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JUL 12 2001

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July 12, 2001

Ms. Magalie Roman Salas
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Federal Communications Commission
The Portals
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Washington, D.C. 20554

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Re: Ex Parte Presentation of CoServ L.L.C. and Multitechnology Services, L.P.
In WT Docket No. 99-217, CC Docket No. 96-98, and CC Docket No. 88-57

Dear Ms. Salas:

On behalf of CoServ L.L.C. and Multitechnology Services, L.P. (collectively "CoServ"), and pursuant to Section 1.206(b)(2) of the Commission's Rules, this letter is to provide notice of the July 11, 2001 *ex parte* meeting between Terry Falls and Kelly O'Neil, of CoServ, Lawrence R. Freedman and Aimee E. Knapp, counsel to CoServ, and Jeffrey Steinberg and Leon Jackler of the Wireless Telecommunications Bureau.

The purpose of the *ex parte* meeting was to introduce CoServ as a Texas-based competitive local exchange carrier and to discuss the policies adopted by CoServ to address and facilitate customer choice at the MTEs CoServ serves. The parties also discussed CoServ's policy of "compensated access" with respect to other telecommunications carriers who interconnect with and use CoServ's network infrastructure at MTE properties. The attached outline was distributed by CoServ and sets forth the issues discussed in the *ex parte* meeting. Also attached is a copy of testimony given by Terry Falls in a recent Texas arbitration case, which was also distributed at the meeting.

Pursuant to the Commission's rules, an original and a copy of this notice of *ex parte* contact, and the aforementioned outline and testimony, are being submitted for inclusion in the public record. CoServ is also filing herewith four additional copies of this letter and the attachments with the Commission due to the additional two docket numbers attached to this proceeding. Kindly direct any questions regarding this matter to the undersigned.

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Respectfully submitted,

Lawrence R. Freedman /JRF
Lawrence R. Freedman

cc: Jeffrey Steinberg, WTB
Leon Jackler, WTB

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JUL 12 2001

**Presentation to the
Federal Communications Commission
Regarding**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

“COMPENSATED ACCESS”

by

COSERV COMMUNICATIONS

**7701 South Stemmons
Corinth, Texas 75065**

July 11, 2001

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Prepared by

**FLEISCHMAN & WALSH, LLP
1400 Sixteenth Street, Suite 600
Washington, DC 20036**

I. WHO IS COSERV?

A. General Background

CoServ was started in Texas in 1937, as the Denton County Electrical Cooperative, serving smaller and often underserved communities. While CoServ has grown to have some limited interests outside of Texas, its headquarters and the vast majority of its facilities and operations are located in Texas.

Over the years, CoServ has expanded beyond electrical services to now offer a broad range of utility and communications services. This suite of services now includes electricity, natural gas, security, cable television, civil engineering and construction, telephone, and Internet access. In this regard, CoServ often acts as a "bundled" service provider to its customers, an approach CoServ believes has been recognized and encouraged by industry experts as the wave of the future.

CoServ's general approach is to offer a rich and robust advanced fiber based connection to customers so that we can offer the broadest and most advanced, cutting edge array of telecommunications and utility services in the most efficient and economical manner possible.

B. Facilities-Based CLEC

In providing telecommunications services, CoServ relies heavily on a facilities network that CoServ itself has deployed. For instance, CoServ owns and maintain two Class Five telephone switches in Texas and has itself installed, or had installed, approximately 700 miles of fiber.

C. MTE Focus

An important element of CoServ's business approach is the desire to provide services to MTEs, which in most cases are garden- or campus-style apartment communities. In order to more efficiently and effectively serve these communities, CoServ has invested in and now owns and controls the telecommunications infrastructure at around ninety-five MTE properties in Texas.

At most of these properties, CoServ installed (at its own expense) its facilities when the MTEs were built. At the remaining properties, CoServ purchased the existing telecommunications facilities on the properties from the previous owner -- the ILEC. In all cases, CoServ invested, and continues to invest, substantial capital and resources to procure, install, provision, service, maintain, and repair the telecommunications facilities necessary to provide the desired services at MTEs. CoServ recovers this investment principally from revenues derived from services to the tenants of these communities.

II. WHAT IS “COMPENSATED ACCESS?”

Compensated access is a policy adopted by CoServ to directly address and facilitate customer choice at the MTEs it serves. In particular, compensated access is CoServ's policy of allowing other telecommunications carriers to interconnect with and use the network infrastructure that CoServ owns and controls at MTE properties subject to reasonable rates, terms, and conditions.

For instance, if a provider cannot (or chooses not) to install its own service facilities at an MTE, CoServ will let the provider use the facilities that already exist by cross-connecting the service facilities of a requesting provider to CoServ's on-premises MTE network and allowing the provider to use CoServ's MTE facilities to deliver service to a requesting tenant.

When CoServ performs a cross-connect for another provider and allows another provider to use CoServ's facilities, we believe it is appropriate to impose fair and reasonable terms and conditions and obtain fair and reasonable compensation. The primary rate elements of compensated access are (1) a nonrecurring, up-front charge for cross-connects performed by CoServ and (2) a recurring, monthly charge for usage of the on-premises network elements provided by CoServ.

CoServ's choice to adopt a policy of compensated access is driven by real world market forces. CoServ has an ongoing business relationship with and substantial investment in the Texas MTE properties that it serves. In a highly competitive market, CoServ cannot jeopardize these relationships or investments by alienating MTE property owners, leasing staff, or MTE tenants by stifling customer choice.

III. IMPLEMENTATION ROADBLOCKS

A. Carrier Abuse of Compensated Access

For over two years, CoServ has honored MTE tenant requests to obtain telecommunications services from SWBT and Verizon via CoServ's on-premises network facilities. In fact, SWBT is now utilizing CoServ cross-connects and facilities at over fifty properties in Texas to serve MTE customers. In this time, SWBT has refused to pay anything to CoServ for compensated access other than what SWBT has unilaterally determined it wanted to pay (i.e., \$35.00 for cross-connects and \$2.00/month for using CoServ's facilities). In turn, Verizon has ignored CoServ charges and bills for compensated access altogether, paying nothing for the cross-connects and facilities that it receives. The amount that SWBT and Verizon now owes CoServ for compensated access is now in the millions and is still growing.

B. CoServ Implementation Efforts

Since the inception of its compensated access policy, CoServ has made a number of efforts to implement its access policy, but with little to no success.

1. **Commercial Negotiation.** CoServ proposals for rates, terms, and conditions for compensated access have been rejected wholesale in attempts at commercial contract negotiations.
2. **Tariff.** In mid-1998, CoServ placed the rates, terms, and conditions for all Texas carriers seeking compensated access in its tariff on file with the Texas PUC. SWBT and Verizon have refused to honor CoServ's tariff.
3. **Interconnection Dispute.** In 1999, CoServ sought relief at the Texas PUC under its then-current interconnection agreement with SWBT, but was unsuccessful because the agreement did not specifically address compensated access. The Texas PUC invited CoServ to pursue compensated access in CoServ's successor interconnection agreement with SWBT.
4. **Interconnection Negotiation/Arbitration.** In negotiations for a successor agreement initiated with SWBT in 2000, SWBT universally refused to negotiate compensated access. In arbitration, SWBT was able to convince Texas PUC arbitrators (subject to pending reconsideration and PUC approval) to deny jurisdiction over CoServ's compensated access claim based, in part, on a mistaken belief that the FCC's MTE Order actually prohibits an MTE property owner from choosing inside wire demarcation point(s) based on the end of a CLEC's network, instead of an ILEC's network.
5. **State Law PUC Complaint.** CoServ has filed a complaint against SWBT with the Texas PUC under various state law authorities to recover past sums owed CoServ for compensated access. The complaint has been stayed pending final resolution of jurisdictional questions in the interconnection arbitration.

III. IMPLEMENTATION ROADBLOCKS (continued)

C. Summary of Implementation Alternatives

1. **Commercial Contract.** Negotiations ineffective and illusory. SWBT dictates the same cross connect and facilities usage rates (\$35.00 & \$2.00) to all CLECs in Texas without any regard to the fact that it is dealing with different CLECs, different cost structures, different network architectures, and other distinguishing factors.
2. **Interconnection Contract.** ILECs (SWBT) refuse to include compensated access in interconnection agreements. PUC intervention stifled, delayed, and misled by antiquated, misleading, and self-interested ILEC interpretations of current FCC interconnection and inside wire rules and orders.
3. **PUC Enforcement of Tariffs and Other Complaints.** Stifled and delayed by the same jurisdictional questions raised by ILECs in interconnection.
4. **No Implementation.** Eliminates an additional option for carriers to honor customer choice in MTEs. Jeopardizes CLEC relationships with MTE owners, leasing agents, and tenants, which, in turn, jeopardizes existing facilities investment decisions and erodes market incentives to deploy at future MTEs.
5. **Court Enforcement.** Significant increases in cost and delay. Potential questions about primary jurisdiction between a court and the PUC. Relative lack of subject matter expertise. ILEC resource advantages become more pronounced.

IV. POLICY CONSIDERATIONS

- A. Compensated access is a market-driven solution to providing customer choice at MTE properties.
 - 1. To maintain the valuable business relationships that CLEC enter into with MTE property owners, leasing agents, and tenants, CLECs have an inherent incentive to honor customer and MTE property owner choice in an efficient and reasonable manner.
- B. Compensated access reflects longstanding, straightforward, and common sense economic principles and telecommunications law regarding fair and reasonable compensation for use of another's services and facilities.
- C. The absence of any means to competitively and effectively implement compensated access jeopardizes:
 - 1. Existing CLEC facilities investment and customer relationships;
 - 2. Incentives for future CLEC deployment of facilities; and
 - 3. An important and demonstrably viable niche market for CLECs.
- D. The absence of any means to competitively and effectively implement compensated access perpetuates ILEC advantage and market power by forcing CLECs to effectively subsidize ILEC local service at MTE properties.

V. FCC SUPPORT

The FCC Building Access Proceeding provides a unique and appropriate vehicle in which the FCC can provide necessary policy and enforcement relief for compensated access. Some of the measures that the FCC can take toward facilitating the effective implementation and realization of compensated access are:

- A. A determination that compensated access is appropriate.
- B. Swift and effective FCC enforcement mechanisms.
- C. Clarification of existing inside wire and MTE orders that a CLEC can, subject to the choice of the MTE property owner, control the facilities on an MTE property and that such facilities are, therefore, not inside wire.
- D. A determination that the FCC and/or state PUCs have authority to arbitrate or otherwise resolve disputes over the rates, terms, and conditions for compensated access.

DOCKET NO. 23396

JOINT PETITION OF COSERV, L.L.C.)
d/b/a COSERV COMMUNICATIONS)
AND MULTITECHNOLOGY)
SERVICES, L.P. d/b/a COSERV)
BROADBAND SERVICES) BEFORE THE
FOR ARBITRATION OF) PUBLIC UTILITY COMMISSION
INTERCONNECTION RATES,) OF TEXAS
TERMS, CONDITIONS, AND)
RELATED ARRANGEMENTS)
WITH SOUTHWESTERN BELL)
TELEPHONE COMPANY)

**DIRECT TESTIMONY OF
TERRY FALLS
ON BEHALF OF COSERV**

1 Q. Please state your name and business address.

2 A. My name is Terry Falls. My business address is 7701 South Stemmons, Corinth, Texas
3 75065.

4 Q. Who is your employer and what is your position with the company?

5 A. I am currently the Director of Network Planning and Engineering for CoServ, L.L.C., one
6 of the joint petitioners in this proceeding. Before assuming my position with CoServ,
7 L.L.C., I was the Director of Network Engineering at Cable Plus.

8 Q. What is the purpose of your testimony?

9 A. The purpose of my testimony is to inform the arbitrator and the Commission about
10 CoServ, as well as the factual background and actual physical processes and facilities
11 involved in what CoServ calls "compensated access." Although a number of legal,
12 policy, and cost issues relate to the facts I will be testifying to, I am a network engineer
13 by background and will defer any of the legal, policy, or cost implications of the facts I
14 am providing to counsel and/or CoServ's designated experts in this proceeding.

1 **Q. Is your testimony submitted on behalf of both of the joint petitioners in this**
2 **proceeding?**

3 A. Yes. CoServ, L.L.C. and MultiTechnology Services, L.P., the joint petitioners in this
4 proceeding, are under common ownership and have similar interests. As such, I am
5 familiar with, involved in, and capable of testifying to the network facilities and activities
6 of my employer, CoServ, L.L.C., as well as its sister company, MultiTechnology
7 Services, L.P.

8 **Q. Please describe who CoServ is and its background?**

9 A. CoServ was started in this State in 1937, as the Denton County Electrical Cooperative,
10 serving smaller and often underserved communities in the State. While CoServ has
11 grown to have some limited interests outside the State, its headquarters and the vast
12 majority of its facilities and operations are located in Texas.

13 **Q. What services does CoServ now provide?**

14 A. As noted above, CoServ started as a small, electric power company. Over the years,
15 CoServ has added a number of new services to the suite of services it provides to its
16 customers. These services have, in addition to electricity, included natural gas, security,
17 cable television, civil engineering and construction, telephone, and Internet access
18 services. In this regard, CoServ often acts as a “bundled” service provider to its
19 customers, an approach we believe has been recognized and encouraged by industry
20 experts as the wave of the future for the delivery of such services. Our general approach
21 is to offer a rich and robust advanced fiber based connection to customers so that we can
22 offer the broadest and most advanced, cutting edge array of telecommunications and
23 utility services in the most efficient and economical manner possible.

1 **Q. Is CoServ a certified telecommunications utility in the state of Texas?**

2 A. Yes. Both CoServ, L.L.C. (Docket Nos. 17262 & 19206) and MultiTechnology Services,
3 L.P. (Docket No. 21842) are certified telecommunications utilities.

4 **Q. Is CoServ a facilities-based telecommunications provider?**

5 A. Yes. We own and maintain two Class Five telephone switches in the State. We
6 compliment those facilities with transport and loop facilities obtained from a variety of
7 sources, as well as fiber connections that we have procured and installed ourselves.
8 Indeed, CoServ itself has installed, or had installed, approximately 700 miles of fiber.

9 An additional portion of our network that is particularly relevant in this
10 proceeding is the telecommunications facilities and equipment that we have installed
11 and/or purchased, own, and maintain at multi-tenant environments (“MTEs”). An
12 important element of our business approach is the desire to provide services to MTEs,
13 which in most cases are garden- or campus-style apartment communities. In order to
14 more efficiently and effectively serve these communities, CoServ has invested in and
15 now owns and controls the telecommunications infrastructure at around ninety-five MTE
16 properties in Texas. At about 70% of these properties, CoServ installed (at its own
17 expense) its facilities when the MTEs were built. At the remaining properties, CoServ
18 purchased the existing telecommunications facilities on the properties from the previous
19 owner -- the ILEC. In all cases, CoServ invested, and continues to invest, substantial
20 capital and resources to procure, install, provision, service, maintain, and repair the
21 telecommunications facilities necessary to provide the desired services at MTEs. We
22 recover this investment principally from the revenues we derive from services to the
23 tenants of these communities.

1 **Q. Does CoServ seek to offer a competitive alternative to the incumbent providers?**

2 A. Yes. We believe we can offer a true competitive alternative to the incumbents through,
3 among other things, economies of scale based on bundled services, and the provision of a
4 highly modern, fiber based network capable of delivering a truly 21st century suite of
5 advanced telecommunications services. And, to reiterate, we are not seeking simply to
6 resell or otherwise depend wholly on existing telephone networks; rather, CoServ is
7 deploying its own facilities, its own fiber and cabling, and is otherwise making significant
8 investments in the telecommunications infrastructure in the state of Texas.

9 **Q. What is “compensated access?”**

10 A. CoServ is aware that an important concern at the Commission is customer choice at MTE
11 communities. Compensated access is a policy adopted by CoServ to directly address and
12 facilitate customer choice at the MTEs it serves.

13 Like the Commission, CoServ recognizes that sometimes tenants in MTE
14 properties wired with CoServ facilities will choose providers other than CoServ for their
15 telecommunications service. It is my general understanding that, under Texas law and
16 Commission rules, if the alternative provider chosen by a tenant wishes to install its own
17 facilities at an MTE to serve a customer, it may do so, subject to making proper
18 arrangements. Compensated access provides other carriers with an option above and
19 beyond what Texas law and Commission rules require. In short, compensated access is
20 CoServ’s policy of allowing other telecommunications carriers to interconnect with and
21 use the network infrastructure that CoServ owns and controls at MTE properties subject
22 to reasonable rates, terms, and conditions. Put another way, if a provider does not wish to
23 install its own service facilities, CoServ will let the provider use the facilities that already

1 exist by cross-connecting the service facilities of a requesting provider to CoServ's on-
2 premises MTE network and allowing the provider to use CoServ's MTE facilities to
3 deliver service to a requesting tenant.

4 When CoServ performs a cross-connect for another provider and allows another
5 provider to use CoServ's facilities, we believe it is appropriate to impose fair and
6 reasonable terms and conditions and obtain fair and reasonable compensation. Although
7 I am not an attorney, and defer to counsel for legal interpretations, we believe that
8 fundamental elements of fairness and property rights dictate that when some other party
9 is the beneficiary of a requested service and uses property that we have paid for and
10 maintain, we should be fairly and reasonably compensated. We, of course, are fully
11 expected to abide by rates, terms and conditions and pay reasonable compensation when
12 we obtain cross-connects from and use the facilities of other carriers, including SWBT.
13 Naturally, we have a reasonable expectation that we can and should expect the same
14 when another carrier obtains cross-connects and uses facilities that CoServ owns and
15 controls.

16 **Q. What do you mean when you say "facilities that CoServ owns and controls?"**

17 A. By "owns," I mean facilities that CoServ either purchased and installed itself or
18 purchased from the previous owner and now keeps on its books and records as
19 depreciable and valuable assets. By "controls," I mean, among other things, that CoServ
20 is wholly responsible for, maintains, and repairs the facilities at its own expense.

21 **Q. What specific facilities are involved in a SWBT request for compensated access?**

22 A. The network architecture involved in a SWBT request for compensated access can be
23 described fairly simply by beginning at the property line of a typical CoServ MTE

1 premise and tracking the network facilities inward all the way to a tenant's telephone
2 handset. In addition to the verbal description of these facilities, I have provided a
3 diagram and photographs corresponding to and referenced in my testimony that are
4 attached as Exhibit TF-1 (diagram) and Exhibit TF-2 (photographs).

5 Starting at the property line, SWBT enters a CoServ MTE property via a cable
6 that runs to a central telephone equipment room on the property ("Telephone Equipment
7 Room"). The Telephone Equipment Room is typically controlled and maintained by
8 CoServ, including responsibility for power and HVAC. To accommodate tenant requests
9 for SWBT service, CoServ has divided the room (typically by erecting a wall) and
10 provided a separate entrance to a portion of the room in which SWBT may place
11 necessary access equipment (See Exhibit TF-2, Slide 1).

12 SWBT's entrance cable typically runs from the MTE property line to SWBT-
13 provided protectors ("SWBT Protectors") located in SWBT's portion of the Telephone
14 Equipment Room. From the SWBT Protectors, the circuit runs to a SWBT-provided
15 frame ("SWBT Frame"), which also is located in SWBT's portion of the Telephone
16 Equipment Room. SWBT typically owns and controls its entrance cable, the SWBT
17 Protectors, and the SWBT Frame (See Exhibit TF-2, Slide 2).

18 From the SWBT Frame, cables are run through the wall dividing SWBT's portion
19 of the Telephone Equipment Room from the rest of the room to another frame ("Cross-
20 Connect Frame"). The cables running between the SWBT Frame and the Cross-Connect
21 Frame are hardwired to corresponding "jack and pin" assignments on each frame, and
22 were provided by CoServ when the SWBT Frame and Cross-Connect Frame were

1 established or were, in the case of the Cross-Connect Frame, purchased by CoServ (See
2 Exhibit TF-2, Slides 3 & 4).

3 **Q. So, CoServ owns the cabling between the SWBT Frame and the Cross-Connect**
4 **Frame?**

5 A. Yes.

6 **Q. Who owns and controls the Cross-Connect Frame?**

7 A. CoServ.

8 **Q. What happens after we reach the Cross-Connect Frame?**

9 A. In order to fulfill a SWBT request for access, a CoServ technician is dispatched to
10 manually run a cross-connect from the Cross-Connect Frame to a third frame. This third
11 frame is often referred to as a main distributing frame or "MDF" and is also located in
12 CoServ's portion of the equipment room (See Exhibit TF-2, Slide 5). CoServ must
13 generally perform a separate cross-connect for each line and customer to which SWBT
14 seeks to provide service.

15 **Q. Who owns and controls the cross-connect cabling that CoServ runs from the Cross-**
16 **Connect Frame to the MDF?**

17 A. CoServ.

18 **Q. Who owns and controls the MDF?**

19 A. CoServ.

20 **Q. What facilities are involved after the MDF?**

21 A. From the MDF, established cabling runs to a building entrance terminal or "BET" on
22 each building on the MTE premises. Once a requested cross-connect is manually placed
23 by a CoServ technician, SWBT's dial tone will be routed through the MDF to the specific

1 BET on the building where the tenant requesting SWBT service resides (See Exhibit TF-
2 2, Slides 6 & 7).

3 **Q. Who owns and controls the existing cabling from the MDF to the BETs?**

4 A. CoServ.

5 **Q. Who owns and controls the BETs on each building?**

6 A. CoServ.

7 **Q. What facilities follow once we reach the BET?**

8 A. From the BET on the particular building where SWBT's new customer resides, cabling
9 runs to a junction box ("Unit Junction Box") located in each of the individual units (e.g.,
10 apartments) of the building. By virtue of the CoServ-provided cross-connect that I
11 described earlier, SWBT's dial tone will run from the BET to the Unit Junction Box in
12 the individual unit of the MTE tenant requesting SWBT's service (See Exhibit TF-2,
13 Slide 8).

14 **Q. Who owns and controls the cabling between BETs and the Unit Junction Box in
15 each individual unit at an MTE?**

16 A. CoServ.

17 **Q. What facilities follow once we reach the Unit Junction Box in each unit?**

18 A. From the Unit Junction Box in the new SWBT customer's individual unit, wiring runs to
19 each individual telephone jack in the unit, allowing SWBT's new customer to receive
20 SWBT dial tone through his or her traditional telephone handset or other equipment that
21 is plugged into the jack.

1 **Q. Who typically owns and controls the wiring from the Unit Junction Box in each**
2 **MTE unit to each telephone jack within those units?**

3 A. CoServ.

4 **Q. Who typically owns and controls the telephone jacks in each MTE unit?**

5 A. CoServ.

6 **Q. Does CoServ impose any separate charge on an end user for maintaining or**
7 **repairing any of the facilities listed above that CoServ owns and controls?**

8 A. Not to my knowledge.

9 **Q. Does CoServ typically own or control any telecommunications facilities beyond the**
10 **telephone jack in each MTE unit?**

11 A. No. CoServ's ownership and control typically ends at the telephone jack in each CoServ
12 MTE unit. The end user customer owns and controls any telecommunications equipment,
13 wiring, or facilities beyond that point.

14 **Q. So, in summary, what facilities in the network architecture at CoServ MTEs does**
15 **CoServ own and control?**

16 A. CoServ owns and controls (*e.g.*, is responsible for, maintains, and repairs) the facilities
17 from the cables connecting the SWBT Frame to the Cross-Connect Frame all the way to
18 the telephone jack in each individual MTE unit. In particular, CoServ owns and controls
19 the cables connecting the SWBT Frame to the Cross-Connect Frame, the Cross-Connect
20 Frame, the cables used to perform the cross-connect between the Cross-Connect Frame
21 and the MDF, the MDF, the inter-building cabling from the MDF to the BETs, the BETs,
22 the intra-building cabling from the BETs to the Unit Junction Box in each MTE unit, the
23 intra-unit cabling from the Unit Junction Box in each MTE unit to the telephone jacks in

1 each unit, and the telephone jacks in each unit. These are all facilities that CoServ either
2 installed itself or purchased from the previous owner (i.e., the ILEC) and maintains and
3 repairs at no separate charge to the end user tenant.

4 **Q. Does the MTE property owner or “landlord” own or control any of the facilities**
5 **identified in the previous question at MTE properties subject to compensated**
6 **access?**

7 A. No.

8 **Q. Is there ever a point at CoServ MTE properties where facilities owned or controlled**
9 **by SWBT physically intersect with facilities owned or controlled by an end user**
10 **customer or an MTE property owner?**

11 A. No. SWBT facilities and end user customer or MTE property owner facilities are always
12 separated by CoServ’s facilities at these properties.

13 **Q. How does compensated access fit into this proceeding?**

14 A. CoServ’s compensated access policy is currently reflected in its tariff on file with the
15 Commission. CoServ developed and filed its rates, terms, and conditions for
16 compensated access in its tariff in order to implement compensated access in a reasonable
17 and nondiscriminatory manner. CoServ now wants to incorporate the rates, terms, and
18 conditions for compensated access contained in its tariff, or similar terms, into its
19 interconnection agreement with SWBT. As an initial matter, it just makes sense to
20 include the rates, terms, and conditions for SWBT’s interconnection with and use of
21 CoServ’s network in the same agreement that covers the rates, terms, and conditions for
22 CoServ’s interconnection with and use of SWBT’s network. On an even more practical

1 level, however, CoServ's request is fueled by a desire to stop SWBT's current and long-
2 standing abuse of CoServ's compensated access policy.

3 **Q. How has SWBT abused compensated access?**

4 A. For over two years, SWBT has been ordering cross-connects and using CoServ's MTE
5 facilities to serve customers, but has refused to pay CoServ's tariffed rates for this access.
6 Since CoServ's tariff was filed in August 1998, CoServ has invoiced and demanded from
7 SWBT \$57.07 per cross-connect performed by CoServ and \$6.21 a line per month for use
8 of CoServ's facilities consistent with the rates in CoServ's tariff. These rates were fair
9 and reasonable in our view based upon a number of factors, including, among others,
10 their relationship to SWBT's cost for equivalent services and facilities and their
11 relationship to our own documented costs. Of course, I am not a cost expert in this
12 proceeding, and I would defer to CoServ's designated expert, Mr. Don Wood, for all
13 policy and other questions relating to costs and cost studies.

14 Despite CoServ's demands for payment, SWBT has ignored CoServ's tariffed
15 rates and itself decided what it was going to pay: \$35.00 per cross-connect and \$2.00 a
16 line per month for use of CoServ's facilities.

17 **Q. What kind of financial implications does this abuse have on CoServ?**

18 A. SWBT now has cross-connects established and is using CoServ's facilities at
19 approximately fifty-eight MTE properties in Texas, and the deficit between what SWBT
20 is paying and the full amount due under CoServ's tariff is approximately \$3.4 million and
21 growing.

1 **Q. Why does CoServ continue to provide cross-connects and allow SWBT to use**
2 **CoServ's MTE facilities if SWBT is not fully compensating CoServ for such access?**

3 A. CoServ realizes that discontinuing or refusing cross-connects has implications for more
4 than just the delinquent carrier. By discontinuing or refusing cross-connects, CoServ will
5 necessarily be disturbing an MTE tenant's telephone service and choice of
6 telecommunications providers. CoServ has an ongoing business relationship with and
7 substantial investment in the Texas MTE properties that it serves. In a highly competitive
8 market, CoServ cannot jeopardize these relationships or investments by alienating MTE
9 property owners, leasing staff, or MTE tenants that will tend only to see CoServ
10 switching their SWBT service, not SWBT failing to pay its bills.

11 **Q. Why is it important for compensated access to be included in CoServ's**
12 **interconnection agreement with SWBT?**

13 A. For over two years, SWBT has been dodging its responsibility to fully and fairly
14 compensate CoServ for interconnecting with and using CoServ's MTE facilities. For
15 these past sums due, CoServ has been forced to file a complaint in Docket No. 23397.
16 On a going-forward basis, however, an interconnection agreement creates a much clearer
17 obligation for SWBT with expedited post-interconnection dispute remedies at CoServ's
18 disposal, if necessary. With compensated access, SWBT is acutely aware of its dominant
19 market position and CoServ's catch-22 situation in refusing cross-connects. With this
20 knowledge it continues to generate revenue over CoServ facility investments, brazenly
21 paying only what it wants to, not what is charged. Interconnection agreements were
22 created as a tool to eliminate an age where ILECs with dominant market power could
23 unilaterally dictate the terms upon which they deal with other providers. CoServ believes

1 that its interconnection agreement can and should be used in just such a manner to stop
2 SWBT's abuse of compensated access.

3 **Q. What would the impact on CoServ be if this Commission determined that it did not**
4 **have jurisdiction over the wire and facilities CoServ has installed on its MTE**
5 **properties and therefore could not require SWBT to pay for compensated access?**

6 A. I leave to counsel the legal issues associated with this question, but will address from a
7 factual perspective how CoServ would view the situation. We would presumably be left
8 with our only alternative of going to court. Such a result would be extremely detrimental
9 to CoServ and would negatively impact CoServ's ability to compete and willingness to
10 make new investments in future MTE facilities in Texas. First, court litigation is
11 burdensome, expensive, and time consuming. These impacts are much easier to bear by a
12 large multi-billion dollar carrier like SWBT than by a smaller competitive company like
13 ours. Second, a court does not have the subject matter expertise and familiarity with the
14 issues that this Commission does. In fact, I believe that some courts, when presented
15 with questions focusing on telecommunications issues and concepts, try to defer those
16 questions back to the public utility commission under the theory that the commission has
17 the appropriate expertise to determine such issues. Third, it would just strike me as
18 inconsistent that we would be held accountable for ensuring that our plant and facilities
19 meet Commission standards and requirements, but that we could not enforce the terms
20 and conditions for use of such plant at the Commission.

1 **Q. What would happen if CoServ is denied appropriate compensation for the use of all,**
2 **or a portion, of the facilities it provides?**

3 A. It would plainly impact our revenue streams and, in turn, make it much harder in the
4 future to economically justify making the investments in the first place. We would be in
5 the position of carrying our competitors' traffic on terms and conditions not of our own
6 choosing, but, rather, unilaterally dictated by the very competitors who are now enjoying
7 the revenue streams from the end user customer. Suffice it to say that these scenarios
8 would discourage CoServ's ability to continue to offer a competitive alternative to the
9 incumbent, and to continue to make the investments in modern plant and facilities, for
10 this important Texas MTE marketplace.

11 **Q. In short, what is CoServ asking from the Commission with regard to compensated**
12 **access?**

13 A. In essence, and without limiting any of CoServ's previous representations, CoServ
14 requests that the Commission approve and establish in CoServ's interconnection
15 agreement with SWBT reasonable rates, terms, and conditions for compensated access.

16 **Q. Does this conclude your testimony?**

17 A. Yes.

Docket No. 23396

Direct Testimony of Terry Falls

EXHIBIT TF-1

Docket No. 23396

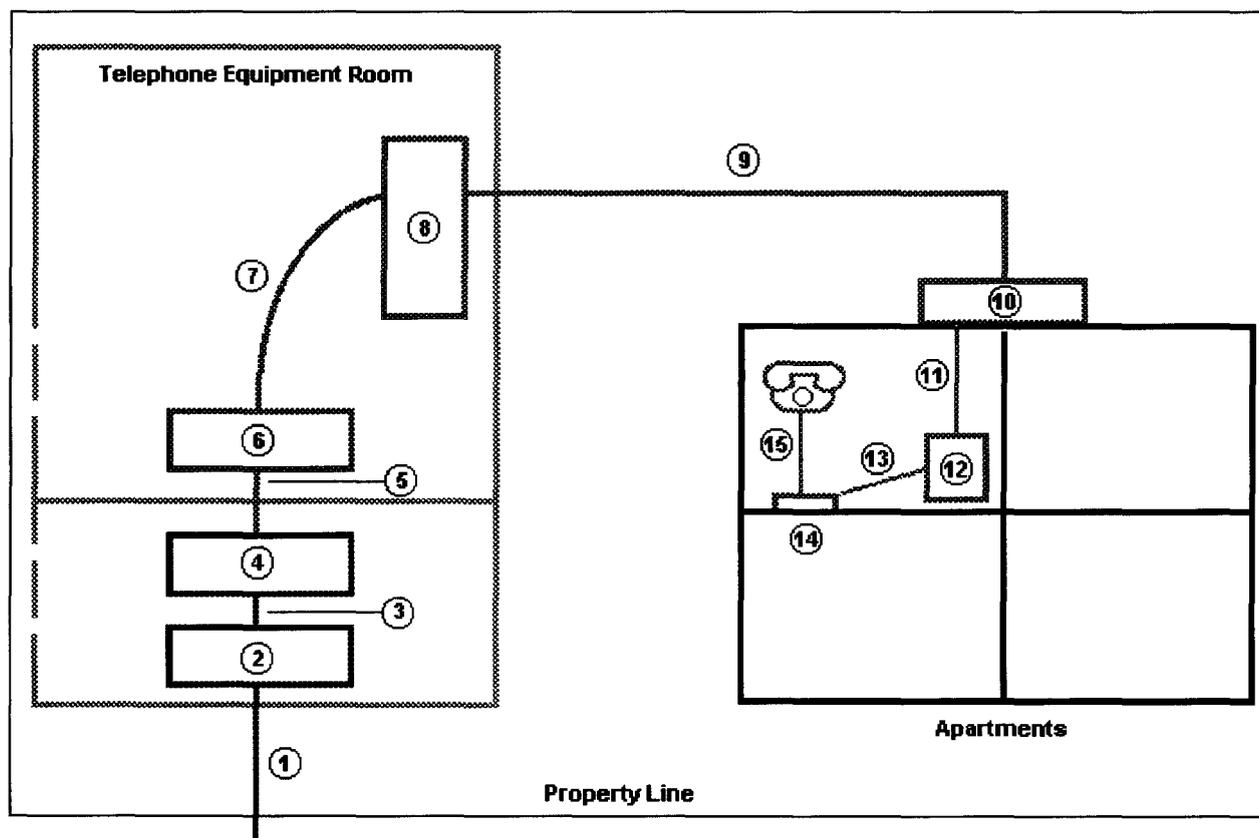
Direct Testimony of Terry Falls

EXHIBIT TF-2

The facilities pictured in Exhibit TF-2 are located at the Wimberly apartment community at 4141 Horizon North Parkway, Dallas, Texas 75287.

COMPENSATED ACCESS NETWORK DIAGRAM

Docket No. 23396
 Direct Testimony of Terry Falls
 Exhibit TF-1



- | | | |
|--------------------|-------------------------|---------------------------------|
| 1. Entrance Cable | 6. Cross-Connect Frame | 11. Intra-building Cable |
| 2. SWBT Protectors | 7. Cross-Connect(s) | 12. Unit Junction Box |
| 3. Cable | 8. MDF | 13. Intra-unit Cable |
| 4. SWBT Frame | 9. Inter-building Cable | 14. Telephone Jack |
| 5. Cable | 10. BET | 15. Customer Premises Equipment |

■ SWBT Facilities

■ CoServ Facilities

■ End User Facilities

**SLIDE 1
TELEPHONE EQUIPMENT ROOM**



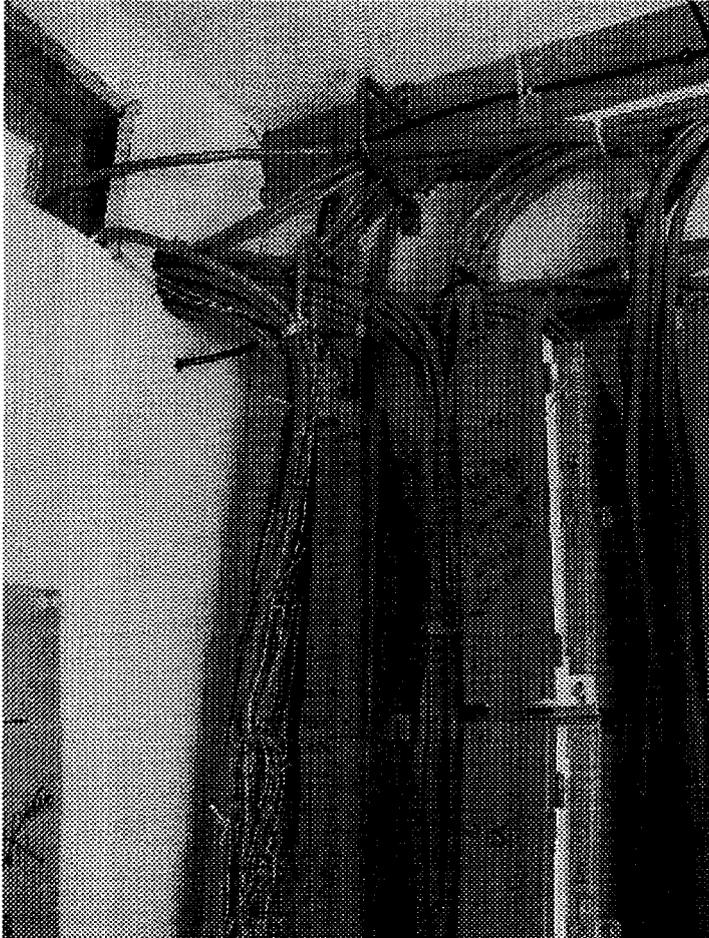
The separate entrance to CoServ's portion of the Telephone Equipment Room is located on the left side of the photo. The separate entrance to SWBT's portion of the Telephone Equipment Room is located on the right side of the photo.

**SLIDE 2
SWBT PORTION OF THE TELEPHONE EQUIPMENT ROOM**



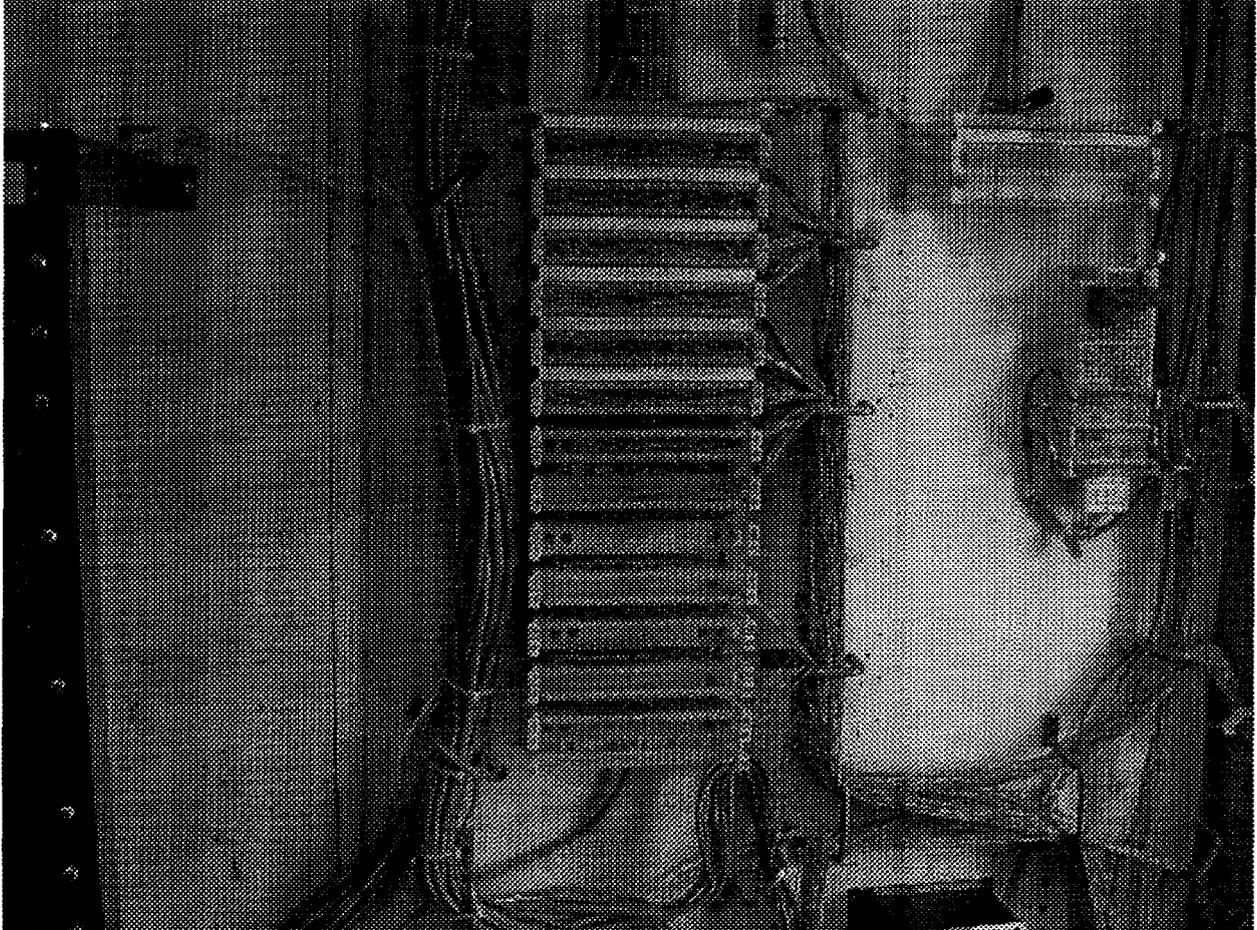
The SWBT Protectors are the green cabinets on the right side of the photo. The SWBT Frame is made up of the orange blocks on the left side of the photo.

SLIDE 3
CABLES BETWEEN THE SWBT FRAME AND THE CROSS CONNECT FRAME



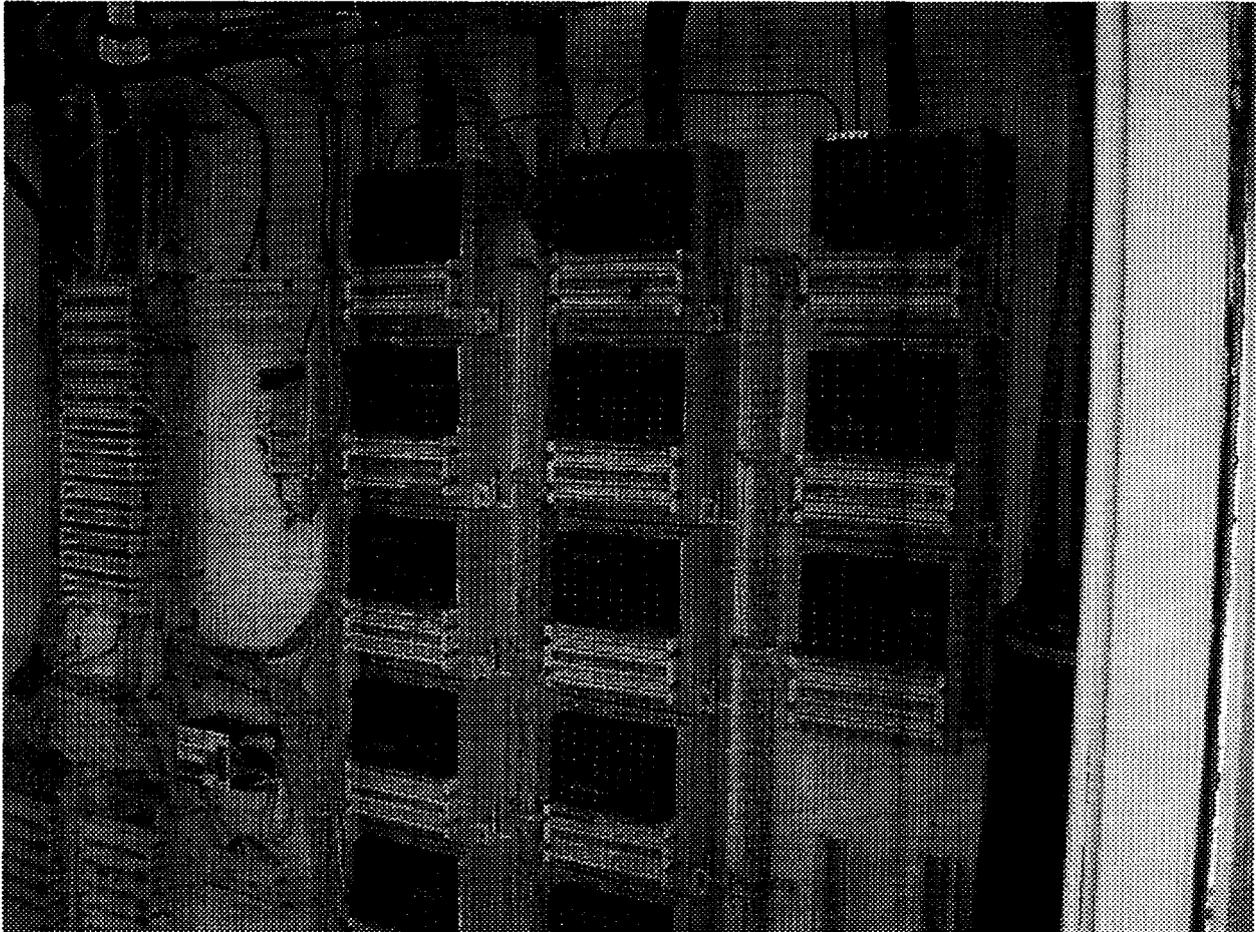
The grey cables running into the wall in the upper left-hand corner of the photo connect the SWBT Frame (pictured) and the Cross-Connect Frame in CoServ's portion of the Telephone Equipment Room. This photo is a magnification of the upper left-hand corner of Slide 2.

**SLIDE 4
CROSS-CONNECT FRAME**



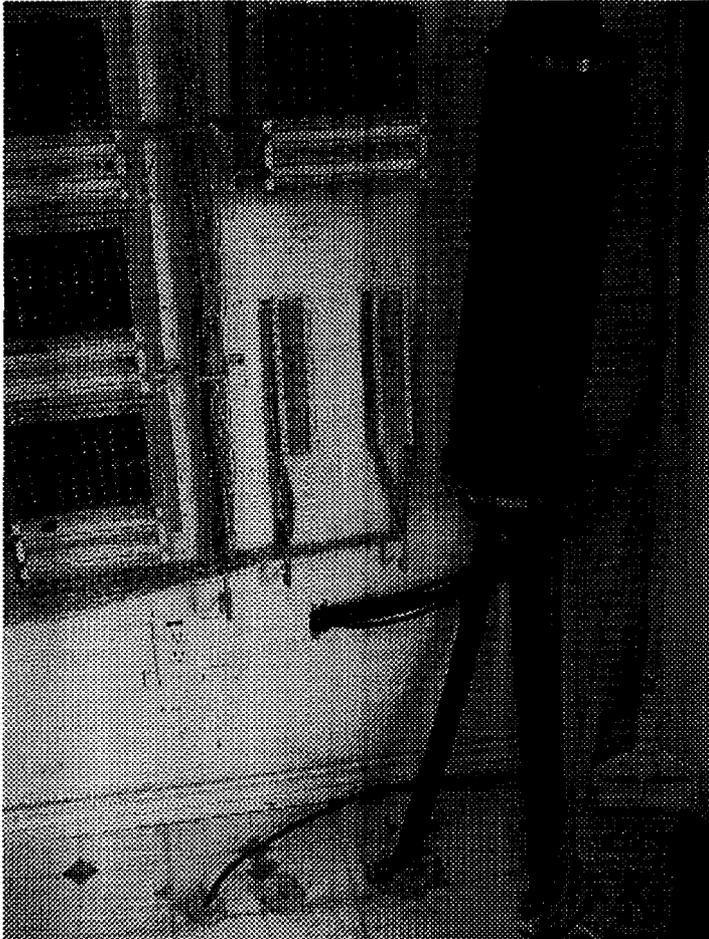
The grey cabling in Slide 4 is connected to the Cross-Connect Frame (pictured above) located in CoServ's portion of the Telephone Equipment Room.

**SLIDE 5
CROSS-CONNECT FRAME & MDF**



The Cross-Connect Frame pictured in Slide 4 is on the left side of the above photo. The MDF is made up of the black-faced terminals on the right side of the photo. The green wiring running from the Cross-Connect Frame to the MDF is the wiring used by CoServ to provide SWBT cross-connects.

**SLIDE 6
CABLING BETWEEN MDF AND BETs**



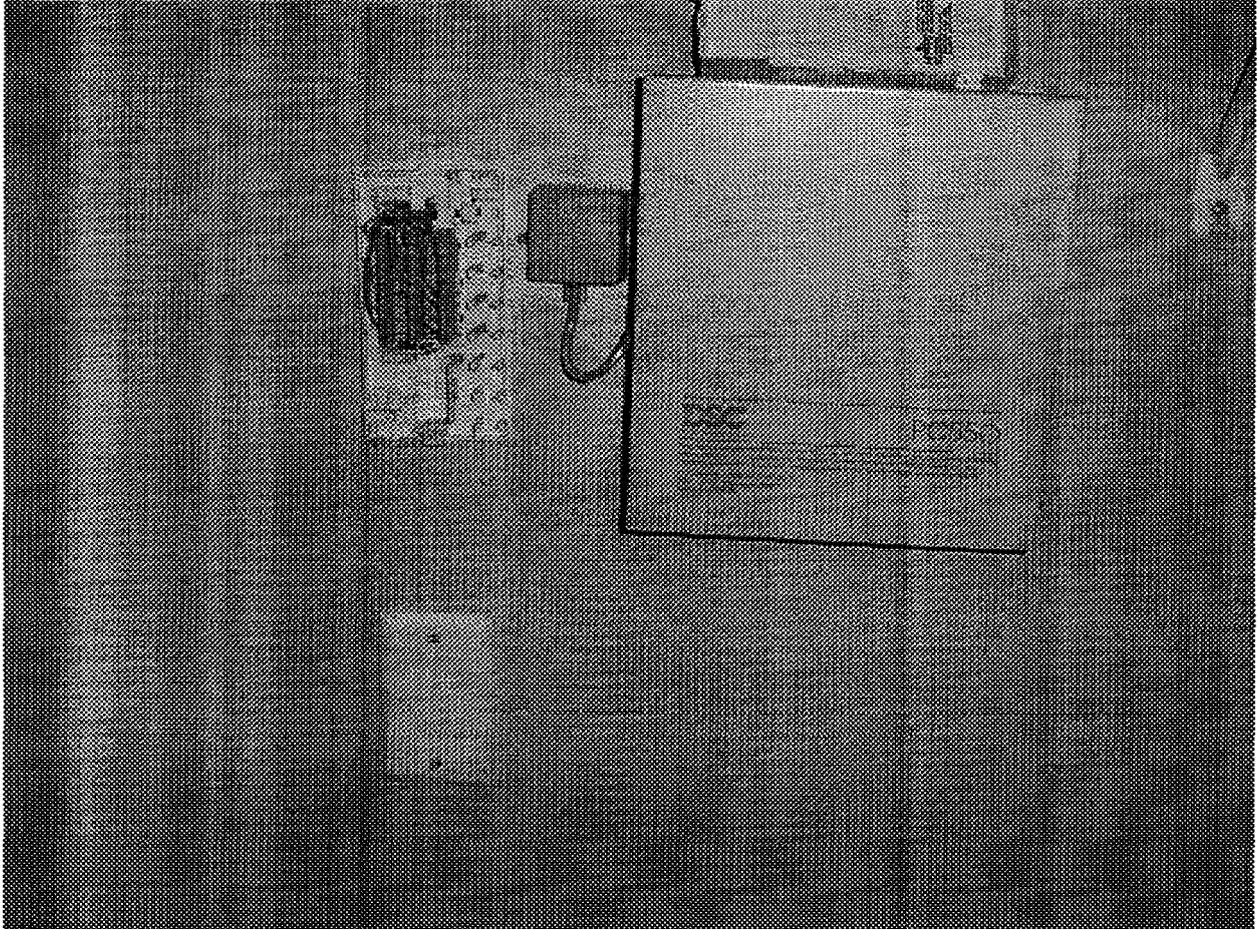
The thick, black cabling on the right side of the photo is the beginning of the cabling running from the MDF in CoServ's portion of the Telephone Equipment Room to the BET on each building at a property.

**SLIDE 7
BET**



The cabling from the MDF connects to a BET (pictured above) on each building at a property.

SLIDE 8
UNIT JUNCTION BOX



Cable from a BET is connected to the Unit Junction Box (pictured above on the left) in each individual unit in a building. Wiring from the Unit Junction Box is then run to each individual telephone jack in the unit.