service from the MPOE to the end user's premises is the responsibility of another party; i.e., the property owner, the owner's designated agent or another carrier. BellSouth's experience has been that "indirect access" results in disjointed service - and end user confusion, frustration and dissatisfaction. These undesirable results are due to the lack of end-to-end responsibility by any one party. "Indirect access" bifurcates end-to-end responsibility.

In summary,

- a) BellSouth has proposed useful definitions for "direct" and "indirect" access.
- b) End users want and deserve "direct access" by their chosen carrier.
- c) BellSouth fully supports the Commission's existing rule that requires ILECs to locate the demarcation point on the end user's premises.

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

Any carrier which is subject to the Commission's Rules should have "direct access" to customers; "direct access" being defined as proposed in paragraph I.

**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" should be defined as any environment wherein end users of telecommunications services lease, or otherwise reside on, property where access to the end users' premises is controlled by another party.

All of the examples that the Commission cited fit this description, and should include new and existing properties. Although not noted by the Commission, single family residential subdivisions, where ownership of the ingress/egress roads remains privately held rather than deeded to the local governmental authority also fits the definition proposed by BellSouth.

For purposes of establishing access regulations, it is essential that the adopted definition of "multi-tenant environment" be as simple and straightforward as possible and, if at all possible, absent of exceptions that tend to confuse and weaken any rules that may be ultimately promulgated. BellSouth believes its proposed definition is concise, comprehensive and applicable.

**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?**

The definition of "direct access", as proposed in paragraph I above, defines the means and scope of responsibility by which a carrier delivers service to an end user. Therefore, BellSouth sees no reason why it would be necessary to include or exclude particular telecommunications services from the definition of "direct access".

Thus, relative to permissible services included within the scope of access rights:

- a) All services should be included in discussions of "direct" access.
- b) Carriers should be free to choose the desired technologies used to deliver

these services.

c) Carriers should be free to provide any services offered for lawful purposes.

**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?**

Using BellSouth's proposed definition of "direct access", the Legislature and/or the Commission must address the concerns of property owners relative to the placement of multi-carrier telecommunications facilities on their properties. If the Commission adopts the stance that a property owner has the authority to prevent a carrier from placing its facilities on the owner's property, then this authority is, in effect, a restriction to "direct access".

Secondly, any rule which allows property owners to deny a carrier "indirect" access (i.e., no service - not even to a MPOE), would be a restriction to access.

Relative to the overall question of whether property owners have the authority to refuse to allow, one or more telecommunications companies to provide service to tenants (either by "direct" or "indirect" access), BellSouth's primary concern is not with the ultimate resolution of this question relative to non-Carrier of Last Resort ("COLR") carriers. BellSouth believes that in a fully deregulated environment, market forces will ultimately determine those carriers (and, in fact, those properties) which will be chosen by end users. As a COLR, however, the ability of a tenant/end user to obtain, and BellSouth's ability to provide, services is of great concern to our company and presumably is to legislators and regulators within the state of Florida.

BellSouth's position is that property owners should allow tenants to be served by a COLR, preferably via "direct access" (premises demarc). COLRs, including BellSouth do not have the freedom to pick and choose those subscribers or properties which they desires to serve, whereas other carriers have such an option. Thus, within its franchised service territory BellSouth is literally the "last resort" for subscribers who are bypassed by other carriers. For these and other reasons, detailed terms and conditions for service provisioning have been carefully crafted and documented in BellSouth's filed tariffs which have been approved by the Commission.

Until such time as BellSouth is no longer obligated to serve all end users in its franchised territory, and until such time as BellSouth is totally freed from rate regulation and service indices imposed by the Commission, all subscribers should have the right to subscribe to those services which have been designated by Florida legislation as being in the best interests of the citizens of the state.

Relative to the question of whether exclusionary contracts should be permitted, BellSouth's position is that carriers should not be prevented from marketing their services to occupants of multi-tenant properties. BellSouth believes that, in the long run, the most desirable properties will be those which permit tenants to obtain service from any carrier offering service to the property. Owners of such properties may tout their non-exclusionary leases and, perhaps, go a step further and offer their own branded service in concert, or in competition, with one or more carriers. Preferred carriers who offer the best mix of price, features and service will succeed by adding value to a property.

**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)?**

Although BellSouth fully supports the Commission's existing "premises demarc" rule, the Commission may wish to consider the more detailed versions shown below. NOTE: This definition would apply to services delivered by carriers who the Commission decides should be subject to the rule.

**Demarcation Point:** The demarcation point for telecommunications services is defined as the physical point at which a provider of access to the public switched network delivers, and has full service responsibility for, services which that carrier provides to its subscribers. Unless the subscriber and carrier mutually agree on a different arrangement, the demarcation point shall consist of a carrier-provided interface connection which is clearly identifiable by the subscriber, and which provides the subscriber with:

- a) an easily accessible way to connect subscriber-provided wiring to the interface and
- b) a plug and jack connection which provides the subscriber with a means to quickly and easily disconnect the carrier's access channel from the subscriber's wiring or terminal equipment in order to prevent harm to the public switched network and to facilitate service trouble isolation and determination by the subscriber and carrier.

**Location of the Demarcation Point:** Subscribers shall designate the demarcation point location in accordance with applicable statutes, rules tariffs and/or service agreements reached with telecommunications carriers. At multi-tenant properties where demarcation point locations must be established prior to occupancy, the demarcation points will be assumed to be located within the premises of the tenants/subscribers.

**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.**

**(1) A landlord, owner, manager, condo association or any other party which controls access to the premises of a telecommunications end user in a multi-tenant environment should permit tenants to access services provided by their desired carrier and to clearly communicate to tenants any and all terms and conditions relative to tenant access to such telecommunications services.**

**(2) Tenants, customers and end users should have access to services offered by their desired carrier. BellSouth feels strongly that end users are best served when carriers are able to provision their services to the end user's premises, utilizing their own wiring and equipment. In any event, end users have the right to know precisely what the serving arrangements are for the property prior to signing a lease. At a minimum:**

**a) Is the tenant, customer or end user able to easily obtain service from their chosen carrier?**

**b) Where is the demarcation point for carriers' services?**

**c) How and who does the tenant contact to obtain telecommunications service?**

**d) If a MPOE demarcation point exists, who is responsible for service between the MPOE and tenant unit? Are there any tenant, customer, end user or carrier fees associated with this service? How does the tenant go about calling in a repair problem?**

**What charges, if any, apply if a repair trouble is found to be not caused by the investigating telecommunications provider?**

**e) Procedures for accessing E911 if differing in any way from the norm.**

**In addition, end users should have the right to maintain their chosen telecommunications provider for the term of their lease.**

Although BellSouth fully supports the Commission's Rule 25-4.0345, if the Commission modifies this rule to permit MPOE demarcation points, at a minimum end users should have the right to access carrier services at the MPOE in a manner which is easily identifiable; i.e., the tenant's line is terminated on a separate, individual, female-ended Network Interface jack that is tagged and which can accommodate plug-in of a standard male-ended modular telephone plug.

Finally, end users should have the right to freely choose carrier services without direct or indirect economic penalty. End users should not have to bear the burden of access fees or other levies which are not based upon any value added services received.

(3) Telecommunications companies should not be prevented from offering services to subscribers on multi-tenant properties.

**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?**

Except to the extent that COLR tariffs and the Commission's Rules address the issue of granting of easements and support structures (See: III.A. below), no other legislative or regulatory dictates should be established relative to financial arrangements reached between owners, carriers and tenants. As stressed in previous comments, however, COLR services and COLR customers must continue to be protected by tariffs until such time as the legislature and the Commission determines that the COLR concept is no longer needed, and thus, COLRs are free to serve or refuse to serve any customers they so choose.

When operating out of its franchised territory as an ALEC, with the freedom to serve or not serve, BellSouth will negotiate all terms and conditions of service with tenants and owners, regardless of whether or not other carriers offer service to the subject property.

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

1. All carriers must equip their telecommunications hardware and software for dial access to 911.

2. The availability of accurate end user location addresses is a concern if the Commission allows a carrier's demarcation point to be at the MPOE. In such situations, the carrier's physical serving terminal would be located at the MPOE and, thus, the tenant's address could feasibly be listed as the main address of the multi-tenant complex rather than the tenant's actual apartment or suite

address number. This could possibly result in emergency personnel not being able to identify the caller's exact location within the multi-tenant environment.

3. If an MPOE demarcation point is established, dial tone may only exist at the MPOE demarcation jack. If the wiring between the MPOE and the tenant's unit is not intact, the tenant will not receive dial tone in the living unit and, thus, will not have access to 911 service.

4. Access to 911 would be jeopardized if a party disconnected a carrier's wiring to, or at, the carrier's network interface jack. The Commission may wish to consider adopting a rule, consistent with Florida law, which specifies that a carrier's wiring and equipment must never be disturbed without approval of the carrier.

### **III. Other Issues not covered in I and II:**

**A. Access to Easements and Support Structures:** In consideration of BellSouth's obligation to provide service to all subscribers, BellSouth's filed tariffs obligate subscribers to provide easements and other supporting structures at no cost to BellSouth. (In a multi-tenant environment, the property owner usually, but not always, acts as an agent for all subscribers relative to these requirements.) In such cases it would appear to be inappropriate for the property owner to require compensation for access. Also, lease rates typically include access to common areas by tenants. Thus, double compensation for the same space could occur if the property owner also seeks to have carriers pay again for this space.

Certain supporting structures such as conduits, equipment rooms, plywood backboards, electrical outlets, etc. are "fixtures" of the property and remain in place for the benefit of the property owner, tenants or other telecommunications companies in the event that the incumbent carrier's services are disconnected. Thus, even in a totally deregulated environment, with no carrier designated as COLR, there remain very real and compelling arguments as to why property owners and/or subscribers should provide access to structures that are, or become, "fixtures". This is the case with plumbing, heating, cooling and any other infrastructure which is shared in whole or in part by tenants. This notwithstanding, it is BellSouth's position that in a fully competitive market with no COLR obligations, telecommunications carriers, subscribers and property owners will and should negotiate numerous terms and conditions, including the provision of structures, in order to arrive at mutually agreeable serving arrangements.

BellSouth is not in favor of any government-mandated standards for owner-provided support structures. BellSouth notes that existing national and local codes cover items which impact life/safety issues. Also, voluntary industry standards and methods exist which are readily available to concerned

owners(see ANSI/TIA/EIA Standards and BICSI design/installation manuals). In addition, COLR state and federal tariffs contain reasonably sufficient specifications on other support structure elements commonly used today. Any needed changes to these tariffed specifications should be addressed in separate Commission proceedings wherein all of the associated issues can be properly addressed; e.g., effect on subscriber rates, etc. In summary, BellSouth is of the opinion that existing rules and tariffs relative to COLR provisioning should be left intact and that, where Commission rules and tariffs are not currently applicable, then owners and carriers should be able to negotiate support structure issues without further Commission regulations.

**B. Access To Wiring And Equipment:** As described previously, the definition of "indirect access" proposed by BellSouth entails a carrier demarcation point at the Minimum Point Of Entry (MPOE) of the multi-tenant property.

In such a MPOE scenario, the resulting question arises: how do carrier services get extended from the MPOE to the end user? The most probable answer is via wiring which is installed and maintained by the property owner (or an agent of the owner), or perhaps by another carrier who the owner has permitted to install wiring and equipment.

A similar but clearly different scenario arises when a carrier is requested, or required by regulatory mandate, to place its demarcation points at end users' premises but is not permitted by the property owner to install its own wiring on the property. Such a scenario exists on a limited basis in the Commission's Shared Tenant Services (STS) rule whereby, in STS situations, BellSouth must utilize wiring owned by a third party if such wiring:

- a) meets requirements of the National Electrical Code (NEC) and
- b) can be accessed at costs which are no higher than the costs BellSouth would have incurred if it had installed its own wiring.

However, BellSouth's position regarding the use of third party wiring and equipment is very straightforward. No carrier, whether a COLR or not, should be forced by regulatory dictate to use facilities owned by another party. All carriers should have the freedom to make a decision regarding such use on purely its own operational, technical and economic criteria.

Therefore, the current rule for use of third party wiring on STS properties is clearly deficient and should be revoked. There are so many operational factors and technical specifications to be taken into consideration relative to a carrier's choice of transmission media and equipment that attempting to establish a "laundry list" administered by regulatory mechanisms is a futile endeavor. For

example, the NEC addresses only a very minute set of factors relative to wiring, all of which are oriented toward life/safety issues, not performance. Other voluntary industry standards, such as those promulgated by the American National Standards Institute in conjunction with the Telecommunications Industry Association and Electronics Industry Association (ANSI/TIA/EIA), attempt to address performance, however, even these organizations recognize that telecommunications providers utilize proprietary and individualized network architectures that do not always lend themselves to "cookie cutter" standards. Certainly, standardized media and equipment would make everyone's life easier in the telecommunications industry, but that simply is not the case today, nor will it be in the foreseeable future. All one has to do is read any telecommunications periodical to clearly see the widely diverse opinions on which media is "best". In point of fact, success in the marketplace is often a direct function of how effectively a telecommunications provider is able to differentiate its products, services and technologies.

What, for example, should BellSouth do if it intended to deploy fiber plant and a property owner's wiring consisted of metallic facilities which met NEC specifications and could be accessed at a reasonable cost? Should BellSouth modify its deployment plans to accommodate another party's technology choice? Should BellSouth's subscribers be denied the benefits of fiber technology? Should BellSouth take a step backward and modify systems and central office equipment to accommodate metallic plant? The answer to all these questions is a resounding NO! Nor should any other carrier be required to do so.

With the above rationale in mind, BellSouth's positions on the use and availability of premises wiring are summarized as follows:

1. Although certainly not a matter of regulatory mandate, property owners would be well advised to install support structures (conduit, etc.) which will reasonably facilitate the installation of media by multiple carriers. This just makes good common sense in today's environment. Doing so would obviate most if not all of the issues regarding shared use of wiring.

2. BellSouth is obligated to resell its services, and in its incumbent franchise area must also "unbundle" its network facilities and thus must share its wiring wherever technically feasible. Conversely, BellSouth expects that other carriers should similarly offer the resale and use their facilities to BellSouth when technically feasible.

3. If a property owner will not allow BellSouth to install its own wiring to the end user's premises, BellSouth would choose one of the following alternatives:

- a) Enter into a facilities-use contract with the owner of the premises wiring

and accept full responsibility for service to end users in accordance with existing tariffs and Commission rules and service indices. Furthermore, BellSouth will make every effort to ensure that the use of third party facilities is transparent to the end user. The decision to enter into a facilities-use contract would be solely BellSouth's.

- b) If an acceptable agreement cannot be reached with the owner of the premises wiring, BellSouth will place its demarcation points at the MPOE, assuming that the end user/subscriber accepts service in this manner, and that Commission Rules are modified to permit demarcation at the MPOE.
- c) If the Commission's premises demarc rule remains intact and an acceptable facilities-use agreement cannot be reached, BellSouth would be unable to provide service to the customer, and should then be relieved of its COLR obligations as to that service request.

4. BellSouth believes that the procedures outlined in (3 a,b,c) above make sense for all carriers and that no legislative or regulatory dictate should exist which would require any carrier to use wiring or equipment owned by another party, regardless of the circumstances. Terms and conditions of facilities-use contracts must be totally a matter of free market negotiation. .

**C. Use Of Space:** BellSouth understands property owners' concerns that space for telecommunications equipment is a limited resource. Owners voice a concern that a plethora of serving carriers would require an inordinate amount of space on their properties. BellSouth believes that such a situation, while theoretically possible, is unlikely for several reasons:

- a) Given "X" amount of tenant floor space, there is some "Y" level of telecommunications needs, regardless of whether one or ten carriers are providing service. The Jones family may need two lines today versus one yesterday, however the fact that two carriers rather than one are providing service does not necessarily mean that double the space for wiring and equipment is needed. Industry standards attempt to quantify these factors and typically propose formulae that telecommunications designers utilize to plan "structured systems"; i.e., generic plans that are vendor transparent. Granting, however, that telecommunications needs are increasing and granting that generally more carriers may translate into more common space, there is nevertheless only just so much space that will be required to service a property. Property owners should retain the responsibility to adequately design and size their equipment rooms and support structures to handle reasonably expected demand for such spaces.

b) The trend in the telecommunications industry is for cables and equipment to reduce in size, not increase in size. For example, yesterday's 3600 pair copper cable requiring its own 4" conduit can now be replaced by one fiber optic cable which is no more than 5/8" in diameter.

BellSouth's positions relative to the space issue are summarized as follows:

1. As part and parcel of an owner's job to provide common services to tenants, owners should stand ready to accommodate their tenants' changing telecommunications needs and to make appropriate modifications to their space planning and sizing specifications.

2. It is wrong for owners to attempt to make compensation for space a profit-making endeavor.

3. Owners need to monitor the reasonableness of space usage by serving carriers.

**D. Access Time Issue:** Some owners apparently express concern over the need to provide carriers with seven days a week/24 hours a day ("7/24") access to buildings. BellSouth's experience has been that, normally, its ability to gain timely access is easily resolved with property owners. Both owners and carriers must have service to their tenants and customers as a common and overriding objective. In its selection process, owners are able to discern the viability of carriers relative to their ability to provide timely, reliable service. If a selected carrier wishes, or is forced by regulatory mandate, to provide 7/24 service to tenants, the owner should make arrangements to accommodate this need. Also, if tenants in the building need 7/24 support, the property owner, as a matter of good business practices, should facilitate the satisfaction of this tenant need.

Recently, BellSouth has experienced isolated cases where access for installation and repair service has become an problem. The Commission should, therefore, investigate the prevalence of such difficulties and, if necessary, consider adopting rules which require the fullest possible access rights since such access is clearly in the public interest.

The individual nature of tenant needs may or may not require off-hour access. BellSouth believes that the access time issue should, ideally, not be the subject of governmental oversight or regulation. But key to this assumption is that owners inform tenants before a lease is signed if access by utilities is limited. That way, tenants whose business depends on 7/24 service can freely opt to select another property where access is not limited.

If BellSouth is forced to pay additional fees to access tenant, then BellSouth will pass these fees along to the tenants in the building (the cost carrier scenario).

Respectfully submitted this 29th day of July, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

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**The Building Owners and Managers Association of Florida, Inc.**

JOHN LEE BREWERTON, III, P.A.

ORIGINAL

COUNSELOR AT LAW

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August 5, 1998

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo, Director  
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Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

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Re: Special Project No. 980000B-SP

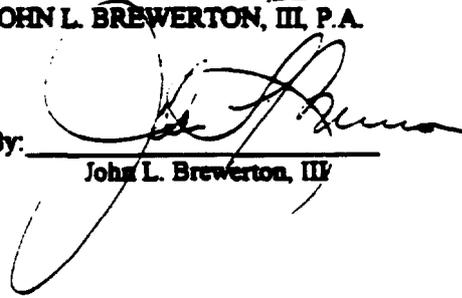
Dear Ms. Bayo:

Enclosed for filing are two (2) originals and a diskette of BOMA Florida's comments regarding the above-captioned matter. Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to me via teletcopy at (407) 843-4946.

Thank you in advance for your assistance in this matter. If you have any questions, please call me.

Very truly yours,

JOHN L. BREWERTON, III, P.A.

By:   
John L. Brewerton, III

Encl.  
JLB/cs

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- AFA \_\_\_\_\_
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cc: Mr. Arturo Fernandez  
Ms. D.K. Mink  
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FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Issue Identification Workshop )  
For Undocketed Special Project: ) Special Project No. 980000B-SP  
Access by Telecommunications Companies )  
To Customers in Multi-Tenant )  
Environments )

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**INTRODUCTION**

The Building Owners and Managers Association of Florida, Inc. (BOMA) is a tax-exempt Section 501(c)(6) real estate trade association organized under the laws of the state of Florida. Its chartered membership consists of local chapter associations in Greater Miami, South Florida, Tampa, Orlando, Jacksonville, North Florida (Tallahassee) and members at large throughout the state. BOMA represents some 800 member companies in the state of Florida, owning, managing and/or operating literally billions of square feet of primarily office, but also including retail, industrial and other tenant-occupied building space in this state. BOMA is a chartered member of BOMA International, Inc., founded in 1907 and based in Washington D.C., which boasts membership of approximately 17,000 real estate and related companies and representing hundreds of thousands of tenant-occupied office buildings in the United States alone.

The issues in question in this proceeding are not of first impression. Telecommunications companies, with their deep-pocket advertising and lobbying budgets, have been urging this state and Congress to pass mandatory (a/k/a/ forced building) access or similar laws in order to reduce their cost of doing business, which, from a prudent business perspective, is understandable. However, mandatory access laws, and lobbying efforts with respect thereto, were expressly rejected by Congress when it passed the Federal Telecommunications Act of 1996, because such laws would be unconstitutional on their face and effect unconstitutional takings of private property rights of building owners.

Mandatory access laws were expressly invalidated as unconstitutional by the United States Supreme Court in 1982, in a case involving a mandatory access cable television statute in the state of New York (*Infra, Loretto v. TelePrompster Manhattan CATV*). A litany of cases throughout the country challenging the constitutionality of similar cable statutes and ordinances were also litigated in the early to mid-1980s, all of which were also held unconstitutional under the U.S. Supreme Court's rationale stated in the *Loretto* decision. In fact, a number of such cases were decided here in the state of Florida, the most notable of which was *Storer Cable TV v. Summerwind Apartments Associates*, also discussed hereinafter.

In short, these cases hold that, to force a building owner to grant access to any party, including a telecommunications service provider, results in a governmental taking of private property rights for which full compensation to the owner must be paid either by the taking governmental entity or the beneficiary of the taking (as proposed here, the telecommunications companies). Moreover, in the *Loretto* opinion, the U.S. Supreme court expressly stated that the power to exclude third parties has traditionally be considered one of the most treasured strands in an owner's bundle of private property rights.

The following will provide BOMA's comments to the issues circulated by the Florida Public Service Commission (PSC) for discussion at its public hearing scheduled for Wednesday, August 13, 1998, relative to mandatory access.

### COMMENTS

**L Issue: 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.)**

**Comment:** It is the position of the Building Owners and Managers Association of Florida, Inc. (BOMA) that telecommunications companies should not have direct access to customers in multi-tenant environments. The private property rights of building owners must be observed. Building owners must retain the authority to regulate,

supervise and coordinate on-premises activities of all service providers, including telecommunications carriers.

Installation and maintenance of telecommunications facilities within a building will disrupt building operations and those of tenants, as well as cause physical damage to the building and other property of the owner. Unauthorized entries into any building by a third party, as well as its contractors, agents, employees, etc., may also result in physical damage to the property of tenants in the building, including those not served by its telecommunications service providers. Moreover, unauthorized entries into private buildings by third parties will compromise the integrity of the safety and security of all occupants of the building, including tenants not served by the telecommunications company seeking the access. Building owners and their property managers are in the business of providing environments in which people live and work, and therefore, they are uniquely positioned and obligated under tenant leases to coordinate the conflicting needs of multiple tenants and multiple service providers, including telecommunications companies.

Telecommunications companies demanding access to landlords' buildings require access to space in underground easements; through exterior walls and floors; through interior walls, floors and ceilings; through and in telephone and riser closets; on rooftops; and in space occupied by tenants and other licensees. In addition, telecommunications companies often require permanent space for location of their telecommunications equipment in building basements, telephone closets and riser closets, and on the rooftops of the buildings in which they serve or propose to serve tenants. Therefore, building owners must be entitled to exercise discretion in the managing, controlling and licensing of access to and space in their premises for the protection and security of not only their own interests, but also those of building tenants, licensees and other occupants.

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

**Comment:** In determining whether telecommunications companies should have direct access to customers in multi-tenant environments, the Public Service Commission (PSC) must consider, first and foremost, the existing private property rights of building owners. It is clear under applicable Federal and Florida state case law [*Loretto v. TelePrompster Manhattan CATV*, 458 US 419, 426. (1982) and *Storer Cable TV v. Summerwind Apartments Associates*, 451 So. 2d 1034 (3d DCA Fla. 1984) (citing *Loretto*)], that any proposed "granting" of mandatory or similar access by the state of Florida to any telecommunications company in a tenant-occupied property constitutes a "taking" of private property rights of the building owner, for which full compensation must be paid.

Other considerations include liabilities resulting from the access, space proposed to be occupied and availability thereof, security and safety of property and persons, confidentiality of tenants, lease obligations of the landlord, value of the space and access proposed, competition for the limited availability of space within the building, and other factors.

**A. Issue: 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?**

**Comment:** Inasmuch as the primary targets of most telecommunications company marketing efforts consist of commercial businesses in office buildings owned and/or managed by members of BOMA, it is obvious that the telecommunications companies seek to include commercial office buildings within the definition of "multi-tenant environments." Nevertheless, members of BOMA also own and/or develop residential, transient, condominium, retail and other properties, as well as, in a very limited number of cases, own or operate shared tenant service provider affiliates. However, for BOMA

to object to or insist on any specific definition of a "multi-tenant environment" would be tantamount to agreeing that the Public Service Commission has authority over licensed access to multi-tenant environments, to which BOMA objects.

**B. Issue: 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?**

**Comment:** To the extent that the Public Service Commission is addressing the term "direct access", BOMA suggests that such term should be defined to include any service whatsoever provided by any telecommunications carriers certificated by the state of Florida, including, without limitation, basic local telephone service, internet access, video, data, satellite, etc., as well as services related to the sale, installation and maintenance of software, cabling, hardware and equipment related or incident thereto.

**C. Issue: 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?**

**Comment:** Once again, it is BOMA's position that there should be no direct access by telecommunications carriers tenants of multi-tenant "environments", unless the same is expressly consented to by the building owner. Moreover, as BOMA has advised the Public Service Commission and the Florida Legislature in the past and as discussed in more detail hereinafter, "exclusionary" contracts (often called exclusive agreements) are the exception to the general rule and not the norm in the commercial office building industry.

Generally, it is in the best interests of property owners and their managing agents to grant access to multiple carriers desiring to provide telecommunications services to tenants within multi-tenant buildings. In other words, exclusive agreements are generally not in the owners' best interests.

Of course, in evaluating which carriers should be granted access to its property, the owner takes into consideration such factors as, but not limited to: the reputation of the respective telecommunications company; space availability in the building; consents, demands and/or needs of tenants; prior experience of the building owner and/or management company with the respective telecommunications company; terms and conditions for access requested; expected disruption to tenants and occupants; potential physical damage to the property; integrity of the safety and security of the building and its occupants; architectural integrity and aesthetics of the building and the proposed modifications by the carrier; and conflicting needs of multiple tenants and multiple service providers. Therefore, access to private buildings must be subject to the express consent of the building owner or its manager.

In some cases, exclusive contracts may be warranted, determined in the discretion of the building owner, based on its evaluation of the foregoing and other factors. In any event, as previously stated, it is BOMA's position that exclusive contracts are generally not favorable or in the best interests of its members. However, a building owner has the constitutional right to govern who and what companies have access to its own property, and while it may not be prudent to do so, a building owner may constitutionally exclude any party from its property. By the same token, it may lawfully enter into an exclusive agreement with any particular telecommunications company. Simply put, that is the building owner's constitutionally guaranteed right to be imprudent and to exclude from its property any party it so chooses. (*Supra, Loretto* at p. 435)

**D. Issue: 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).**

**Comment:** It is BOMA's position that the definition of demarcation point for purposes of Florida law should remain as currently defined under PSC Rule 25-4.0345, FAC.

However, BOMA International and BOMA Florida are currently evaluating this issue nationwide and therefore must reserve the right to change this position.

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

**1) Landlords, owners, building managers, condominium associates;**

**Comment:** Landlords, owners, building managers and condominium associations must retain the right to govern actual, physical and other access to their property, as discussed in both the Introduction and Section I above. Their responsibilities and obligations are and must be governed by their negotiated agreements with their tenants and telecommunications companies seeking access to their properties.

**2) Tenants, customers, end users; and**

**Comment:** Tenants, customers and users may exercise any rights, privileges, responsibilities or obligations with respect to their needs and demands for telecommunications company access provided in their contracts with their landlords. They can and do negotiate these issues and considerations within the context of their negotiations of their leases, tenant build-out and other agreements with their landlords.

**3) Telecommunications companies.**

**Comment:** Telecommunications companies have no rights whatsoever to gain access to private property and the occupants thereof, absent the express consent of the property owner. Any rights and obligations regarding telecommunications access should be governed by the negotiated, arms-lengths terms of a license or other access agreement between the landlord and the carrier, on the one hand, and the landlord and its tenant, on the other. To legislatively grant any "special priority" or other guaranteed or mandatory access status or similar right to any telecommunications company would violate the U.S.

and Florida Constitution (Article X, Section 6) provisions regarding the protection of private property rights. (*Supra, Loretto and Storer Cable TV.*)

Consequently, issues regarding easements, cabling, space, equipment, lightning protection, service quality, maintenance, repair, liability, personnel, pricing and all other considerations related to private property/building access should be governed by the terms and conditions of an agreement to be negotiated by and between the property owner and the telecommunications company, subject of course to the owner's obligations contained in its lease or other private agreements with its tenants. As discussed above, building owners are in the business of providing environments in which people work. They are uniquely positioned and obligated pursuant to their leases to coordinate the conflicting needs of multi-tenants and multi-service providers. Consequently, to infringe on landlord's property rights and/or obligations to their tenants, other licensees and customers, solely to benefit the pecuniary interests of privately-owned telecommunications companies, would result in unconscionable harm to private property owners.

In fact, private licensing and similar access agreements among building owners and telecommunications companies, both inside and outside the state of Florida, are today becoming the norm. Unfortunately, given the pre-existing monopoly-status of incumbent local exchange carriers ("LECs"), it is a much more arduous a task, if not impossible today, for property owners to attempt to negotiate agreements with such LEC carriers. Property owners simply have no leverage, and LECs generally refuse to sign any license or other access agreements whatsoever. Consequently, unless the Public Service Commission and/or Florida Legislature expressly acknowledges the interests of property owners in their own properties, particularly in this time of monopoly deregulation and promotion of competition with LECs by alternative local exchange and competitive

access service provided ("ALECs"), then a building owner has but three (3) options (or some combination thereof): (a) attempt to convince its tenants to discontinue doing business with the LECs, which of course is not a desirable or viable option for the property owner, because it could result in building service interruptions, not to mention tenant-relations nightmares; or (b) attempt to require all ALECs to execute license or other access agreements, which the ALECs claim results in discrimination against them because the LEC obtained access without executing an agreement or paying any license fee; or (c) absorb or pass on to tenants, in the form of additional rent or operating expenses, the costs of administering access by multiple telecommunications carriers serving tenants in its building. Nevertheless, as previously stated, contractual agreements between property owners and most alternative carriers including the likes of Intermedia (ICI), Teleport Communications Group (TCG), e-spire (f/k/a ACSI), WinStar Communications, Teligent Communications, Cypress Communications, Sprint, etc. are becoming more and more common, at least among those landlords represented by BOMA membership.

**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.**

**Comment:** These are issues, *inter alia*, for which the landlord/building owner is responsible to its tenants and should be addressed in license or similar agreements with telecommunications companies seeking access to its property.

**F. Issue: 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?**

**Comment:** The real question is not "which" compensation should be required, but whether the property owner has the ability to charge any compensation for access by telecommunications companies. Under the authority of *Loretto* and its progeny,

including *Storer Cable TV*, it is clear that landlords have the constitutional authority to require that all service vendors, including telecommunications service providers desiring to do business with tenants in their buildings, pay license, access, or other fee compensation as a condition of gaining access to their buildings and tenants.

Once again it is BOMA's position that a telecommunications company's access to a private building must be subject to the express consent of the building owner or manager. Such consent agreements should address all terms and conditions with competing carriers for such access, including any compensation payable therefor. As a matter of practicality, the building owner must be able to take into account any factor it chooses in determining to which carriers it should grant access, including without limitation, the fair market value of the access sought by the carrier. However, as previously stated, it is in the property owner's best interests to have multiple carriers providing services to tenants within their buildings, so it will naturally be inclined to negotiate such agreements. Any carriers refusing to negotiate any license or access agreements with landlords and demanding free, unfettered and uncompensated access are simply being unreasonable and ignoring owners' private property rights.

Factors typically taken into consideration by a landlord in evaluating the level of compensation to be paid to it for licensed access to its tenants generally include, but are not limited to, the: compensation paid or offered to be paid by other carriers for the same access; space limitations in the building; term of the licensed access sought; other terms and conditions of the access sought; services requested to be provided by the landlord for the benefit of the telecommunications company; lease obligations to and telecommunications service needs and demands of tenants (and the amount of space each of such tenants leases in the building); number of carriers already providing telecommunications service to tenants in the building; value of the space to other vendors

and service providers which are not telecommunications companies (e.g., such as but not limited to utility and alternative utility service providers); additional one-time and ongoing risks and costs which will result to the landlord, its building and tenants as a result of such access; benefits of such additional service access to tenants; value of the space to the telecommunications carrier; and revenues to be generated by the telecommunications carrier as a result of the access to the property, among others.

It is BOMA's position that the factor "cost" is usually irrelevant in the compensation negotiation(s) between the property owner and telecommunications carrier, at least from the owner's perspective. The cost of the equipment proposed to be installed by a telecommunications company in a building shall be determined and evaluated by the telecommunications company, not the property owner. In evaluating the profit potential of a particular building, cost will obviously be a consideration to the telecommunications carrier. However, it will only be considered by the building owner to the extent that it requires a specific telecommunications company to install certain equipment or facilities in its building.

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

**Comment:** Of course, it is necessary to preserve the integrity of E911. However, as long as some certificated telecommunications company is willing (or obligated under tariff) to provide telephone service to a particular building, the integrity of E911 will always be preserved.

**III. Other issues not addressed in I and II above:**

**Comment:** Other issues not addressed hereinabove, but which must be considered by the Public Service Commission in this context, include but are not limited to the following:

1. The Federal Telecommunications Act of 1996 and the Florida Telecommunications Act of 1995 have in fact resulted in the establishment of immediate and significant competition among numerous recently-certificated telecommunications companies providing services to tenants both inside and outside the state of Florida. A non-exhaustive list of carriers with whom mutually-negotiated agreements with property owners have contracted is provided hereinabove in the comment provided for Issue II(E).

Nevertheless, for the state of Florida and/or the Public Service Commission to interject the state or its agency directly into the negotiation process between landlords and the telecommunications companies, and indirectly between landlords and tenants in their lease negotiations, would not only be unwarranted and unconstitutional, but futile. The free market relationships among those parties will ferret themselves out, as is already occurring in the market today. In order to promote competition, the state must allow competition, not attempt to force-feed it by unlawfully legislating mandatory or similar access by telecommunications companies. Any mandatory access or similar law will not only fail to accomplish the objective of establishing competition, but preclude it.

2. Oftentimes, telecommunications companies already possessing access to an owner's building (LECs and ALECs alike) attempt to overburden the building's telecommunications infrastructure (such as equipment rooms, risers, raceways, telephone closets, rooftops, etc.) and physically occupy more space than they actually need (*i.e.* to provide services to all tenants in the building), simply to render access to the building's tenants economically impractical for other competitors, thereby resulting in a barrier to competition. In other words, in evaluating the cost for the next carrier to gain access to the building, such access becomes too expensive because of the significant structural and cost of new construction issues facing the next carrier seeking tenant access.

For example, suppose an owner constructs a new building and installs four (4) four inch (4") telecommunications conduits (or "raceways" or "chases") to facilitate building access by multiple telecommunications carriers. If one of the carriers (already doing business in the building) physically occupies more space than it actually needs to provide its services to its customers, then the cost to construct additional raceways must be incurred by either (a) the next telecommunications carrier desiring access to the building's tenants, or (b) the building owner itself. Therefore, in effect, the existing carrier is imposing upon other carriers economic and space barriers to competitive entry.

3. In order to promote competition, the state must consider two alternatives: (a) either immediately or gradually retract or diminish the monopolistic rights of LECs in tenant properties such as to remove barriers to entry for all ALECs and create a level playing field for all telecommunications companies; or (b) immediately or gradually elevate the status of every certificated ALEC to that of the existing LECs. Obviously, the latter of those two alternatives, particularly given the fact that there are some 150 or so telecommunications companies certificated in the state of Florida already, will result a gross abuse of the governmental power of eminent domain and effect substantial takings of private property rights, without payment of full compensation, as required by the Florida Constitution, Article X, Section 6.

4. Moreover, such taking action would violate other Florida laws, including, without limitation, the provisions of the *Bert J. Harris, Jr. Private Property Rights Protection Act* of the state of Florida. (Fla. Stat. Section 70.001 *et seq.*)

5. If the state or the Public Service Commission decides to interject itself into free market negotiations (between landlords and telecommunications companies) regarding the terms and conditions of and/or the amount of compensation to be paid by the telecommunications companies for access to landlords' properties, such would result in an artificial and arbitrary "price fixing" by the state and ignore the principles of our free market economy. The costs of providing service to a particular building must include the value (and terms of) the access sought and space demanded. Many telecommunications companies involved in this proceeding are actually offering to pay very competitive license fees to landlords in order to gain access to their properties. It is impossible to understand why the state would even consider interjecting itself into those negotiations and interrupting the free market, arms-lengths negotiations among those parties.

Once again, the free market will determine the amount of compensation payable to landlords for licensed access to their properties. Any cost considerations will be taken into account by the telecommunications company in evaluating the feasibility of an investment in access to a specific property's tenants.

6. Many telecommunications companies have proposed that parameters or limitations on the amount of license or access fees payable to landlords, such as "reasonable" and "non-discriminatory", be incorporated into proposed PSC rules or state statutes. The effect of such laws would be to governmentally limit the compensation payable to landlords for access to their properties. Such artificial limitations would not only be unlawful and violative of Florida Constitution Article X, Section 6, but also create unfair and artificial negotiating leverage in favor of the telecommunications companies to the detriment of landlords.

Once again, landlords are in the business of leasing premises to tenants. If tenants demand access via certain telecommunications carriers, the tenants will negotiate for such access within the confines of the lease or related agreements with the landlord. Absent lease obligations to tenants, landlords are in the unique position to govern access to their properties by all persons and parties, and must be allowed to do so in order to comply with their lease obligations to their tenants.

7. The Public Service Commission is not in the real estate business. Therefore, the PSC should not arbitrarily or unnecessarily involve itself in the negotiations of terms and conditions of or amounts of license fees payable for telecommunications company access to tenant-occupied properties. For the PSC or the state to involve itself in that negotiating process would be analogous to governmentally mandating rental rates payable for tenant space within buildings, which would obviously result in unconstitutional takings of private property rights. Moreover, legislating mandatory access would also require landlords to incur additional and unnecessary expense of hiring regulatory lawyers to advise them in dispute proceedings before the Public Service Commission in the event that a telecommunications company desires to subject the landlord to a "spending war" in the process of negotiations or as part of its negotiation strategy. Clearly, such was not the intention of the Federal Telecommunications Act of 1996 or the Florida Telecommunications Act of 1995.

8. Technology is ever-evolving in the telecommunications industry. Hybrid telecommunications companies (hard-wire and wireless, combined) are becoming more and more common. Telecommunications carriers are requiring access to both the interiors as well as exteriors, e.g. the rooftops, of buildings. All carriers require space,

which is a valuable commodity to a landlord. Space is what landlords "sell". For the government to usurp those private property rights and grant mandatory, free or other state-regulated access to the private property of landlords would result in an abomination of private property rights and only lead to more disputes between carriers and property owners. It would be more advantageous for all parties, and accomplish the objectives and mandates of the Federal and Florida Telecommunications Acts, if the state simply allows the parties to negotiate among themselves such that our free market economy will be allowed to thrive without unnecessary governmental regulation.

### **SUMMARY AND CONCLUSIONS**

It is clear from all applicable federal and state case law that any mandatory access statute, ordinance, administrative or other rule, or any other law proposing to impose mandatory access on private property owners would result in a governmental taking of private property, for which full compensation must be paid under the Florida Constitution. Moreover, the properties in question in the factual scenarios of those cases were tenant-occupied properties.

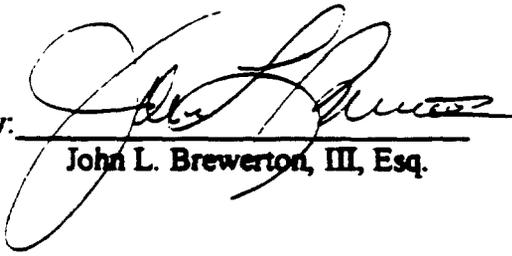
Therefore, the terms and conditions for a telecommunications carrier's access to a particular building must be negotiated by the parties involved. Landlords are in the business of satisfying tenants. Consequently, if a tenant demands access for a specific telecommunications service provider, and such access adversely impacts the rights and obligations of the owner to its other tenants (or the owner's managing agent to such owner), the owner (or manager) cannot be forced to grant unfettered access to such carrier, much less an unlimited number of other telecommunications companies demanding access. Owners must be able to protect their property interests, as well as the interests of each of their tenants. Any proposed mandatory access law will jeopardize the owner's ability to protect those interests.

Telecommunications carriers, like any other service vendors, have no guaranteed right to do business with any party or at any place. Such is a fundamental precept of a free market economy. Building owners must be able to regulate access to their properties by all persons or else they subject themselves to unlimited liability. Such is an express consideration in lease negotiations with their tenants.

Moreover, telecommunications company access must be administrated by landlords, and that access results in additional costs and burdens on landlords, and ultimately their tenants. Those costs and burdens should rightfully be passed on to the entities profiting from such access, *i.e.*, the telecommunications companies demanding it. If such access costs and burdens are not reflected in the prices for telecommunications services charged to tenants, then they most certainly will be reflected in increased lease rentals and common operating expenses shared by all tenants of the building (collectively, "Rents"). Such a result would unfairly benefit telecommunications carriers at the expense of landlords and tenants.

A primary purpose of the Florida and Federal Telecommunications Acts was to foster competition with LECs by ALECs. It was not an objective thereof to raise Rents for tenants, for the direct pecuniary benefit of telecommunications companies, which will be a direct result of the passage of any mandatory access or any other similarly intentional law by this state or its agency.

Respectfully submitted on behalf of the  
Building Owners and Managers  
Association of Florida, Inc. by  
JOHN L. BREWERTON, III, P.A.

By: 

John L. Brewerton, III, Esq.

**Florida Association of Homes for the Aging**

ORIGINAL

MEMORANDUM

RECEIVED-PPSC

August 31, 1998

98 SEP -1 AM 11:14

RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BEDELL) **CB**

RE: UNDOCKETED SPECIAL PROJECT NO. 980000B-SP - Access by  
Telecommunications Companies to Customers in Multi-Tenant  
Environments

Attached is an **ISSUE MEMORANDUM LETTER FROM THE FLORIDA ASSOCIATION OF HOMES FOR AGING DATED AUGUST 10, 1998**, to be filed in the above-referenced docket.

CB/slh  
Attachment  
cc: Division of Communications

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
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RECORDS AND REPORTING

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# FLORIDA ASSOCIATION OF HOMES FOR THE AGING



*An Organization of Retirement Housing and Health Care Communities*

William R. Whitley  
President

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Karen R. Torgesen  
Executive Director

## MEMORANDUM

**TO:** The Public Service Commission

**FROM:** Mary Ellen Early, Director of Public Policy  
Julie Miller, Director of Housing

**SUBJECT:** August 12 workshop on "Assess by Telecommunications Companies to Customers in Multi-Tenant Environments" -- Special Project No. 9800003-SP

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The Florida Association of Homes for the Aging is a statewide association consisting of nursing homes, assisted living facilities, government-financed or insured housing for the elderly, and retirement communities that provide the full continuum of care, including a licensed nursing home or assisted living facility or both. Most of our members are non-profit organizations. Over 50,000 residents, most of whom are over the age of 78, reside in these facilities. Thousands of other Floridians live in similar facilities that are not part of our association.

Since the early 1980's, some of our members have provided telephone services to tenants through a shared telephone system. The Public Service Commission affirmed their right to use shared tenant services in docket number 860455-TL, order number 17111, issued on January 15, 1987.

The purpose of this memo is to request that the Public Service Commission, in its deliberations on "Access by Telecommunication Companies to Customers of Multi-Tenant Environments" consider the special needs of elderly and disabled Floridians who reside in group living facility/communities that are licensed, certified, or financed by a government agency. We respectfully request that you reaffirm current policy to exempt these facilities from restrictions on the use of shared tenant services.

Our response is limited to the telecommunication needs of persons residing in long-term care facilities and retirement housing as defined in this memo. We are not technical experts in the field of telecommunication services. Therefore, we do not have the expertise to respond to specific issues identified in the workshop notice that appeared in the July 31, 1998 issue of the Florida Administrative Weekly.

In group living facility environments, such as a nursing home, assisted living facility, government financed/subsidized housing for the elderly, or a retirement community with a licensed nursing home or assisted living facility, a shared tenant telephone system (central office trunk lines via a PBX or master switchboard) operated by the facility should be permitted. Direct access to customers by the local telephone company is not warranted.

- Oftentimes, these facilities provide multiple levels of care that co-exist on a campus.
- These providers have never been regulated by the PSC. They have had a specific exemption (PSC order #17111) from regulation since 1987.
- They are not in the business of providing local exchange telephone services and do not compete with telephone companies. They use local and long distance companies but facilitate the acquisition and management of telephone services on behalf of residents.
- Through the use of a shared tenant system, elderly and disabled residents of these facilities enjoy telecommunication services that might not otherwise be available. These include local exchange service, three-digit in-house dialing through the PBX or master switchboard, an in-house emergency response system and, when required, assistance from the switchboard operator in making calls.
- Most shared telephone systems provide not only affordable telephone services, but also an emergency response system. Some have an automatic tie into an in-house operator or nurses station in the event of an emergency. If a resident knocks the headset off the hook, staff receives an automatic signal for help.
- Nursing homes, assisted living facilities, continuing care retirement communities and HUD housing are already heavily regulated by a number of government agencies. Oftentimes, these facilities are collocated so residents move from building to building as their needs change. The overlap makes it difficult to classify these facilities as transient rentals. Stays can be for an extended period of time or for a few weeks. Through call aggregator services, residents are provided with telephone services regardless of where they move, even if the stay is temporary.
- As people live longer, their stay in a communal or institutional setting designed specifically for seniors has become longer. While some stays are short-term, many Floridians live out their lives in a nursing home, assisted living facility, continuing care retirement community or HUD funded or insured housing complex for the elderly. When the PSC issued Order #17111, they acknowledged that these facilities should not be classified as transient rentals.
- Since the PSC issued order #17111 on January 15, 1987 exempting these providers from shared tenant and call aggregator regulation, we are not aware of any consumer complaints to the commission that would warrant a change in policy or rule.

The long-term care facilities and retirement housing communities that use shared tenant services are not competing with telephone companies. Frequently, the telephone service is provided as part of the personal care, housing and emergency response package available to residents/patients. Availability of a shared telephone service in long-term care facilities and retirement housing is clearly in the public interest and beneficial to elderly Floridians. It is also

consistent with public policy initiatives to promote a variety of long-term care and residential options that help to postpone or eliminate the need for nursing home care.

If the Public Service Commission determines that there is a need to restrict the use of shared tenant services, we believe that the following exemption should continue. Occupants of all homes, communities or facilities for the aged, disabled or retired in which at least 75% of the occupants are over age 62, or totally or permanently disabled, and meet one or more of the following criteria:

- a. is licensed in part or in whole as a nursing home pursuant to Ch. 400, F.S.;
- b. is licensed in part or in whole as an assisted living facility pursuant to s.400.404, F.S., or exempt from licensure as an assisted living facility pursuant to s.400.404, F.S.;
- c. is certificated as a continuing care facility pursuant to Ch. 651 F.S.; or
- d. is financed or insured by the U.S. Dept. of Housing and Urban Development (HUD) pursuant to the National Housing Act or financed in part or in whole by the State Apartment Incentive Loan program pursuant to s.420.507, F.S.

We were unsure about the appropriateness of responding to the PSC workshop notice that appeared in the Florida Administrative Weekly. Specifically, it was not clear that our members would be affected by issues to be addressed during the workshop. Since we were unable to obtain guidance from Commission staff on the appropriateness of submitting comments, we decided to respond.

If you need additional information, including information from PSC hearings on this issue, please do not hesitate to contact us.

Thanks in advance for your time and consideration of this important issue.