BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

PROJECT NO. 980000B-SP

In the Matter of:
Issue Identification Workshop for Undocketed special Project: Access by Telecommunications Companies to Customers in Multi-tenant Environments:

PROCEEDINGS: SPECIAL PROJECTS WORKSHOP

CONDUCTED BY: CATHERINE BEDELL
Staff Attorney

DATE: Wednesday, August 12, 1998

TIME: COMMENCED AT 9:30 A.M.
CONCLUDED AT 3:30 P.M.

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P R O C E E D I N G S

MR. HOPPE: Good morning. We would like to go ahead and call the meeting to order now. I want to welcome everyone here to the second workshop on Project Number 980000B-S, which is the access by telecommunications companies to customers in multi-tenant environments. Today we are going to discuss positions of the interested parties. Each party will be able to give a roughly 15-minute presentation of their position, and then later on we'll have some discussion of those positions.

Some housekeeping I wanted to take care of before we get started, there is a sign-up sheet over on the right-hand side of the room over there. If you all would sign up, and please print so that we can tell who is here and who is not.

There is also four handouts that people should have that we'll be working from today. One handout is the agenda.

The second handout is a listing of the parties as far as when they will be giving their presentations. I understand that some people are switching positions. That's fine. We'll deal with that when we get to there. And I also understand that certain different people might be giving presentations that are listed on the second

sheet, and I understand that will be happening too.

The third handout that we have is just a review summary of the issues, just so everyone is clear as to what the issues are, for people who might not have filed and are just coming for the first time, might need to know what issues we are talking about.

And the fourth handout is a brief presentation that will be given my Rick Moses on our demarcation rule, just for a brief review for every one. So those are the four handouts we'll be working from.

I want to also take this opportunity to thank all the parties who filed. We were really -- I want to compliment you all on your responsiveness to our issues. We got a lot of good information, and I would hope that you would continue to give us that type of information throughout this process. You all filed very timely. I think there was only one party who filed late, and I just want to thank you all for getting us the information as quickly as possible.

I do want to apologize for the fact that our home page was down for a while. Some of you probably tried to access our home page. Our system crashed about two weeks ago, and then last week the server got hit with lightening, so it was down two different times. I do want to apologize, so any people who tried to get access through

the home page might not have been able to do so.

Today we have overhead equipment for anybody who might want to give -- have overheads for their presentation, so we do have an overhead projector with a screen. We also have a court reporter, so anybody who wants copies of the transcripts, please get with the court reporter sometime today.

I guess that's about all I really have to say right now. I'll be turning it over to Cathy. Rick will be giving a brief presentation in the introduction, and I guess I'll turn it over to Cathy now.

MS. BEDELL: Well, I was going to turn it over to Rick. I did want to tell you all that, when Rick is finished, you're certainly free to ask him any questions that you would like, but we need you to come up to the mike and identify yourselves if you do that. And you are also free, when we talk about what we are going to do for the next round, that we'll include your filing rebuttal comments to things you've heard today. That would also include any rebuttal that you might like to file in response to Mr. Moses's presentation. We are offering this because we just thought that it would be useful to clarify the difference between the federal MPOE and the Florida demarcation point rule and the reasons for that difference. I turn it over to Rick.

MR. MOSES: Good morning everyone. I just wanted to go through some of the different scenarios that we have got as far as our rules and show you where the differences are between the Florida PSC's rules and the Federal Communications rules. I know this first one doesn't really relate to the job at hand as far as multi-tenant, but I thought I would go through the entire rule just to give you our interpretation of it.

On a single unit, which would be similar to your house or a townhouse or something of that nature, our rules and the FCC are very similar. The FCC says it's going to be within 12 inches of the protector or the minimum point of entry. The PSC rules is at the nearest physical point that you can demarc on the property, which can -- usually is normally the outside protector on the outside of the house, so we don't have a conflict with the FCC in that regard.

Then we get into the area of the multi-tenant environment. This one is without common equipment, and what we mean by common equipment is a CPU of a key system or a PBX system where there is common equipment that is serving all of the tenants in that particular area. The FCC has left the decision up to the multi-premises owner, which would be the property owner or the building landlord, that they can select where they want the demarcation point

as a single point or they can have it as a multi-point; and it will be within 12 inches of where the wiring enters the customer's premises. In that instance the FCC has determined that the customer would be the property owner, the way they have interpreted that.

Our rule, for the common equipment -- or excuse me, this is without common equipment -- that each one of those tenants is a separate customer, and that customer is the customer of the encumbent local exchange company; and I'll be speaking of the incumbent local exchange company in these rules. Therefore, the demarcation point is the hand off between the regulated entity and the customer, which would be inside of each one of those customer's premises; and that's where we have a conflict with the FCC at that point. We don't allow it to be left up to the building owner. It's the customer's right to dedicate where the demarcation point would be as close as possible inside of their premises.

We have less of a conflict with the FCC when we talk about multi-tenant environment with common equipment, such as a PBX or a key system. The FCC has got the same rule as we do without the common equipment. It's the minimum point of entry. The PSC's rules require that the demarcation point be located within 25 feet and in the same room as the common equipment. The reason for that is there

has been situations where the demarc was dumped off at, say, the outside of the building or in an equipment room where the common equipment wasn't located, and say you are 15 floors up and that is where your CPU is or your PBX, there was a big gap between the service; and there was no way of getting it up there in some instances, so we wanted to make sure that the local exchange companies were held responsible to make sure that that wire and the service was delivered to the customer and not the building owner.

And on the shared tenant, we have recently, I think about a year or maybe two years ago now, time is kind of escaping me, we had rulemaking on it where we did some clarification; and this is the one area where our rules actually address compensation of the wire that is used by someone other than the local exchange company. In other words, on the shared tenants, your demarcation point is the same as that multi-tenant with the common equipment, except for if one of these tenants elects to opt out of the shared tenant environment. Now your demarcation changes. It goes back up to that tenant's property, and that's where we conflict with the FCC again in that area.

In the shared tenant rules we have a compensation clause in there that says that if the wire meets the National Electric Safety Standards and it is telephonic wire, then the local exchange company is required to use

that wire and pay compensation at a rate no higher than what it would have cost for them to put in their own services. So we do have a precedent as far as compensation on these issues.

Is there anyone that has got any questions on this? I'm sure someone has.

(NO RESPONSE)

MR. MOSES: I wouldn't have expected this. Okay. Thank you.

MR. CUTTING: We'll begin the presentations. You'll notice that people were asking why the order came out the way it did. These are the way they were received in our records department. So for the gentleman who said, We arrived here at 4:25 in the afternoon. We can't believe we're possibly so high on the list. Obviously you may have been the last one in the door but the first on the top of the pile when records documented them and put your document number on them. So there is no preferential treatment as to how the list was derived.

But I do understand that Time Warner and Teligent wanted to reverse, and apparently Teligent is ready to go first. Please identify who you are. And everyone will be limited to 15 minutes, and I'm going to be a pretty strict gatekeeper about that. Following each presentation, if there are some brief clarifying questions only, we'll be

glad to take those. In the event there is time left over in the rest of the afternoon following the presentations, we'll certainly get into more indepth discussions. But if it's strictly a clarification question, please feel free to ask that once the 15 minutes is over. So Teligent, if you would like to go first, feel free.

MS. DANIEL: Please introduce yourselves, and if you need the hand held mike, we have that.

MR. Mince: Good morning. My name is Mike Mince, and I'm here with my colleague Stuart Kupinsky. We are in-house attorneys with Teligent. My area is real estate and Stuart's is regulatory. We are going to tag team our presentation this morning. I'm going to talk a bit about Teligent and also the issues we face in giving tenants choice in carrier, and Stuart is going to talk about possible solutions.

To let you understand our vantage point regarding these issues, let me tell you about Teligent for just a moment. We are a competitive local exchange carrier, like Southwestern Bell or MFS. We complete the call from the long distance provider to the end user and can deliver a full array of local, long distance, video, data or Internet services. We are high speed, high band width and highly reliable, just like fiber providers, but we are wireless.

Wireless. Is that like PCS or cellular? No, we

are more like MFS or Southwestern Bell. When they collect traffic from the customers and bring it down to their loops in the basement, typically take it underground out to the publicly switched network, we collect the traffic from the customers and bring it up to a 12-inch antenna on the roof and beam it to a node collecting point where it then goes into the publicly switched network. We're the opposite of PCS or cellular. Where their antennas serve mobile users outside the building, our antenna serves only the customers in the building. Because we are wireless, we don't dig up streets or lawns or use public rights of way. We are low impact and low cost.

So what's the problem? The problem is in giving the tenants a choice. Our customers are tenants in commercial office buildings, and to provide service to those customers, to give them choice in the telecom carriers, we have to go through different monopolists: the building owner and the ILEC. In a real sense, the building owner has monopoly power over the tenant's choice of carrier. Some building owners and managers fail to permit tenant choice in telecom providers and services. If the owner doesn't permit the competitive carrier to install in the building then the tenant's choice is limited to the incumbent carrier. And the long-term leases that tenants sign prevent their exercising choice. Most leases are

typically ten years in length. And even if they could move, moving is an onerous and unrealistic alternative for most tenants. That is an enormous expense to move from one building to another.

Here is the reality as we see it. Landlords, being good capitalists, would like to charge everyone who uses the building as much as they can get. But every landlord also wants at least basic telephone service for their building, so the incumbent is in every building for free. The landlord can't charge the incumbent because the landlord has no choice, but the competitive carriers, he can charge them because he has a choice. Ironically, once the competitive carrier gets in the building, then the landlord would have a choice because he could charge the incumbent as well.

But here is the result: Even though, typically, the CLEC has a lower cost, lower network cost than the incumbent, if the landlord is only charging the CLEC, then that additional access charge takes away the competitive edge that the CLEC might have available to bring competition to that building and provide the tenant with a choice. The landlords only charge the CLECs, and that discrimination hurts competition and delays bringing competitive choice to Florida's commercial telecom customers.

The ILEC's control of the risers in the wiring furthers that discrimination. The incumbent controls access to the existing riser and house wiring at the MPOE. If access is permitted at all, the ILEC dictates the timing and cost of providing competitive services; and Stuart will speak more about that in a moment. It adds significant cost and disruption if you have to rewire. And what we are talking about here, again, is the service to the customer if we have to -- to the extent that we have to deal with the incumbent in terms of getting connected.

And the last point to notice is that, well, what if we took away that discrimination, what if the landlord was charging both the ILEC and the CLEC. Well, there has to be a reasonableness to it because, remember, the tenants are locked into a long-term lease, often ten years; so if the landlord charges both the ILEC and the CLEC the same fee for access but it's an unreasonably high fee, both of those carriers are going to pass that cost on to the customer who has no choice because he can't move.

And now I'm going to turn it over to Stuart who will discuss some of the potential solutions.

MR. KUPINSKY: I'm going to take a stab at no microphone. Mike is a little bit more soft spoken than I am.

MS. BEDELL: She has got a direct feed. She

needs --

MR. KUPINSKY: Oh, is that right? Well, then okay, I'll use that.

So what is the solution? We believe there is a win solution for all the parties involved. A win for tenants would be something congress has already decided upon, which is, competitive carriers vying to provide the lowest cost and highest quality services. A win for building owners would include a wide latitude to negotiate fair and reasonable terms and conditions for access. But in order to make it a win for carriers, there have to be limitations on that latitude, because a win for carriers would be for the market to send the right economic signals to carriers and to instruct carriers on the basis of the quality and cost of their services. And, you know, those signals have to pass through the lens of a building owner, and where the building owner is not interested in the cost or the quality of the services being provided, they can be attenuated.

So the solution really reduces to two sort of fundamental concepts. The first is nondiscrimination as to both carrier and to technology. Send the right signal. So the tenant should send the signal to the carrier on the basis of cost and quality. And the building owner should not be discriminating on the basis of carrier, and the

tenant should be making a fundamental choice on the basis of technology.

The second concept is reasonableness, something we introduce into contracts and laws all the time; and that includes reasonableness as to the charges that the building owner imposes on tenant access, and the reasonable terms and conditions. These two concepts, while they can play a major role in your recommendation to the legislature, you can, today, by moving the demarcation point to the MPOE, address a little bit of the first one, discrimination between carriers. Given that the ILEC already has ready access to the risers in a building and competitors don't, that would address part of the problem, but it would be a significant step.

MR. MOSES: Could I ask you a question on this part right here?

MR. KUPINSKY: Sure.

MR. MOSES: You're saying about the nondiscrimination, and you have placed the building owner as an integral part of this nondiscrimination; and as you realize, we have no regulatory authority over that building owner. How would you suggest we address that part? In other words, how is a consumer going to be guaranteed service?

MR. KUPINSKY: Well, let's see, where you have

jurisdiction, you can take unilateral action. So the MPOE requirements, you have jurisdiction to adjust them in accordance with the nondiscriminatory environment, such as Illinois and California, where they've located the demarcation point in the -- at the MPOE.

MR. MOSES: Okay, that gets the service to the buildings, but I've still got a customer 30 floors up in the air that doesn't have the service yet. How are we going to ensure that that customer gets that service?

MR. KUPINSKY: As far as sort of carrier of last resort or --

MR. MOSES: Well, no, not necessarily carrier of last resort. You are talking about moving everything back to the MPOE. If we were to do that, carrier of last resort's responsibility stop at that point; so we still haven't ensured that the customer has gotten the service that they've ordered.

MR. KUPINSKY: Well, California and Illinois have stopped at the MPOE, and it doesn't seem to have created that problem in those states; and so we would suggest that, you know, the market will take care of that aspect. I mean if that problem were to arise as far as the customer not getting the ordered service, I assume it would have arisen in California and Illinois.

MR. MOSES: Well, we have experienced that here

even though we have got a rule that says otherwise, but we have experienced that here in Florida, so that is why the rules are structured the way they are. And I'm not sitting here trying to be adversary about it, don't get me wrong. I'm just trying to get all the facts out as to you're talking about it not being nondiscrimination, but we can only take it to a point, so we still have to keep the consumer in mind.

MR. KUPINSKY: No, and I think that's obviously a consideration that you're paid to keep in mind. I think, you know, the idea is there has to be a solution whereby we don't depend on the incumbent for when we can access riser cable, when we can access a tenant; and it's an opportunity to use the current risers, the existing equipment in the building. And, you know, we would certainly entertain whatever requirements, if there weren't two competitors serving a building, that kind of thing that would address your concerns.

MR. MOSES: Well, my understanding, you're using a wireless service so the demarcation really isn't a factor as such because you are not getting local loops from the incumbent LEC; is that right?

MR. KUPINSKY: No, it's an enormous factor. What we do is we locate an antenna on the roof, and we drop a cable down to the wiring closet; and then in the -- once we

are in the wiring closet, we look like any other carrier. For example, a fiber carrier might come in here (indicates), if this is the wiring closet. We will be, you know, trying to tap into the demarcation down here and bring the wiring up to the customer prem, just like any other fiber carrier.

MR. MOSES: Where do you pick up the dial tone?

MR. KUPINSKY: Where do we pick up the dial tone?

MR. MOSES: Uh-huh, where does the dial tone originate?

MR. KUPINSKY: In our switch. We have a regular circuit switch.

MR. MOSES: So you go from your switch to wireless at the top of the building, and then you come down and pick up at the demarcation point only for -- which isn't a demarcation point because there is no regulated company at that point; so all you're doing is picking up the riser cable, right?

MR. KUPINSKY: Correct.

MR. MOSES: So how does this enter into this picture at all? Because that wire can belong to anybody. That is not regulated.

MR. KUPINSKY: Well, in most cases -- for example, BellSouth may be controlling a lot of the riser cables in the building.

MR. MOSES: They may have facilities there, but --

MR. KUPINSKY: Right. Rather than having to rewire the entire building or, for example, dropping a cable down and drilling up through and going to a particular customer floor.

MR. MOSES: Do they lease you those pairs?

MR. KUPINSKY: We have an agreement with BellSouth in Florida that allows us to lease riser cable. What it does, though, is it forces us to call them whenever we want to serve a customer. It forces us to adhere to their schedule of sending someone out to the wiring closet and to limit the speed with which we can serve customers.

MR. MOSES: In your experience in Florida, have you experienced that a building owner owned that cable instead of BellSouth or any other LEC?

MR. KUPINSKY: Not in Florida today, but in other states that have similar rules as to building cable. What we have experienced is that it becomes a least common denominator service, that the RBOC dictates the time that we can go out and provision a service to a customer. And customers are looking for, you know, a higher grade, a higher quality of service, and it seriously debilitates our ability to do that.

MR. MOSES: Okay. Thank you.

MR. KUPINSKY: So what have other states done? We believe that the Texas statute is a good role model. The Texas statute divides into two parts, one part talks about what building owners can do, and the other part talks about what they can't do. The part that talks about what they can do includes a lot of this concept of reasonability. They can impose reasonable safety, security, time, space, and appearance conditions, indemnification for damage and demand reasonable payment for access. It's a fairly comprehensive statute. It addresses a lot of the problems that we have encountered nationwide, and we think it's a good example.

Ohio and Connecticut have also addressed the issue. Ohio nas a ruling that is fairly general, and while it supports our position, it is general enough that there is a lot of maneuvering room around it. Connecticut has an interesting statute. The interesting aspect is that even if there is a dispute as to compensation for tenant access, the statute provides that service will be installed pending the outcome of the dispute, and the Commission acts as the ultimate arbiter in resolving the dispute.

And then finally, we would recommend that you take a look at the recently adopted NARUC resolution regarding building access. NARUC supports allowing all telecom service providers to access at fair and

nondiscriminatory and reasonable terms and conditions, public and private property in order to serve a customer. We think it's a well-reasoned resolution and recommend that you take a close look at it.

Thank you for the opportunity to speak to you today, and we'd be happy to answer any other questions and ask that you send the right signal.

MR. CUTTING: Any questions from the floor?

(NO RESPONSE)

MR. FALVEY: Stuart, maybe -- This is Jim Falvey with e.spire. This is what would be friendly cross if there were a more formal hearing, but it seems in response to the universal service issue you do have the legislation picking up where the Commission's, ostensibly the Commission's jurisdiction leaves off; so that while, technically, the Commission, the Commission's jurisdiction may end at the point of demarc, there is no point along the line to the customer that is not regulated by either the building access statute or the Commission's direct jurisdiction, if you will; and as you say, in the Connecticut statute there is dispute resolution -- This is also not a question apparently.

MR. KUPINSKY: I think it would be better if I didn't say anything.

MR. FALVEY: No, but you certainly have a

connection between the two so that -- and I think that is why universal service has not suffered in California and Illinois to my knowledge. Stuart, if you could comment on that, please. That's my question.

MR. KUPINSKY: Thank you.

MR. CUTTING: Next in line is Cox Communications. I'm aware that they and TCG apparently reversed their order.

Please identify yourself and talk into the mike.

MR. HOFFMAN: Thank you. My name is Ken Hoffman. I'm with the law firm of Rutledge, Ecenia, Underwood, Purnell & Hoffman. I'm here this morning on behalf of Teleport Communications Group, Inc.

I would like to begin with a statement that, having participated actively on this issue during the past legislative session, I believe we are here because the legislature was sufficiently convinced that there is a segment of the Florida population, and I'm talking about both business and residential customers, who do not have a choice of local telecom providers because of the actions and the inactions and the policies of building owners and managers. TCG remains hopeful that the Public Service Commission will recommend through this study and that the legislature will enact legislation that will allow tenants and occupants in multi-tenant environments the ability to

choose their local provider of choice rather than having that choice left in the hands of the building owner or the landlord.

As we mentioned in our comments, we believe that this type of pro-competitive policy is clearly articulated in both the 1996 federal legislation and the prior 1995 Florida legislation which opened up the local market to competition, and we provide a few examples in our comments.

First, the 1995 Florida legislation now mandates local governments to provide nondiscriminatory access to their rights of way. Now that the competing local provider can mandate nondiscriminatory access to rights of way, the provider may essentially be left at the sidewalk if the building owner denies access or demands discriminatory or unreasonable compensation.

The second example under Florida law can be found in the 1998 amendments to the shared tenant services statute. Now pursuant to these amendments in a building where shared tenant services are provided now, because of these amendments, both residential and commercial tenants have the right to demand direct access to their local provider of choice. We believe that these amendments and their legislative intent remain frustrated when nondiscriminatory or reasonable access is denied by

building owners and landlords.

As a third example, I would point you to the Commission's current rulemaking dockets, which was open for the purpose of adopting a fresh-look rule. The staff has published a preliminary proposed rule which would give all consumers of local exchange services the opportunity to terminate their contracts with the incumbent LECs in favor of a competing provider subject to the terms and conditions that are outlined in the rule. I should say proposed rule. Again, without legislation requiring multi-tenant building owners and managers to provide nondiscriminatory access to all providers, then the benefits of the Commission's anticipated fresh-look rule will be foreclosed to the tenants and occupants of multi-tenant buildings.

Lastly, I should say that TCG also maintains that nondiscriminatory access is particularly appropriate to foster state and federal encouragement of facilities-based local competition. TCG, as many or most of you are aware, is a certificated alternative local exchange company here in Florida and across the nation. TCG typically employs fiber optic cable in providing service in a multi-tenant building. The facilities are typically installed in a common telecommunications closet and extend along common conduit already installed and existing in the building by the incumbent LEC to the customer's premise. These

facilities are installed, operated, repaired by TCG and may be removed without consequence to other tenants or to the building.

The actual cost of providing access to the limited space necessary to install and maintain these facilities is negligible and certainly not commiserate with the excessive rents or percentage of profits that have been demanded by building owners. These demands are particularly anti-competitive when the incumbent LECs have been allowed entry, installation and operation of their facilities at no charge.

In defining the term multi-tenant environment, TCG believes the definition should include new and existing, public and private buildings used for residential or commercial purposes, including apartments, condominiums, cooperatives, office buildings and commercial malls. In terms of the term "direct access," TCG believes that services which should be included in the term "direct access" should include all telecommunications services, including services which may be accessed by a customer's local loop, such as information services and high speed data services.

Now on pages 11 and 12 of our comments, we have laid out what we believe to be the appropriate guidelines and parameters for legislation or Commission rules, or

both, governing a mandate of nondiscriminatory access. Specifically, we suggest that multi-tenant owners and managers not be permitted to deny a multi-tenant building tenant or occupant the choice of a competing provider by doing any of the following: First, by denying a competing provider physical access to install facilities; second, by interfering with competing providers installation of facilities requested by a tenant; third, by demanding payment from a tenant as a result of choosing a particular provider; fourth, by demanding payment from a competing provider on terms that discriminate between providers; fifth, by demanding payment from a competing provider on any basis other than the actual cost of providing access to the necessary space; and sixth, by entering into inclusive contracts with any provider.

Now for the remainder of my comments, I have some remarks that I would like to make in response to some of the comments that have been filed by the various property and building owner associations, and let me begin with the Florida chapter of International Council of Shopping Centers.

First, the Council of Shopping Centers indicates that there is no need for the Public Service Commission to intervene on the access issue because access is adequately regulated by the market place. We believe that the Florida

legislature took a different view by ordering the Public Service Commission to study these issues and report back to the legislature. Also, the FCC has repeatedly commented that there is not yet true local competition and has so found in a number of the section 271 orders.

Secondly, the shopping centers believe that reasonable compensation may be derived by contracts which require payments of percentages of gross revenues. Such terms are discriminatory when compared with the free access that is provided to the incumbent provider. Moreover, the extraction of percentages of gross revenues are predicated, in our opinion, on the unfounded assumption that multi-tenant building owners and managers are somehow entitled to increased revenues as a result of legislative mandates to open up the local markets. There is no indication in the 1996 federal act or the 1995 Florida law which would support such a notion.

Now they have attached a declaration that was submitted to the FCC by Harvard Professor Haar. If you go through that declaration, you'll see that the professor, like many of the other building owner participants in this project, places great emphasis on the Loretto decision. Now nowhere in the professor's comments, or for that matter in BOMA's or any other building owner's comments, is there a recitation to the more recent federal district court

decision in Gulf Power Company versus United States, a case which is cited and discussed in TCG's comments.

Very briefly, in Gulf Power, the federal district court recognized that there may, there may be a taking triggered by the amendments to the Federal Pole Attachment Act, which requires electric utilities to provide cable systems and telecom carriers with nondiscriminatory access to the electric utilities' poles. However, the court went on to say and went on to hold that the statutory scheme under which the FCC would resolve a dispute concerning rates for access to these electric utility poles subject to judicial review overcame the constitutional taking objection. We believe that, to the extent there is a taking, a similar statutory scheme authorizing the Public Service Commission to resolve compensation disputes, subject to judicial review, would be valid and lawful.

Finally, with respect to the shopping centers' comments on pages 14 and 15, they cite to a number of cases where courts have found that congress did not intend to authorize a taking. Here, of course, as part of this project and potential legislation the Florida legislature could do just that, with compensation, if any, to be determined by the Public Service Commission, subject to judicial review, consistent with the Gulf Power case.

Let me move to the Florida Apartment Association.

The apartment owners begin with a number of unfounded assumptions. First, they posit that competition for telecommunications services exist today in the residential market on a community level. This statement, obviously, overlooks and conflicts with the findings of this Commission last year in BellSouth's Section 271 proceeding.

Secondly, the apartment owners then suggest that property owners have the ability today to choose and change providers and will do so based on market demands. Again, this statement belies reality if competing providers cannot even gain access to the multi-tenant buildings.

The apartment owners, like others, such as the Community Associations Institute, also suggest exclusive contracts on the community level to promote competition and should be encouraged. TCG disagrees. Exclusive contracts eliminate the option of a competing provider. Even where exclusive contracts are subject to a bidding process, a matter not required under Florida law, exclusive contracts can still work to foreclose the desires of a particular tenant to choose a particular competing provider, because that specific provider is able to provide enhanced or bundled services at competitive rates or discounts.

Let me turn briefly to the Community Association Institute. The Community Associations suggests that there is no need for competitive choice for the owners of their

units because all owners are spoken for through a governing board of directors, who choose a particular telecom provider. In our opinion, the fact that five, seven, whatever the number may be, individual unit owners are appointed to govern the business and operations of a homeowners association does not eliminate the fact that there will often be individual unit owners who desire and should be offered the same choice of competing providers that other consumers in Florida are provided under the Florida and federal laws.

Now the Community Associations also argue the Loretto decision, and we would submit that even apart from the Gulf Power decision, which I've discussed, Loretto does not address the issue of whether competing providers use of space, which is already allocated for telecommunications use, would constitute a taking. We believe that a legitimate legal issue exists, even with Loretto, as to whether the de minimis use of an existing telecommunications closet and previously installed conduit would constitute a taking, even under Loretto.

The Community Associations also emphasize the forced nature of mandated access as though every competing provider is going to rush out and install their facilities, despite the lack of customers. First of all, there are relatively few facilities-based providers in the State of

Florida. Secondly, the facilities-based providers, like any other business, will make cost effective decisions. They have to make cost effective decisions, and they will not undertake investments and installation of facilities where the present or future customer base promises little or no return on investments.

Finally, a brief comment in response to the comments filed by the Central Florida Commercial Real State Society and the Greater Orlando Association of Realtors. The one point we'll make is their comment that landlords and owners should have unabridged rights to control the use of their property. That is their position. And we would respond by saying they do not have that today, as they submit to the tariffs of the incumbent LEC requesting the owners of multi-tenant buildings to allow the incumbent LEC to run their facilities into the building to provide local service without compensation paid by the incumbent LEC. The competing providers and the tenants who desire the services of the competing provider simply want the same treatment.

That concludes my comments. I'll be happy to respond to any questions.

MR. MOSES: Mr. Hoffman, let me ask you one question. You're aware of the rule as far as the ILEC, that as far as the easements and right of ways, you're

aware of that rule? In other words, it's up to the customer to obtain any easements or right of ways for the incumbent at no cost to the LEC?

MR. HOFFMAN: I'm generally familiar with it.

MR. MOSES: All right. If you applied that rule and the current demarcation rules, which are not currently applied to ALECs, would that alleviate some of the concerns?

MR. HOFFMAN: No, Rick, because I think the basic concern, the fundamental concern, based on the experience that TCG has had, is we can't get in the building in the first place.

MR. MOSES: But if those two rules were applied, why couldn't you get into that building?

MR. HOFFMAN: Well, I'm not sure that applying those rules in the marketplace would affect allowing a competing provider into the building. I mean I think that's an assumption that you're making in your question, but I don't know that I agree with that.

MR. MOSES: Okay.

MR. FALVEY: I haven't looked at the rule, but if I could just interject, I think what you're suggesting is that the customer has to do that.

MR. MOSES: Well, right now they do.

MR. FALVEY: There is a third party standing

between the customer and the provider, and the building owner who has, as they will repeatedly point out, the property right to the property between a provider and the willing customer, willing provider and willing customer.

MR. MOSES: Okay. Right now the ILEC faces that exact same situation. That is why that rule is in place. It is not up to the ILEC to make a taking. It is up to the customer to ensure that that ILEC has access.

MR. FALVEY: But the customer -- you know, standard approach in the industry, the CLEC industry, is to go to the customer and ask the customer to go on bended knee to the building owner and say, please, please, I want this person to come into the building. But if the building owner puts his property right between -- Now maybe you have a complaint at the Public Service Commission, but --

MR. MOSES: Well, let me give you an example; and, in fact, we do have a complaint.

MR. FALVEY: But it would be a customer's complaint, right? It wouldn't be my complaint as the carrier.

MR. MOSES: No, it was the ILEC's complaint. If a building owner denies an ILEC access to one of their customers that has requested their service, it's up to the customer to obtain the right of ways; it's not up to the ILEC. The ILEC can't go on in and force that building

owner to give them access. We can't go in there and force them. All they can do is say, There is not going to be any service provided.

MR. FALVEY: And the result is that any time I want to get into a building, I have to get a customer to file a complaint at the Public Service Commission.

MR. MOSES: But my point is that would make a level playing field, that's what I'm hearing everybody wanting, is the ILECs not to have any more access than a CLEC.

MR. FALVEY: The big problem there -- And we can go on all day.

MR. MOSES: I understand.

MR. FALVEY: And I'd be happy to, frankly. But the big distinction between my company and BellSouth is that BellSouth is in every building in Florida, literally, literally every single building in Florida, and my company is in a handful. So it's a done deal for them, and it's a big issue for all the carriers that are here today.

MR. MOSES: Well, here, let me just explain a little bit what I was thinking, and maybe I haven't made myself very clear, but if those rules were in place, you've got interconnection agreements as a CLEC that you have got to go into. That would give you access to that wire.

MR. FALVEY: I guess we can talk about that.

There is this idea of an unbundled inside wire, and when I speak in my turn, I will talk about that briefly.

MR. MOSES: Okay.

MR. KUPINSKY: Can I interject one comment?

MR. CUTTING: Please identify yourself for the record.

MR. KUPINSKY: Stuart Kupinsky from Teligent. I think the problem with what you are talking about, and I understand, I think, where you're going, is the level playing field is only skin deep because the situation is that the ILEC is already in the majority of buildings; there is already a relationship existing with a majority of the customers. And so while at first blush the playing field is level in terms of you may have situations where the ILEC has come to you with regard to the easements and filed a complaint, in the vast majority of situations, as Jim talked about, we are going to be going in after the ILEC has already established this relationship. And the level playing field becomes very skewed when we have to go to a customer and beg them to complain about it whereas the ILEC doesn't. And so the ILEC achieved this relationship in a very different environment than we did, and that is the fundamental problem, and it has a severe consequence.

MR. CUTTING: Next in line we have Cox

Communications.

MR. PHILLIP: Good morning, my name is Carrington Phillip, and I represent Cox Communications, in this instance, Cox Florida Telecom. I would like to thank the Commission for providing opportunity for Cox to speak here today.

Cox Communications is a telecommunications company that has as its primary business the cable television business. The network that's been put in place by Cox is one that has a substantial broad band capacity, and it is Cox's business plan to leverage off of that network to provide telephony services both to residential and to commercial customers.

Interestingly, with the passage of the 1996 Act, we at Cox thought that it would be relatively simple to leverage off of our network and provide telephone service to our residential customer base. What we have since discovered, though, is that because of the current state of the law of access to wiring in Florida, as well as in other states, that there absolutely exists a bottle neck or a bar to entry so that a company such as Cox, which is primarily facilities-based, can leverage off of its network and provide telephone services in competition with the incumbent local company. We very much, as I indicated before, appreciate the fact that the Florida legislature

and the Commission is taking a serious look at this issue, and hopefully, we'll come up with some very workable rules that will permit this type of access.

I will restrict my comments, basically, to talking about what the Commission should have as a policy in the development of the rules. Our comments give some suggestions, and I basically agree with everything I've heard so far in terms of what my colleagues from TCG and Teligent have suggested. We, like Teligent, agree that the minimum point of entry should be the demarc point; and if that becomes the rule in Florida, that will certainly simplify the access and will limit the ability of the incumbent to use their control over those facilities as a barrier to entry. However, we would advocate that we need to take it a little bit further.

After the MPOE, intra-network cabling or the cabling that goes from the MPOE to the various campus buildings should also be a subject to limited regulation by this Commission. What I mean by limited regulation is that I believe that the Commission should exert jurisdiction so that in the instances where that wiring is owned by the ILEC that there should be, as an option, that the building owner should be able to purchase that wiring at a fully depreciated cost. By permitting the building owner to purchase this wiring at depreciated cost, as part of their

contract, I believe that all carriers should be given access to riding those facilities to serve individual tenants.

In instances of riser cabling, I would make a similar proposal. In new building situations, where a contractor puts in this wiring, I believe that the building owner should be required to permit access to all carriers and that using the MPOE would be a simple and elegant solution so that a number of carriers could compete with serving individual tenants in that building.

I'm sure that a number of the participants here from the building industry are probably cringing at these comments and are kind of wondering, well, what do we get out of this? And frankly, I think that is a fair question. After all, that is their building. I think what they should get out of it is that they should be assured that their buildings, that the tenants in their building will have access to the wide range of very diverse services that are currently available; but, because of the current situation, are not currently provided to the majority of individual tenants.

Cox has no problem with an individual building owner entering into a marketing agreement, and I stress the word "marketing" as opposed to access agreement, with an incumbent or another CLEC. I believe that in a competitive

marketplace that carriers should and will compete based on marketing agreements so that they can, hopefully, attract the majority of the tenants in an individual building. However, just because there is a marketing agreement does not mean that another carrier cannot convince an individual tenant to subscribe to the services of that carrier; and by having the access rules written in such a manner, that would be possible and would be preferable for, I believe, the majority of individual tenants.

The Commission has to consider many competing factors in reaching its decision. That is relatively obvious based on the differing and diverging opinions that have been filed before it. However, the Commission in doing so should really go back to its purpose, and the purpose is really to regulate the public interest, and also with the recent passage of legislation, to ensure that the local exchange market is developed fully and is fully competitive.

The only way that this can occur is for the Commission to ensure that its rules make it possible for a large segment of the population -- I refer to the folks who live in multiple dwelling units -- to receive service from multiple carriers. It would certainly be inconsistent with the federal act if the Commission were to draft rules that would make it practically impossible for carriers to gain

access to wiring so that they could compete with each other to provide service to individual tenants. By contrast, and with the single dwelling homes, with once a carrier is able to get access to the street, they can usually find relatively easy access to the home and can provide telephone service.

Now I heard a comment a little bit earlier that, or a suggestion, that carriers can get access based on their interconnection agreements. Cox has interconnection agreements with every RBOC with the exception of BellSouth and Ameritech. However, based on my knowledge of those interconnection agreements, I don't believe that that's a good or viable solution. The suggestion that we can gain access based on our interconnection agreements seems to suggest that we need to approach the market in a particular manner, that is, either through resale or through purchasing unbundled network elements, basically transport and the wiring from the incumbent. I believe that would not be in the interest of Cox because Cox, based on the fact that it's a cable company, has extensive network that goes right up to the MPOE and some situations past the MPOE; and I don't see any good business reason why Cox would want to use unbundled network elements to gain access to a carrier when it could simply connect to an MPOE and ride the facilities which hopefully would be deregulated

and would be available for its use.

Finally, I just wanted to say that when the Commission considers the comments of the building industry, it should recognize that with the development of the new services that are being put forward by the various companies here that the building industry will be compensated by the fact that their tenants have access to those services. Most of the companies here today have expended substantial amounts of money to develop those services, and there is great value in making those services available to tenants. I think the building owners will come to realize the benefits of these services, and the Commission needs to at this point ensure that the individual tenants can get access to those services. Thank you very much.

MR. CUTTING: I've got a quick clarifying question. You made reference to marketing agreements, and I'm wondering if you have any problems or concerns with those marketing agreements potentially, say, cutting cost to some of the services such as that the incumbent comes in and provides a marketing agreement with a landlord. Do you see any problems with discriminatory treatment of the marketing terms such that a competitor couldn't compete in terms of price?

MR. PHILLIP: Well, I believe that existing law

should be able to guard against any type of anti-competitive conduct. I mean this would essentially be marketing contracts, and then we have the antitrust laws as well as various state laws that should be able to control any type of excesses. However, I think you do raise a good point, and I do believe that the Commission may want to consider some type of very limited rules for the development of marketing agreements. And also, my colleague mentioned the fresh-look provision. Cox supports the fresh-look provision because the existing state of affairs finds incumbents with a majority of long-term contracts, and we would like to compete for that business.

MR. CUTTING: That was my concern on jurisdiction as to whether the Commission could actually enter into the civil area of contract terms versus strictly the regulation of the companies, and I've been reading other statutes in other states and looking at what is there, and there seems to be a diversity between the states as to whether they want to allow their commissions and/or their courts to get involved in, you know, how those terms are regulated. The Commission hasn't really, my information here, got into the area of contract terms. That is the reason I asked the question, was to clarify how you perceived that problem.

MR. PHILLIP: Well, I think as long as the term relates to the provision of local exchange service the

Commission has jurisdiction. I think that is fairly clear and not really debatable. In terms of other services, so-called unregulated services, possibly cable television service, the courts certainly are available if a carrier has an issue with a contract.

MR. CUTTING: Thank you. Any other questions, comments?

MR. KATZENSTEIN: Just one.

MR. CUTTING: Please identify yourself.

MR. KATZENSTEIN: My name is Mike Katzenstein. I represent Optel. The use of marketing agreements, exclusive or otherwise, in our view, should only be permitted when there are the physical impediments to competitive access, i.e., the availability of facilities has been overcome. In other words, in a property in which there is no single MPOE for access, no physical ability of a competitor to access except through the purchase of unbundled elements, there should be no authority in an incumbent to enter into exclusive or semi-exclusive marketing agreements because those would essentially disable any, any competitive forces that would militate towards the future establishment of an MPOE. And that is a big concern to us, and it's been a factor in other states in which we do business.

MR. PHILLIP: I wanted to note that I was very

careful not to use the word "exclusive." I completely agree with my colleague. Certainly we're not advocating exclusive agreement, but I do believe that marketing agreements are an acceptable form of developing the market.

MR. CUTTING: Thank you.

MS. BUTLER: I just wanted to make a comment -- Jill Butler with Cox Communications -- and that is, what I'm hearing from the staff is a lot of questions about the jurisdiction of the Commission. And I guess how I've looked at this series of workshops, as you make a recommendation to the legislature at the end of it, that the Commission does, is that some of the recommendations that you make may go beyond issues that are within the jurisdiction of the Commission and that -- I want to make sure to kind of keep that in mind as we go forward because I know that you would focus on that, but there are issues that go, in my mind, way beyond it.

MR. CUTTING: Optel, I guess you're next in line.

MR. KATZENSTEIN: Thank you, ladies and gentlemen. I appreciate the opportunity to cook our meal a little bit on your stove here. Optel is a --

MS. BEDELL: Tell us what your name is again.

MR. KATZENSTEIN: I'm sorry, Mike Katzenstein. I'm a representative of Optel, and specifically of Optel

Florida Telecom, an ALEC here in Florida. Optel is a deliverer of integrated communication services, video, voice, data, exclusively to residential markets and exclusively to the MDU marketplace. We believe our perspective and experience in these issues is as broad as any company in the country. We have operations in ten states and are going through these same issues in many of them. It is our experience, unfortunately, that competition in Florida has been substantially retarded because of the position on certain of these issues that has been advocated principally by incumbents, and we are free, we feel, to comment on our experience in other states where the terms of access for competitive providers are better developed, in our view.

Optel agrees substantially with the positions advocated by our competitive brethren. I must say, though, that Optel's view, vis-a-vis the property owner is far less sinister, and it may just be that our being limited to the residential multi-family marketplaces has changed or has not subjected us to the overwhelming stories of greed and angst that others have experienced.

Optel is usually at a residential multiple dwelling unit complex because it has been invited by a property owner who wants both a business partnership but also an alternative to the ILEC. Optel's rates are always

less than that of the incumbent. We believe our services, absent problems with provisioning, et cetera, from the ILEC, are as good or better, our systems modern, advanced, and our networks broad band.

Today I really want to focus on what we view as the critical first-base stumbling block for competition; and that is, the establishment of a point of entry at multiple dwelling units that would permit any and all competitors access regardless of the issues of who gets to go. If these issues are not resolved, no one but the ILEC will have access to the resident in unit 36-J, in building 14 of Campus Style Apartment Building.

Optel's -- and I think that the, to cut to the chase, and the panel is very well versed I'm sure on the pleadings, the issue really is what choices does a competitor have to physically access a tenant? And I think Teligent pointed out that these issues are technology neutral. We bring our signal via point to point microwave to properties. Where that is not feasible, or if a better solution is to bring it by fiber, we bring it by fiber. If that fiber can be built by us, we build. If it's cheaper to lease, we lease. The issue is not how you get to the property but once you are at the property line how do you get to the customer.

We have the full cooperation of the MDU owners

and ownership associations which have invited us on. Nonetheless, even with that cooperation, we are stymied and our services have faltered at the door step. That has resulted in delays in our delivering services to customers, to the detriment of the reputation of CLECs, generally and certainly to Optel's detriment, in the perception of unreliable services because the incumbent is permitted to put -- under color of state law, to place obstacles in our accessing customers, and in a myriad of other business problems which have been at best vexing to Optel and I believe to others in this room.

The issue is simply that Florida law does not now require properties to be reconfigured to permit access, and that is a problem. It's a problem to you because you need to be in a position where you can say we are doing what other states are doing to make residential competition a reality. It is far easier for us to compete, provide services, even with -- and all this is with the invitation of our property owner in states like Texas and California. You are, unfortunately, in the same category as states like Arizona and Colorado, what we call U.S. worst states, where the tariffs do not require reconfiguration of essential facilities. And we are facing the same issues, and I think Cox and others probably will say that they have the same issues.

What can be done about it? Well, there is a thorny bed of property issues. We think there are ways to work them out. We think Pure 95 is a pretty workable, livable solution -- that's the Texas solution -- and there may be the requirement to involve the legislature in this important issue. But right now, within the Commission's powers, we certainly think that rethinking the demarcation issue, rethinking the -- in advance, a formulation that would require the ILECs to reconfigure their networks such that the CPE begins at the property line. The regulated versus unregulated areas of their network will be bifurcated at the property line will be a start.

What would that mean? Well, that means in campus style environments requiring the ILEC to reconfigure the networks such that all campus wiring runs to a single point at a building or building complex, which can be easily accessed by competitors. Granted, there are still issues about access, and property owners' rights. Optel thinks that those issues have been commented on by others, but we think that this is the first point, the starting point and the only way that there will be competition.

Optel is forced to buy loops. UNEs -- And we know that with the development of the law in the circuit courts, the only way it can essentially buy is a full packet of services, often at pretty unreasonable discounts,

and we can tell you that that manner of competition does not have a business case at Optel, and I don't think that it has a business case with many others, which is why you see such a dearth in competition in residential markets today. We think that if there is an access point that facilities-based competitors will come. We will come. We will do what is necessary to get there, and we will do what is necessary to get the tenants' ear so that we can provide services which are cheaper and we believe better.

The reality today, which cannot be ignored, is that the ILECs, although not now a de jure monopoly, are still a de facto monopoly in the marketplace. The business market, the business competitive marketplace is much better developed. There is robust competition. In certain elements in the residential marketplace, there is virtually nothing.

The Commission has an interest we believe in seeing facilities-based competition come to each multiple dwelling building in the state, and the only way that that will happen is if there is a paradigm set from the Commission down to allow for access. In our comments we think we lay out what can be done and how it can be done. We think that this action should be taken up also by the FCC in analyzing whether there should be subloop unbundling and how far that should go, but until that time we need the

help of the Commission in making competitive services in Florida a reality. Thank you.

MR. CUTTING: Any questions?

MS. DANIEL: I wanted to ask one. Did I understand you to say that you believe that the ILECs should be required to reconfigure back to the MPOE.

MR. KATZENSTEIN: Yes, we do. And in many states, for instance, in Texas, when there is a request from a property owner, on any kind of property, new, rebuilt, no matter when built, no matter at what level, the plant which was mostly paid for at the backs of the ratepayers anyway, at no matter what age that plant is, a competitor can come in with the request of a property owner and a plan schematic for the establishment of a central single demarcation point to reconfigure the network to that point such that the only issue would be getting to the inside wiring demarcation point, the common punch block, which could be feet or, you know, yards from the property line, so that a competitor can come in and by a simple and single cross connect establish a point of presence in facilities that will serve a customer. That is the key. If you can't do that, then you can't have competition.

And I sympathize very much with Teligent which has to call the incumbent and rely on their good graces and their truck roll to get service. It's an unworkable

circumstance. If your service is not in your own hand, then your destiny is also in the hands of your competitor, and I have never seen a competitor give its competitors the same service that it gives its customer. It's just -- it's an unworkable situation and one that can't be encouraged. There is -- in our view, there is no other solution.

MS. DANIEL: Thank you.

MR. CUTTING: In order to give all the competitors an equal shot, we are going to take a 10-minute break and let the competitors go for the doughnuts.

(BRIEF RECESS)

MR. CUTTING: We're going to hear from e.spire Communications at this time.

MR. FALVEY: Thank you. Jim Falvey with e.spire Communications, Inc. E.spire is an integrated communications provider. We provide local, long distance telephone service as well as data and Internet access services, in many cases all over the same pipeline, which is our e.spire platinum service, which I'd encourage you all to purchase here in Florida.

We are providing service or intend to provide service in Miami, Jacksonville and Tampa. We've got 32 networks nationwide and 17 voice switches and 45 data switches comprising a voice and data network throughout our operating service territory.

We are here to make a few simple points about this issue. First and foremost, that legislation is definitely needed. I think you'll see that there isn't a single facilities-based provider, major facilities-based provider in Florida who has figured this issue out and decided they don't need to come to this workshop. Our company has been working on this issue since its inception, and many of the people in our company were working on unlocking or resolving this issue for five years before that at MFS and TCG and other places. So there is a conundrum that no one has been able to figure out. There is no simple solution. Why can't you just anything. All of those suggestions, frankly, are part of what people are doing today, but what people are doing today in many cases is not getting into very large office buildings, which represent a substantial portion of the market.

Why does e.spire need them specifically? People have talked about unbundled loops. We do buy unbundled loops, but we also build facilities, and in many cases in the downtown urban areas which connect very large office buildings with an enormous amount of telecom services provided within them. We need to get into those, on that building in order to provide service to those customers. You want to encourage people to build facilities here in Florida, and if you want to encourage the building of

facilities, you need to encourage building access.

The idea of building access, it's kind of the step sister issue among many facilities-based CLECs. It's the one that we would all like to get to but haven't been able to. Frankly, we don't have the fire power to lobby legislators, and the action has to come from the legislators. Building access legislation will complete the intents of the Telecom Act by removing one of the most significant remaining barriers to entry.

I should mention that mandated building access has a precedent in Florida as it does in most states When STS providers came into the market in Florida and elsewhere, one of the critical provisions in every STS tariff is that the STS provider must retain the right of BellSouth to come in and access tenants in the building. So BellSouth has lobbied for it in the past, and there is a precedence for this type of legislation.

Building owners are themselves monopolies. I think that is something we shouldn't overlook. Their customers tend to be locked into five- and ten-year contracts, and today many of those contracts were entered into before local competition was even legal or certainly not widespread here in Florida. There was mention of the Kodak case in the Teligent papers, and I personally worked on a parallel case which involves Xerox, and these types of

antitrust cases are very real and they are out there. What we are trying to avoid is filing little mini antitrust cases against every building owner that shuts us out of the building. We don't have the resources to begin to do that, and that's why we need the legislation.

You could also see this as access to an essential facility, which is another antitrust doctrine, or the refusal to deal by a monopolist under Section 2 of the Sherman Act. So there are theories which, for the most part, have not been tested, but I don't think anyone in this room wants to go down the root of litigating this issue from an antitrust perspective.

I know there are some BOMA people and some building owners in the room, and I have spoken at BOMA conventions, and you start to feel very, very unwelcome within a very short period of time. So I would like to take this opportunity to welcome them, and to point out that there are many good apples, if you will, that many of the worst cases come from a few bad apples. But I would also add that I wouldn't absolve the entire industry so quickly that even some of the better cases, when you do get in, there are plenty of provisions that you only sign because it is essentially a contract of adhesion and you have no choice but to sign the agreement if you want to gain access to the building.

In terms of legal impediments to legislation, I guess the way I look at that issue is that the idea of the legislation would be to lay some ground rules, to put everyone -- to get everyone to the negotiating table. The issues, the takings issues, I think they go more to how you craft the legislation to ensure that it does pass muster, constitutional muster, as opposed to, as some would argue, don't do any legislation at all. There is a significant problem for CLECs in Florida and elsewhere, and the legislation is an absolute necessity.

In terms of other provisions of the Telecom Act, utilities have mandated access, and there was some brief discussion of the Gulf Power case. Our company is a party to that case which is brought by a series of southern utilities, largely southern utilities saying that the pole attachment provisions of the Telecom Act represent a taking without just compensation. I think we are all going to address this further on rebuttal. I didn't come prepared to fully discuss the legal issues, but I will say a few points along those lines.

There is some case law that states, essentially, that once you've given access to one provider for free, then having to give it to the next guy isn't necessarily as a taking. You know, as I say, you've already enacted a giving the first time, so how can it be a taking the second

time? And I guess the corollary is you can't complain about a taking when -- If it was a taking the first time, you put up with that for however many years, and that seemed to pass judicial muster for all this time because we are all up on the utility poles today.

So I looked at the Gulf Power case. The issue there was really who determines just compensation. They said the FCC can't do that. It has to be done by an Article 3 court because, just to back up a little bit, a taking is only illegal if it is a taking without just compensation. So what they said was the FCC can determine just compensation because it is subject to review by the DC circuit in every instance, which itself is an Article 3 court. So we'll brief that a little bit further in the next round.

But the point is that the Telecom Act puts all sorts of restrictions on all sorts of entities. They restrict the cities in Section 253 with some of precisely the same language, fair, reasonable, nondiscriminatory treatment of all carriers. The Telecom Act restricts states, for crying out loud. It restricts you, the Commission, in Section 253 as well. So the suggestion that the federal government can restrict what you can do but you and the Florida legislature cannot restrict actions of building owners which impede competition to me seems a

little bit inconsistent. So, again, if we craft the legislation carefully, I think it will pass legal muster.

I also would agree with those who have said that the Texas statute represents a good model. And I want to emphasize that for all of us carriers to be coming in and saying that the Texas statute is a starting point is itself a huge compromise. I mean what I would like to see is BOMA come to the table and say that was a comprise and we'll all go forward with that as a proposal.

One point that Teligent failed to mention in its slide is that a prerequisite to building access under the Texas statute is that you have to begin with a tenant request, so this isn't someone coming in out of nowhere burdening the building owner. It's a tenant that initiates the process even under the Texas statute. It does require nondiscriminatory access, which is our sort of key note for this whole process; but it also builds in many protections for landlords, including recovery of costs imposed by CLECs or ALECs.

E.spire's experience with the statute in Texas has been extremely positive, that the statute works not so much by legally forcing someone to enter into a particular agreement, what it does is it forces the party to the negotiating table under some very basic ground rules, and you will let us in, and we will pay you for it. And it

simplifies the negotiations. Those that have bought initially in Texas have very quickly come to the table when we have sent, faxed -- literally faxed them a copy of the statute, and then we sit down and we enter into an agreement and everyone moves on.

I think the landmarks of any legislation should be nondiscriminatory access. These are cases where access has already been provided to one carrier, and the rules should be very simple, that either everyone pays or no one pays. I think it's critical that we not build in too many limits. When you define "multi-tenant," you should define it very broadly. When you define "services," and this is very critical, you should not limit it to telecommunications services. In fact, e.spire, as I said, has more data switches around the country than telecom -- than voice switches. Everyone is rushing to try to provide voice over data and you'll only confuse them if you limit this to telecommunication services. The statute will last about -- have a useful life of about two years and then, God forbid, we'll all be back here two years from now.

I think reasonable cost-based compensation is certainly acceptable to every ALEC in this room. The concern is that many building owners see this as a revenue opportunity. I mean this is basically a stick up, Give me five percent of your revenues or I'm not going to let you

into my building, and I've got the bottleneck access to this building and so I can do that.

You have to remember that the companies that are ALECs in Florida take an enormous amount of risk to enter this business. Our stock has dropped roughly five points in the last couple of weeks, and I think the same could be said for every stock in this room practically. But I've also seen stocks that are teetering on the brink in the last couple of weeks that are down around five that may not survive this particular downturn in the market. The building owner who asks for five percent of the revenues takes none of that risk. Our stock is available on the Nasdaq, and they can go buy. They can also invest money to enter this business because it's a very interesting and open business, but it's not a risk-free business today.

It also takes enormous investment. Our company has raised a billion dollars in capital. We made 60 million dollars last year, so by my math, we've got a long way to go. So it is critical that that kind of percent of revenues activity not be permitted.

The other typical responses about market rates for space, both recurring and nonrecurring charges, often to the extent of being prohibitive. Probably the most insidious and maybe the most common response is delay in failure to respond, and I mentioned one case in our

comments where people just don't return your phone calls or they don't provide -- sit down at the table and negotiate. So all of these types of responses should be illegal under the new statute.

In terms of contracts and restraint, we have attached a proposal that BellSouth made to the building owners here in Florida, and one of the building owners -- one of the BOMA members gave it to one of our sales people. It was introduced by BellSouth in Georgia, and we then introduced it here, and what this agreement does is it says, if you, the building owner, sell more of our BellSouth service, we'll put money off in this little fund, this little slush fund, five hundred, a thousand dollars a month, whatever it adds up to; and you can then use that as a credit towards your own services, towards training programs for people who work for your real estate company and so on.

To me that is completely unacceptable. If that building owner sees three more carriers coming into his building, he has every incentive to turn them away. Even with a nondiscriminatory access statute, I don't think that -- I think there should be some language prohibiting the incumbent who, again, is in every building in Florida from entering into those kinds of agreements because I just don't think that -- as a matter of public policy, I don't

think they are good for competition.

I think there is some discussion also that the contract laws and the antitrust laws can be a restraint on these types of agreements. Typically, when a building owner does not return our phone calls, delays my access and effectively prohibits it by delaying, they don't also fax me a copy of the agreement they've entered into with BellSouth which says why they are not doing it. So I think another extremely potent piece of this legislation could be a provision that requires even marketing agreements entered into by the incumbent to be publicly filed with the Commission; and then maybe we can shed some -- put them in the light of day, and then we could decide which ones we should challenge under the various antitrust and fair trade statutes that we have at our disposal.

MR. CUTTING: You have just --

MR. FALVEY: A couple of more minutes?

MR. CUTTING: Yeah, and I noticed in your filings that you had not -- you said you were going to address here at the workshop demarcation point and 911.

MR. FALVEY: Yeah, that is my last thing.

MR. CUTTING: Make sure you get those in there.

MR. FALVEY: Yeah, appreciate that. Moving to the demarcation point, we essentially agree with Teligent that you have two alternatives: You can leave it so that

access comes from the building owners, or leave it so that access has to be obtained from BellSouth. In New York, they've left it with the incumbent, and they've -- and there is an unbundled element for the inside wire. That is not a typical arrangement in our interconnection agreements. It is certainly something we can ask for, but nobody -- the bottom line, you've heard it before -- nobody wants to be dependent upon BellSouth for yet another piece of the access because there are -- it takes time to get anything from BellSouth. I'm not even sure BellSouth wants that. But in any event we need to be able to get into the building.

In terms of 911, I think limiting the access to certificated entities brings that 911 issue back into the certification process, and there are certainly 911 rules, and certificated carriers are bound by them; so I think that that is the answer to that one.

MR. CUTTING: Any questions? Next in line is WorldCom. And we'll break -- As soon as we get close to the lunch hour, we'll see how many minutes we've got left as to how we'll fill the 15-minute blocks. We hope to end right around lunch or 12:15, somewhere in that category.

MR. SULMONETTI: Well, I hope to get us to lunch quicker. My name is Brian Sulmonetti. I'm with WorldCom. I don't really have anything more to add to my fellow

colleagues here from the CLEC industry. I think they've touched pretty much on all the key points we raised in our comments, and I will leave it at that unless you have any specific comments about our filing, and also because my subject matter expert couldn't make it.

MR. CUTTING: Appreciate your honesty. Next in line we've got the International Council of Shopping Centers.

MS. BLASI: My in name is Patricia Blasi, and I'm the state chairman for legislative affairs for the International Council of Shopping Centers. I'm going to speak for the first few minutes of our time on some of the more practical matters of why our organization is concerned about this issue and then leave the rest of our time to Julie Meyers with Smith, Bryan and Meyers who is going to talk to you more about the technical and legal positions of our argument.

The International Council of Shopping Centers is very unique to real estate organizations in that a component of our membership, unlike many of the other real estate organizations, is comprised of tenants; and when this telecom issue first came up during the legislative session and I started to poll our membership about their concerns, most of our tenants were going, What telecom issue? We have phone service. We like our phone service.

Why are we going to make this a big portion of our legislative agenda for this year? And we had more of an education process with our membership than we did anything else just trying to explain what the long-range implications of what was going on would be, and most of the tenant constituents came back and said, you know, when we negotiate a lease, we are going to get what we want; and if we don't, then we are going to go somewhere else.

And I think that you'll find the basis of a lot of the concern in the building owner, and if there were any tenant organizations, and you'll find them conspicuously missing from these proceedings, the people that are allegedly going to be protected by what comes out of this, a lot of what you're going to find is people saying, You know what, the market controls these kinds of things. And if we don't find in an office building or a shopping center or an industrial park the services that we need, then we are going to take our business elsewhere.

In addition to serving voluntarily as the state chair for my organization, I am by trade the vice president of a full service real estate company and function in the day to day management, leasing and development of commercial property. In that capacity, I have negotiated agreements with independent telecom carriers in this state and successfully, as we do with other vendors, obtained

license agreements from them, obtained fees for their renting of space; and now that I've learned that the real estate business is risk free, unlike the telecom business, I'm glad that I'm sitting on the side of the table that I am. But I think that one of the issues that is not being discussed in any detail at all here is, Where is the cost benefit to the tenant? And I will tell you, I've conducted focus groups with tenants about services in different types of environments and said, Hey, what do you think about our security? Would you like more security? And typically tenants go, Yeah, yeah, we want more security. How do you like the landscaping? What if we spruced it up, put some more stuff out here, flowers, you like that? Yeah, yeah. Do you want to pay for that? No, we don't want to pay for that.

And though a lot of these access issues are being treated as property rights, and there is certainly a lot of very valid legal arguments, the managing of the day-to-day process by which these carriers would be permitted access to the tenants is not really being talked about, and a lot of the reason why people participate in a multi-tenant environment, whether it's on the residential or the commercial side, is that they expect that the building owner is going to be responsible for a certain amount of their services, and decisions are going to have to be made;

and those decisions are going to be made through the agreement that governs the landlord/tenant relationship, which is the lease.

I also think that the savvy of the average tenant is being way underestimated in some of the discussions brought on by the telecom providers. Tenants are getting what they need and they vote with their dollars, and if they are not getting what they need, the lease agreement is going to allow them to terminate because, on the front end, most of these tenants have heavily negotiated what types of services they are going to be provided and how those services are going to be provided and precisely what happens if they are not getting what they are supposed to and the landlord isn't holding up his end of the bargain.

I also think that some delineation somewhere along the way is going to have to be made for existing buildings and new construction. We are faced now with a lot of issues in planning new developments on the commercial side where we are not really sure what we should be planning for in a building, but at least in certain instances we still have an ability to control what we are going to build. However, with an existing product, we don't have that flexibility.

Furthermore, we are encumbered by the rights of the existing tenants to things like quiet enjoyment and

just how many carriers will be able to fit in a building. I don't really know the answer to that because it's going to vary dramatically by property. But when we move from a situation where that access is not driven by the market and that access is driven by legislation, well, there is going to be a lot of court activity on figuring out what is reasonable and what do I do when my telephone room is filled up and only four carriers have had access and there are five more banging down my door? So I think that though we have focused a lot on this competition, I'm not sure that we are focusing on it on the right level. The competition is in the landlord's hand. Its what obligates him to get tenants, to be in business; and if he can't perform, then the tenant is going to go somewhere else.

I would also take exception -- I hear the number ten years being thrown around as an average lease term, and I don't believe that to be the case. I think that if you surveyed commercial property, you would find that average terms are probably more like five to seven years, and most renewal clauses give the tenant some market condition to base their deal on going forward, so I don't think that these tenants are as locked in as maybe as it may sound to you. And with that I'm going to turn it over to Julie and let her focus a little bit more on our legal and technical issues.

MS. MEYERS: My name is Julie Meyers. I was also a participant in the 1997 legislative session, the 1998 legislative session, and our recollection and analysis of the legislature's intent is fairly different from some of the former speakers.

We believe that what happened was there was an express indication of a problem, and you have heard that from prior speakers, a problem exists, we can't get into the building. Unfortunately, or fortunately for our position, when asked to specify who, under what circumstances and what particular tenants were involved, there was a failure to bring forth any specific information; and certainly there were, at best, isolated incidents that then could not be supported upon further evaluation.

We believe that what the legislature's intent was, or that their understanding was, that they didn't know the extent of the problem, and they asked you, that independent body, to determine if, in fact, there is a significant problem that exist and then what the response should be. So our organization would request that that be your first order of business: Is there a factual basis for the charge that property owners aren't responding to tenants' requests? Are there private agreements out there between telecommunication provider to telecommunication

provider, telecommunication provider to property owner? What are the lease terms between property owners and tenants specific to this issue? I think you will find that the market and private contractual resolution is out there to the extent that the issue has presented itself at all.

And while we have provided you information with what we believe to be the more appropriate analysis of the state of the law on private property rights, there was an initial approach and attempt to mandate direct access without compensation. I think some of the speakers have talked about, Well, there could be reasonable compensation, but then comes the gotcha; and the gotcha is, but it needs to be nondiscriminatory, so -- And if you look farther at what nondiscriminatory means, it means if anybody else came in for free when there was no one else, then that means there should be no payment or compensation to an alternative provider.

And so when we use euphemisms like "nondiscriminatory," we mean free. Unfortunately, landlords are exposed to costs, and it is their space, and it is their property; and it may be, as hokey as it sounds, I'm pretty sure that there is no mention in the U.S. constitution about enhancing telecommunications services; and I'm pretty sure there is a specific requirement that private property rights and private property be adequately

addressed. So we would suggest to you that there be a recognition and maybe a reminder to the Florida legislature that, in fact, property -- private property rights of tenants is legally superior to the need, maybe, or the desire, certainly, of these companies to have a very robust market.

Again, I would say to you that if there should be a specific evaluation in Florida about market terms and conditions, existing market terms and conditions, you won't find these scary things of people charging 5% and 10% and 20% overrides. I would also suggest to you that -- None of my clients have been fortunate enough to have their five hundred dollars or thousand dollar slush fund, but if that should exist, I would suggest to you, like any other service, if they are relying on someone to market a product, there is not anything in the world wrong with that kind of compensation. It's reasonable. Folks have talked about reasonable rates. We would suggest to you anything is reasonable that is agreed upon between the parties.

And so in conclusion we would ask that your eventual report and recommendations concern itself with what we believe to be the very fundamental issue at hand; and that is, is there a true and legitimate need for regulation and what that response would be and what the ramifications of that response would be. We are not

certain that the Florida legislature or the PSC wants to get into the business of negotiating the myriad of leases that could be out there in various commercial settings and when it's appropriate to add another provider and when it's not appropriate and under what market terms and conditions.

MR. CUTTING: Any questions or comments?

MR. KUPINSKY: Yeah, one question. Stuart Kupinsky of Teligent. I didn't catch the first lady's name.

MS. BLASI: Patricia.

MR. KUPINSKY: Patricia, just a question. You mentioned that you had negotiated contracts with independent telcos. Does that mean CLECs or does that --

MS. BLASI: If you don't mind, I'm going to mention by name, Intermedia Communications.

MR. KUPINSKY: Okay. In that building --

MS. BLASI: Very reasonable people, I might add.

MR. KUPINSKY: Great.

MR. WIGGINS: They are the best.

MR. CUTTING: That comment is on the record, right?

MR. WIGGINS: I get to bill more for that, it's great.

MR. KUPINSKY: I'm just wondering, in the

building in which you negotiated that agreement, are you charging the ILEC the same rates for access that you are charging Intermedia?

MS. BLASI: I don't know, and I know that one of those buildings is a single tenant user, so in that instance, it may be that Intermedia is the only provider.

MR. KUPINSKY: In other instances though where you have negotiated these agreements, do you charge the ILEC, generally speaking, that is currently serving the customer?

MS. BLASI: I don't know that we have any dual service right now.

MR. KUPINSKY: Okay. And then just one other quick comment. I think it's important to clarify that what at least Teligent and I think the other CLECs here are talking about is a very wide passage way of negotiation and not, you know, the PUC or the legislature dictating the negotiation ahead of time. All we are trying to do is exclude out the few bad apples that Jim mentioned. So the comments regarding, you know, access being driven by the market and not by the legislature I think are taken by all parties included, and we don't disagree with that at all.

And then lastly, you know, congress doesn't seem to agree that tenants are getting everything they need, and that was the nature of the '96 Act, that we wanted more

competition for better services, that kind of thing. So I was involved in the Act when it was still a bill. And some of the RBOCs came in and said, you know, everybody seems to be pretty happy. Why don't we not, you know, rock the boat? And I think this is sort of the similar comment, that I think competition is healthy, we are in a development stage, and there is a temporal issue as to who is happy now and who would be happier had we had competition. Thank you.

MR. CUTTING: Go ahead.

MR. HOFFMAN: I'm Ken Hoffman on behalf of Teleport Communications Group.

I just wanted to make one comment in response to the presentation of the shopping centers, and that is, with respect to the statement that no information was provided to the legislature concerning the problems that are out there in the field during the legislative session. I can confirm that at a meeting of the house utilities and communications committee, midway through the session, part of the materials that were distributed to the legislature and to the public included a list of buildings, provided by Teleport Communications Group, concerning situations for one reason or another where TCG had been denied access. I'll also state for the record that during some discussions I had with Mr. Brewerton, who is the counsel for BOMA,

there certainly was some disagreement as to whether or not TCG had been denied access. But the statement that the information was not provided to the legislature during the session is inaccurate.

MS. BLASI: May I respond to that a moment?

MR. CUTTING: Please keep it brief.

MS. BLASI: No, and I will. I know of that second hand through the people at BOMA, and quite frankly, it was brought to my attention because the name of the firm that I'm employed by appeared on one of these lists, at which point we obtained written documentation from that particular building manager that he had not been contacted. So I have a feeling there is a lot of he said, she said involved in that particular issue.

MR. CUTTING: Thank you. I think we'll have time for at least one more before lunch. Next in line will be the Florida Apartment Association. Please state your name for the record.

MR. ROSENWASSER: Good morning. My name is Mark Rosenwasser. I thank you for the opportunity to speak. In my paid capacity, I am a regional vice president for a property management firm located in central Florida. We manage about two thousand units representing about six thousand residents. In my volunteer capacity, I am president elect of the Florida Apartment Association

representing some quarter million units with some three quarter million residents. I am here today with Gary Cherry, a small owner here in Tallahassee.

During my comments, I hope that I'm forgiven for my lack of technical knowledge. I couldn't tell you what an ILEC stands for, and I am simply here to address our issues.

Unlike many in this room, I am not a paid staffer, paid lobbyist, paid attorney, nor will I make my money based upon the recommendations that you make to the legislature. To the contrary, any recommendations that you make will in some cases cause loss and higher rents to the residents of this state.

We seek to protect our property from ongoing physical and aesthetic property destruction. We do not have any objection to the competition. If such competition is achieved via wireless or resale agreements of existing wiring. Multi-family residential units should not be included in the access issue. Our tenancies are very short. Our average lease and tenancy is nine months with some leases being as short as seven months. No leases are longer than one year. We experience a 60% turnover in our residency. Our density is as little as 12 units per acre with an average density of 17 units per acre. We do not have equipment closets or any common conduit.

It is for that reason that the Florida Apartment Association believes mandatory or direct access is unnecessary to promote competition. The issue presented is whether individual residential renters should be considered customers in multi-tenant environments. The Florida Apartment Association believes that the customer is the community and that the residential competition already exists on that community level.

Direct access to residential apartment customers is unwieldy, presents many logistic, safety and liability concerns, and as mentioned by somebody earlier, might be an uconstitutional taking. If the Public Service Commission determines that providers must have direct access to the individual renters, then it must take several issues into account. It must take into account the construction. Some of our communities are high rise buildings, some are campus style housing, and some are spread out types of garden apartments.

Any access law must take into account the property rights held by the owner as well as the right of a tenant to quiet enjoyment of their home. Any access law that allows constant wiring and rewiring of properties based on any telecommunications provider's desire is not acceptable. Owners should not be obligated to tolerate destruction of their property or disruption in their

communities on a regular and ongoing basis.

Liability is a further concern. Competition already exists in the residential market. The high level of fragmentation in the market means that no individual owner has any significant degree of market power. Because of the resulting competition, building operators and owners must respond to the needs of the tenants by accommodating their requests for service. Many apartment units in Florida are owned by publicly traded companies. These owners have a fiduciary duty to return value to their shareholders. They will provide whatever services are economically feasible to ensure high occupancy rates. If more than one communication provider is demanded by our market, we as owners will respond.

Many providers compete to service a community. Usually the property owner enters into an agreement with a provider to bring service to the entire community. This ability to guarantee the entire community to the provider helps new and smaller companies compete. Without this guaranteed volume, the smaller competitors cannot justify the cost of competing for just a few customers. Direct access will be a barrier to competition for small companies.

The competition for an entire community keeps the prices low. Each provider offers its best deal to the

owner. No barrier to competition exists in the residential family market. Competition exists between the providers who compete to serve entire communities; therefore, the government does not need to create artificial rules.

Multi-tenant environment should not include residential properties where an occupant has no ownership interest. It certainly should not include tenancies that are shorter than 13 months. Direct access in a non-ownership setting of short tenure results in confusion for the entire property. Can tenants change providers monthly? Would buildings be violated and construction personnel be on site constantly?

Direct access grants non-owners new rights that override the owner's rights, particularly in areas of short tenancy. Choice in this setting is impossible to manage. Direct access cannot include destruction of property or disruption in communities. Unlike commercial buildings, we, as I said earlier, do not have phone rooms or conduit. Service is provided through a box outside the buildings or inside a single unit. Inside wire is run through the ceilings and attics. Access to facilities is mostly through someone's apartment. A renter will have -- In many cases renters will have to live in buildings where workers will always be fishing wires through the wall.

Many apartments are constructed with a mandatory

fire wall between every two units. The fire wall cannot be breached. How will wiring be accomplished? The PSC is not in a position to develop and enforce comprehensive safety regulations. Those matters are appropriately governed by state and local building codes. If the fire wall is breached and not repaired, the communication provider who caused the damage must be liable for any resulting injuries. Property owners must be granted statutory immunity.

In many properties, the ground and parking lots must be dug up to bury the wire. Holes and trenches scattered on the property are unacceptable. Even single routes are unacceptable if they are regularly dug up. Aesthetic considerations undeniably affect property value. Wire nests outside the buildings are also unacceptable. Subsequent providers sometimes inadvertently interrupt current service and the property pays for this with higher vacancy rates due to unhappy residents. Just as providers are not experts in property management, we in property management are not telecommunications experts.

Direct access might be acceptable if all service is provided through a single set of wires. Providers would have to repair any and all damages or changes to the property and all wiring must be underground. Providers should bear legal liability for damage and personal injury.

They should have to provide some sort of guarantee of service to the owners and the residents.

Exclusive contracts are not appropriate for a zip code or area code; however, on a community level, exclusive contracts promote competition. They should be encouraged. They guarantee volume, and they allow for the new and smaller companies to compete based upon that guaranteed volume. Only large companies can compete without guaranteed volume.

With our turnover rates, providers would face administrative nightmares keeping track of customers. Exclusive contracts carry a guarantee term of service; this lowers costs. By all means current contracts should be honored. Owners should have the ability to renew existing contracts as well.

Somebody has already addressed the easement concerns and with the resale of communities. That would certainly cause some title difficulty and should not legislatively be mandated.

Compensation in a non-owner residential setting is appropriate on a limited basis. Some properties own the wiring on and inside their property. This asset is sometimes sold outright to a provider. Property owners should have the right to sell their property, even if the property is wires.

I'd like to thank you for the opportunity to appear and ask that any recommendation that you make to the legislature clearly show the distinction between multi-tenant and multi family, and we thank you for your time.

MR. CUTTING: Thank you. Any questions?

(NO RESPONSE)

MR. CUTTING: We can put Mr. Wiggins on the bubble or we can wait until after lunch.

MR. WIGGINS: I've only got about three minutes, four minutes.

MR. CUTTING: Why don't you go ahead then.

MR. WIGGINS: This is Patrick Wiggins for Intermedia Communications.

You know, a lot of ground has been covered today, and I won't subject you to redundant comments. You know, the initial question you posed for all of us to answer is whether there should be direct access. Interestingly enough, I don't -- the enabling legislation doesn't mention direct access. In fact, my only knowledge of direct access being mentioned in Florida legislation is 364.339, which refers to shared tenant services and guarantees or provides that the incumbent shall have direct access to the tenant.

I mention this because although direct access sounds like a word that means the same thing to everybody,

it probably doesn't. For example, if I understand BellSouth's comments correctly, direct access means their wire going into the tenant's, the end user's premises; or as a second choice, some other carrier's wire going to that end user's premises with them having maintenance, if I understood what they were saying. Whereas, I think for Intermedia and for some other folks, an MPOE approach would, in fact, constitute direct access; but I think BellSouth looks at that as being indirect access. I mention this only to say that we need to be careful about our vocabulary.

The standard that Intermedia would suggest, I think, is one that probably everyone would agree to, that there ought to be competitively neutral access to the end user or to the tenant in a way that respects the property rights of the owner. And in that regard, we should be -- we should not be compromising the safety, making permanent changes to the owner's property without some sort of permission by them. The problem with that standard, which I think everyone would agree to, is that the devil is in the details. I mean how do you get from here to there?

And as we looked at it, I think we are probably struggling the same way everyone else is, trying to be practical and trying to be reasonable at the same time; and we are already on the record as being reasonable. I

think what we came to is that really, for the most part, this has to be negotiated on a case-by-case basis with maybe, you know, obviously some guidelines; and we think the most appropriate one right now is the Commission receding from its current point of demarcation rule and embracing the minimum point of entry. With the minimum point of entry approach and competitively neutral use of that last wire from the MPOE to the tenant, a lot of these problems can be resolved.

And my last comment, I wanted to endorse the comments of Cox with respect to the importance of addressing a horizontal riser in campus situations. It's absolutely essential if we are going to have a competitively neutral, tenant friendly and property friendly environment. Thank you.

MR. CUTTING: Any questions?

(NO RESPONSE)

MR. CUTTING: Meet back here in one hour?

MS. BEDELL: One o'clock.

MR. CUTTING: One o'clock we'll resume.

(LUNCH RECESS)

MR. CUTTING: Please, take our seats please. We'll reconvene the meeting. Next in the order is Sprint. Mr. Rehwinkel, I believe is going to represent Sprint this afternoon.

MR. REHWINKEL: Thank you. My name is Charles J. Rehwinkel. I'm with Sprint Florida, Incorporated. I'm appearing in this proceeding with Jeff Wahlen of the Ausley firm also on behalf of Sprint Florida.

In my comments here today, I just want to make clear up-front that when I refer to the phrase MTE, I'm referring to multi-tenant environment.

Prior to 1995, the Florida Public Service Commission had complete authority to decide who should provide local exchange services in a particular geographic area. It did so by giving a small number of local exchange companies an exclusive franchise to serve all of a discreet geographic area. Congress and the Florida legislature did not take steps to invite competition into the local exchange market so that building owners, property managers and landlords could assume the historical role of the Florida Public Service Commission by deciding which carrier service an MTE used through contracts or otherwise. Rather, provisions of the Telecommunications Act and Florida statutes constitute a basis for carriers to compete for end user customers on a nondiscriminatory competitively neutral basis.

This kind of competitive environment requires nondiscriminatory equal access by certificated carriers at some point on or at the premises of an MTE. To allow

otherwise would subordinate the interest of end user customers in the development of a competitive local exchange market to the landlords. Sprint supports an approach to MTEs that balances the interest of the affected parties, especially end user customers, promotes competition and encourages the development of new technology and services by certificated carriers.

In general, Sprint believes that an MTE should be broadly defined to include all tenant situations whether residential or commercial or single or multiple buildings. However, it should not include transient and certain other sharing arrangements. The definition should include residential condominiums as well as new and existing facilities.

Restrictions to direct access to customers in an MTE should only be allowed upon a compelling showing that the restriction is in the public interest. There should be a strong rebuttable presumption that any arrangement whereby a telecommunications carrier obtains exclusive use of a private building, riser space, conduit, easement, closet space and the like is anti-competitive and unlawful.

The FPSC's current demarcation rule generally places the demarc point closer to the customer and minimizes landlord responsibility and control over portions

of the telecommunications network but presents potential problems when different tenants in an MTE demand service from different carriers. Sprint believes that revisiting the definition of demarc point in MTEs could be a way to balance the interest of customers, carriers and landlords. We would urge the Commission to consider a comprehensive review of its existing rule as an extension of this current study project.

We also believe that there is a tension between our universal service and carrier of last resort obligations and the relative duties and obligations of landlords and tenants. We believe that the Commission needs to take this tension into consideration into whatever decision is made or whatever recommendation is made to the Florida legislature.

The provisions of facilities in an MTE beyond the demarc point should be considered an obligation of the landlord or the customer and not the carrier. If the customer in an MTE demands service from a carrier and existing facilities cannot be used by the carrier to provide that service, the costs of installing the necessary facilities at the property should be included in the rental charge or allocated as a matter of separate contract between the landlord and tenant but not involve the carrier unless carriers can otherwise recover these costs from the

customers requesting the service. Forcing carriers to pay these costs creates an implicit subsidy in favor of MTE tenants.

There are other issues that we have discussed in our written comments, but in the interest of time, I will leave the discussion until later in this proceeding or in our rebuttal comments.

MR. CUTTING: Any questions or comments from the floor?

(NO RESPONSE)

MR. CUTTING: Thank you. Next will be the Community Associations Institute. I believe Mr. Spears is here.

MR. SPEARS: I am here. Thank you. My name is Richard Spears. I am legislative chairman of the Florida legislative alliance of the Community Associations Institute. I've always heard that a good speech is a short speech, and this will be one of the three greatest speeches you'll hear today.

I would like to set the stage a little bit by quoting Mark Twain, one of our greatest Americans, who honest to goodness did say, quote, I would like to wish everyone a merry Christmas except the inventor of the telephone. Those were his words. I think he may have been right.

Like the representatives of the Apartment Owners Association, I'm an unpaid volunteer who won't make a nickel out of the outcome of these proceedings one way or the other, and I represent my own home owners association in Orlando. I represent the Orange County homeowners association which is a coalition of 170 HOAs with a population of 80 thousand citizens, the Florida Legislative Alliance which represents in these proceedings nearly four million people who live in these kind of community associations in our state and the National Community Associations Institute. I'm an officer of each of those at each level.

Even though I spent five years of my career in a legislative capacity on the U.S. senate staff, like my colleague from the apartment owners' group, I feel very much like a David in a room full of Goliaths here today since communications law is not my forte. So in the interest of conserving your time and because they have already delivered most of my remarks, I would like to endorse the remarks of the representatives of the International Council of Shopping Centers and the Florida Apartment Association. The Florida Legislative Alliance would also like to associate itself with the remarks of the building owners and managers association who will be batting clean up here today. We think that there may be

some problems in competition, but they should not be ours.

Homeowners associations, condos and co-ops are different because no owner/tenant relationship exists in them. Residents are the owners, and things such as telecommunication provider selection, these things are decided democratically in the best interest of the community as a whole. If there is a financial gain to a community as we've heard mentioned in some cases today to owners of a building, it is used to the benefit of the owner residents themselves in reducing assessments for such things as building and common ground maintenance, so there is no profit to be made.

Should an individual resident be permitted to opt out of his obligations under the declarations of covenants, conditions and restrictions, the result would be a great dilution of the other services to his fellow owners and an increase in their assessments. This is unfair to all. In community associations, by definition, the burden is evenly distributed among all residents. Because of the unique relationships that exist, we reiterate that there is no owner/tenant relationship in condos, co-ops and HOAs, and for this most basic reason, they should be specifically excluded from any recommendation made to the legislature. Thank you.

MR. CUTTING: Thank you. Next we have the

Central Florida Commercial Society and the Orlando Association of Realtors. Anybody here to speak on their behalf?

(NO RESPONSE)

UNIDENTIFIED VOICE: She is here, but she is out of the room.

MR. CUTTING: Okay. Is Ms. Kim Caswell available?

MS. CASWELL: We are in the same situation. Our subject matter person is out of the room. I'll try and find him.

MR. CUTTING: BellSouth.

MR. MILNER: We are right here. Good afternoon, I'm Keith Milner. I'm senior director for interconnection services for BellSouth. I will apologize, first of all, for the -- for my slide presentation. If there are books on how to construct effective graphics, I've probably broken all those rules; but I do have a hard copy of the slides that I'll present here. I'll leave these up here, and if you would like a copy, please feel free to grab one.

What I will do is summarize the remarks we made in our filing. Let me see if I can make everything fit on the page at once here. What you have here is a summary of our filing, so I will summarize the summary. In the first

point, BellSouth believes that companies should have directs access to the customers living in multi-dwelling units. And by direct access, let me clarify something I heard a little bit earlier. By that we mean that direct access -- that the demarcation be located within the end user customer's premises such that we could deliver service entirely to the end user of that service, and that direct access could be attained either by facilities that that company owns or operates or by acquiring the facilities of some other carrier.

BellSouth offers, by law we are obligated under the Telecommunications Act to make our own facilities available to others, so we've talked a bit about subloop unbundling, and I'll talk about that a little bit later on. But BellSouth would hope that even companies not obligated by law to make their facilities available to BellSouth would do so in sort of a reciprocal fashion.

The second point I would like to make is that we consider the companies that should have direct access to include all companies who provide services or potentially provide those services, and we don't really draw a distinction between whether it's the incumbent, a CLEC, an independent company or whoever else.

Our definition of multi-tenant environment is likewise broad; and that is, that any facility whose access

is controlled by another party should be considered a multi-dwelling unit or a multi-tenant service arrangement. So we have drawn a pretty broad definition, we think, of what telecommunications companies should be -- the rule should apply for as well as the environment itself and the services; that's the next point that I'll raise.

Going to the question of what services we believe should be embraced by that definition, basically all. First of all, we think all services. We think that those services should be offered in a technology neutral fashion; that is, we don't draw distinctions about whether services delivered over fiber or copper or wireless or any other method that may come along. And third, that carriers should be able to provide any services in a direct access environment that lawfully they are permitted to offer.

Let me speak a moment to the question of what restrictions BellSouth believes might apply. First of all, we think that using our direct -- our definition of "direct access," that the property owners' concerns must be addressed. We understand that, and we appreciate that. However, if the stance comes to be that the property owner has the authority to prevent a carrier from providing its services, then that in effect is a restriction to direct access.

Second, and we've talked a good bit about minimum

points of entry or MPOEs. Any rule that a property owner might be permitted to impose that also prevents indirect access, such as MPOEs, is likewise a restriction to access.

Now we as an incumbent and some other companies in this room have some special requirements placed on us as carrier of last resort, and so let me speak to that briefly. Our position is that as we are required to, that we be permitted on a direct access basis to serve customers who ask for our services when we are operating as a carrier of last resort. And lastly on this slide, that carriers, including BellSouth, should not be prevented from marketing their services to occupants of multi-tenant buildings.

Now let me speak to something that was discussed both pro and con earlier; and that is, this notion of marketing agreements, and our friends at e.spire referred to those as creating a slush fund. Let me respond directly to that. First of all, they are not slush funds. The agreements are voluntary, they are cancelable by either party within 30 days for any reason, and the agreement itself in no way restricts access to the property by any service provider. We do have an agreement with the property manager that is more like a sales agency than anything else, and we provide credits to those managers who promote BellSouth's products. If the property owner

doesn't like our arrangement, within 30 days they can cancel that arrangement and make a similar or different arrangement with anybody else, and we are okay with that. The question is access, not sales and marketing.

Let me move on in the interest of time to the question of how the demarcation point should be defined; that is, by the existing PSC rules or by some presumption that the FCC requires an MPOE, which by the way, we don't agree with. First of all, we say that the demarcation point should be that point at which responsibility ends for the service provider and where responsibility by somebody else begins. Our choice has been, under the rules that FCC has put forward and other states and by the rules of this state, our business plan is to provide service all the way to the end user in every case that we can; so we are responsible for the facilities that get that service delivered. So we think that the demarcation point, rather than relying on lots of technical merits, although those are important, should take into view as to service responsibility as to who is going to do what when the customer calls and says my phone doesn't work and who is going to respond the that call.

Likewise, to the issue of where that demarcation point is located, the subscriber, we believe, should designate that point in accordance with statutes. And at

multi-tenant properties, where such demarcation points have to be established before anybody has moved in, then we think that the demarcation point should be assumed to be located within the premises of the tenants or the end user subscribers.

Bear with me, I only have a few more slides. It takes me longer to adjust it on the screen than to say what is on it. The next slide talks about the responsibilities of the various parties: The landlords and owners. We believe that at least part of their responsibility is to make very clear to their tenants who all can provide services and to clearly communicate any terms and condit'ons that the tenant might be interested in regarding access to such services.

For the tenants and the customers and end users themselves, we believe they ought to have rights to allow them to choose the services they want from the carrier they want to provide them; and we think that they ought to be able to choose that without either direct or indirect economic penalty. Now I've used the term "penalty" in a rather narrow frame here, and by that I mean a penalty is a charge for which there is not -- from the end user customer's perspective, any value added. It's not recovery of a cost or anything like that, but rather just something that's not supported by any value being added that is

perceived by the end user. And finally, we believe that all telecommunications service providers should not be prevented from offering their services to anybody in multi-tenant properties.

Regarding compensation, I think I just kind of got to our general theme on that. The notion of compensation needs to be based, at least in part, on some discussion of what value was transferred. Again, I'll speak to our requirements as carrier of last resort. In those instances where we are providing services, within our franchise area and as long as this Commission believes that we have special obligations as COLR, then we believe no compensation is appropriate.

Now I also heard something earlier that I'll speak to as well. Perhaps the folks here from GTE and Sprint were somewhat dismayed and other companies to learn that BellSouth provides service in each and every building in the State of Florida. I wish that were so, personally, but it is not. But the point really is where we operate outside of our franchise area as an ALEC, as a competitor, just like most of you, we want the freedom to serve or not serve; and likewise, we will be negotiating terms and conditions for access to multi-tenant buildings, so that's -- Our proposals, I believe, are consistent with our operating both within our franchised area and in those

cases where we venture out as new competitors in a market.

Lastly, a couple of slides here on E911. I think these points have been covered pretty well. Our belief, obviously, is that E911 is a valuable resource to the consumers in this state; and we as service providers must do everything we can to mitigate any unintended difficulty or disruption of 911 service.

But a couple of things do pop up when you begin to talk about providing service only to a minimum point of entry. The question immediately arises as to what happens if a customer needs to dial 911 and BellSouth, for example, might have located the demarc at the MPOE, and yet either in the second case here, the dial tone works fine at the jack at the MPOE but is not delivered all the way to the end user customer. So even though we might argue that we had fulfilled our requirements of delivering service to the MPOE, that would be of little comfort to a person trying to dial 911 but could not.

And then secondly, another complication of using the MPOE as the demarcation is that that is the address we would show in the records as far as where our facilities ended, and there needs to at least be some mechanism made -- That address might be the club house or the basement or the equipment room or something like that, so something needs to be -- some work needs to be taken on in

those cases where the service provider ends its service at MPOE to identify accurately in the 911 database that it's apartment 12 and the customer's name.

On just for a moment to a couple of other issues. BellSouth is obligated to provide service to all customers that ask us to, and immediately the issue of paying for things like access to easements and support structures, we believe that that is not appropriate.

Secondly, there are some supporting structures that we'll call fixtures that remain a part of the building rather than of any telecommunication service and would be there for the benefit of all parties, including other service providers. So we think that when we address this issue it's very important to separate out those things that you might rightfully call fixtures and separate those from other kinds of support structures.

And then lastly on this slide, we are not in favor of government mandated standards for owner-provided support structures. That list becomes very long very quickly as to all the many ways that you can provide equipment closets and back boards and hundreds of other things like that.

Let me return just for a moment to the issue of the minimum point of entry or MPOE. I've heard a couple of times today that this whole issue will be resolved if

incumbent carriers would just move their demarcation point back to the MPOE. Well, that ignores, I think, two or three pretty important considerations. One, and I'm no lawyer, but immediately to my untrained mind we get into issues of jurisdiction, potentially of confiscation, of customer service delivery issues, customer confusion issues as to who is going to fix what when it breaks and a whole myriad of issues. But obviously, if that were the case, then the question then becomes -- or becomes, how do carriers get service beyond that point?

The other point that I would raise is that there is a different situation when a carrier is requested or required to place its demarcations at the end user premises but is not permitted to install the wiring that takes you there. And in Florida right now we have some rules on the books that say generally that BellSouth must utilize in shared-tenant service arrangements wiring owned by a third party, if it meets two fairly broad requirements. One, that it meets the requirements of the national electrical code, which is not all embracive. There are lots of other codes and requirement, and there are also technology choice issues. And second, that those costs are no higher than what BellSouth could provide for itself. So we think that if the -- we think these two restrictions should be relaxed and let business decisions drive the question of who uses

what facilities and for what reasons.

Again, I'll say that BellSouth by law is required to provide its network to whoever wants it on an unbundled basis, and that includes a lot of the facilities that we are talking about, riser cable in multi-story buildings, network terminating wire and the like. We've got, I believe Teligent agreed that they had -- or said that they had signed an agreement, apparently uncomfortable with some of the conditions of that regarding whether or not BellSouth would have to dispatch each time they wanted to use that. Well, in remembering the old oil filter commercial, it's kind of a case of pay me now or pay me later. If you want to pay me now, I'll give you as many pairs as you'd like. You can use those loops as you like and when you like, and BellSouth would not be required to dispatch each time. And if you want to pay me later, that is, pay me as we go, then yes, BellSouth would have to dispatch each time to make those facilities available. My point is that there are alternatives available to Teligent and whoever else would like to use that part of our loop for getting to those customers.

And then to close on this, no carrier, whether a COLR or not, should be forced by regulatory dictate to use facilities owned by someone else.

We go to the question of use of space, a couple

of points that I heard earlier which I agree with. The trend in equipment and facilities is toward smaller, not larger. Fiber optic cables I heard someone say about a half inch or so, or less than an inch wide compared to probably four inches wide for a copper cable of 16 hundred pairs or so; and the multiplexers and all the other equipment are likewise getting smaller and not larger.

More importantly I think though is that within a given building there is a certain appetite for telephone services regardless of whether there is one service provider or twelve. I mean you reach some point that that appetite has been satisfied. So our position is, first, property owners have a responsibility to make sure that their tenants can have the kinds of services that they want. Second, I think that we believe it's wrong to make compensation for that space a profit making endeavor, but we do recognize that property owners need to monitor and check for reasonableness the use of space by the various service providers that may be in there.

And if you'll bear with me one moment, my very last slide, I promise, is the issue of access; and here again, we think the watch word should be "negotiations," not "mandated." Some tenants will want 7 by 24 access, that is, seven days a week, 24 hours a day, other tenants may not; and it really depends on the nature of the

customer, their business needs or their residential needs. And we think that those -- we think that the arena for that to work through in is negotiations rather than specific mandates. So I thank you for your kind attention, and that's all I have.

MR. CUTTING: Go ahead.

MR. KUPINSKY: Stuart Kupinsky from Teligent. First, we very much appreciate the substantive comments that BellSouth filed. If more incumbents were filing good solid substantive comments, we would resolve these issues a lot faster.

That said, suffice it to say that when we showed up at the dealership, we were told that we didn't have an oil filter, the tires were gone, and you can pay us now. It is, to the best of my knowledge, that we were not given the option to pay ahead of time and access risers whenever, and that may have been a miscommunication of some kind, I'm not sure. I did not take part, I want to say very clearly, in the specific negotiations with BellSouth. However, with other carriers that have sold us tires and the engine, we haven't even gotten as far as we did with BellSouth. So that option, to my knowledge, wasn't available to us.

And it's really a critical factor, and as we stated earlier, we are not alleging that BellSouth is, you know, acting in contravention of the '96 Act. We did sign

an agreement with them to acquire unbundled risers, if you so -- so to speak. The problem is that we really are in a lowest common denominator situation when we have to go to them each time to get a dispatch and wait for them and, you know, they've got a lot of responsibilities, and they can't be waiting around to meet us at every building of every minute of everyday. These technical issues are not complex. This is not rocket science. California and Illinois have been operating under this scenario for a long time. So with that, thank you.

MR. MILNER: Yeah, if I could just respond to that. Since neither of us were direct parties -- To the extent that Teligent would like to renegotiate that part of its contract, we are more than willing to. We have struck, you know, similar things with other carriers, and we would like to talk with you about it.

MR KATZENSTEIN: What other carriers have you struck those agreements?

MR. MILNER: Let's see, with some companies that started out as shared-tenant service providers in other states, and then we're --

MR. KATZENSTEIN: Have you done it in Florida?

MR. MILNER: I don't recall any in Florida, but I know in North Carolina and Tennessee.

MR. KATZENSTEIN: The law is different there, I

believe.

MR. MILNER: Tom Larson is telling me that we do in Florida as well.

MR. LARSON: My Name is Tom Larson with BellSouth. Just to answer the question, you know, we do have agreements with Comcast and Media One, and I know we are negotiating with Teligent now in Florida.

MR. KUPINSKY: Those are complete.

MR. LARSON: They may be completed, I'm not sure. Does that answer your question?

MR. KATZENSTEIN: What do the agreements cover? I'm sorry.

MR. LARSON: They cover wire from the outside of an apartment building up to each tenant's space and possibly distribution cable within the complexes, I'm not sure; but I know they cover that wire from the outside of each building to the tenant's space. And, of course, we have others in other states, but we are just talking Florida now, okay?

MR. FALVEY: Before you go too far, I have a few questions. I don't mean to interrupt you, but I wanted to make sure you didn't believe --

MR. CUTTING: Will you identify yourself for the court reporter?

MR. FALVEY: Sure. Jim Falvey with e.spire. I

guess, you know, sometimes it sounds like we are agreeing, and then I get very concerned. Maybe we are for a change, that would be great. But I noticed that you mentioned that you support the right of all carriers to have access to buildings, and I was wondering if you support nondiscriminatory access, which is sort of the hallmark for us. It's one thing to have access at a rate of -- that's, you know, five thousand dollars a month as opposed to for free; but then I've got to build the five thousand dollars into my rate structure and my cost structure and you don't. So I guess my question is, first question, do you support nondiscriminatory access for all carriers?

MR. MILNER: Well, certainly we do. Now to the point what rate is allowed for us to charge for those things, as you well know, you know, this very Commission is responsible for setting the rates that we could charge for unbundled network elements, which is what we are talking about here. I would presume that they set rates that are nondiscriminatory. At least that --

MR. FALVEY: No, I'm talking about building access. We have been going down the road of unbundled elements and getting to the riser, and I'm really happy to hear you say that if you are going to keep the MPOE at the customer prem then you would offer it on an unbundled basis; but my question is do you support nondiscriminatory

access to buildings? And I question the follow-up question is, do you support legislation and what form should that legislation take? For example, would you support the Texas statute that so many other telecommunications carriers here seem to be supportive of?

MR. MILNER: Let me take the easy part of that first. I'm not knowledgeable enough of the Texas statute to say whether I agree with it or not. Secondly, our obligations flow at least from the 1996 Telecommunications Acts, and consistent with that, we provide access, we believe, in a nondiscriminatory fashion. Are we in favor of such access? Absolutely.

MR. FALVEY: And you would support legislation -- I'm not talking about -- because now you're talking about -- It sounds like BellSouth owned buildings that you would permit access, but that is not any point. I guess I'm trying to find out if you support legislation to give nondiscriminatory access to your CLEC competitors.

MR. MILNER: Well, first of all, I'm not sure that legislation is required. Secondly --

MR. FALVEY: Okay, now we are getting there.

MR. MILNER: -- you said BellSouth owned buildings, I don't believe you mean BellSouth center in Atlanta.

MR. FALVEY: I'm not sure. You mentioned that we

give access to ourselves, and so I assumed that you must have been talking about BellSouth owned buildings, but just ignore that.

MR. MILNER: No, I had no specific reference to any BellSouth owned building. I was referring to BellSouth assets, such as those parts of our loop that some people call riser cable, network terminating wire and the like.

MR. FALVEY: Okay. That's all.

MR. KATZENSTEIN: Mike Katzenstein, Optel. I just wanted to -- hopefully these will remain questions and not -- It appears that BellSouth's position if cut to the essence is that the status quo is just fine, that the current rules for demarcation point, the current rules on access are fine; and if I were in BellSouth's shoes I would certainly agree with that, given the noticeable dearth in competition notwithstanding substantial expenditure by competitors.

I think it would be useful to try to parse through some of the issues that BellSouth has raised because I think many of them are strong arguments and have been addressed in other states where access has been moved to the MPOE by mandate or on a case by case basis upon the request of a competing carrier and a property owner, notwithstanding when the building was built or how it was configured.

We are in interconnection negotiations right now with BellSouth, and I am the negotiator for BellSouth and asked at our first in-person meeting whether BellSouth would consider making a part of the interconnection negotiations elements of the loop which are in the -- on the MDU premises, and BellSouth's position was, unless I've misunderstood it, and if not, maybe you could say so on the record, that subloop unbundling is not required by federal law and that the only thing they would make available on an unbundled network basis are the loops through the NID individually. But elements such as the wiring from the point that it enters into a building would not be broken out as subloop elements, and I think that is something that the Commission should focus on. It has been focused on by other commissions specifically.

Even so, the sub -- Even were the Commission to do so, the situation in most of the MDU properties that we deal with is different than the high rise. Sure, there are high rise apartment buildings in the state, and some of them have single points of entry into the building, and then there is a wire -- a riser wiring that can be easily accessed by the competitor that brings a T1 right into the building. But in the campus style apartment environment, you may have eight, six, five different points of entry by the LEC into the building, and we've been through this with

BellSouth before; and we asked why won't you reconfigure? And the answer was, It's easy, we don't have to roll a truck this way. We can just cross connect and keep our lines hot to a customer from our switch. Whereas, if you require everything to be moved to the MPOE, sure, we can give arguments that E911 will be comprised, that who will take care of the network, it will comprise the COLR requirements; but the bottom line is that BellSouth will have to roll a truck, will have to compete on a level playing field with a competitor who brings its facilities to the property the same way.

In many states, including Texas, California, among others, we are working perfectly well with multiple, with single demarc points at an MPOE. There is an exchange of information for E911 purposes. Certainly it adds responsibilities to both parties, but those responsibilities are easily fulfilled.

There are questions about who will maintain the wiring in the premises afterwards, but those are matters that are worked out between property owners and carriers with no -- with little or no problem, and I would like to know whether BellSouth has experience with the -- has actual experience with properties which are served by MPOE which have required them to take a position, this position in this proceeding.

MS. WHITE: Well, finally a question. That's why I'm up here. I've heard a lot of rebuttal. Nancy White for BellSouth. I've heard a lot of rebuttal, and I believe Optel just repeated its presentation from earlier, but I hadn't heard a question, so --

MR. MILNER: Let me comment on two or three things that I did pick up. First of all, this Commission has already ordered BellSouth to do subloop unbundling in the arbitrations between BellSouth and AT&T and MCI. So this Commission has already heard that issue, has already ordered us, and we are already providing in this state unbundled subloop elements, at least to Sprint and some others. So, A, we are unbundling our network as we are required to do. We are happy to do that.

Secondly, I think your question is to what degree must the network be unbundled; and that is, should loop distribution be taken apart and be made available in smaller pieces than that? The pieces that I've referred to, being riser cable and network terminating wire, I've already said that we are willing to negotiate terms for access to those. So if you want to call that sub subloop unbundling, that is, taking apart the larger piece parts, we've agreed to do that; we are doing that. Tom Larson named some companies here that we are providing those things to.

Back to your question about whether we have, do we have experience with minimum points of entry. Certainly we do. In other states, the rules are different, and in some cases, at the property owner's request, we have established the demarcation there. So, yes, we have considerable experience with that; and, yes, we understand the difficulty in guaranteeing your service to a customer that really doesn't care anything at all about subloop unbundling about whether those phones work or not. So, yes, we have significant experience in that regard.

MR. PHILLIP: Carrington Phillip with Cox Communications. I really do have two questions. They relate to the concerns that you raised about the minimum point of entry solution as you termed it. Were you suggesting that if a CLEC got a customer in an MDU environment and there was a problem with the wiring from the MPOE that BellSouth would have responsibility for that particular problem?

MR. MILNER: If I understand your -- Let me answer your question. If the CLEC were using, for example, BellSouth's riser cable or network terminating wire or that part of our loop, then, yes, we maintain that at the CLEC's request.

MR. PHILLIP: Would you have responsibility to the customer, the actual end user?

MR. MILNER: No, the CLEC is our customer in that regard.

MR. PHILLIP: Okay. So in this instance your concern related to your agreement with the particular ALEC?

MR. MILNER: Yes, our service obligation is to restore the service that we provide to the CLEC, we would have no direct relationship to the -- or indirect relationship for that matter.

MR. PHILLIP: And typically the ALEC as a certificated carrier would have responsibility per this Commission's rules to the end user?

MR. MILNER: Well, I don't know what rules a CLEC in the state is subject to. I'm very aware of the service rules that BellSouth is subject to.

MR. PHILLIP: Okay. Fair enough. The second question I have for you is that you seem to have some concern that the minimum point of entry solution would require BellSouth to make some changes as to where the end point of the network was. Was that a concern that I heard you raise?

MR. MILNER: No, not exactly. The notion that I heard earlier was that if BellSouth was either ordered to or volunteered to move its demarcation to the MPOE that competition would flourish. I have some real questions

about that given my understanding of competition that has arisen in those states that we have heard about today where apparently demarcations at the MPOE are prevalent. So there is at least that question as to whether that's a real stimulus to competition or not.

But in answer to your question, our concerns are that if BellSouth were ordered to move all its demarcations to the MPOE -- and I don't know the answers to this, I'm not a lawyer, and I'm not sure that anybody knows for sure. There is no silver bullet here that says one solution would fix all of these. I merely said that there were a number of issues raised: Confiscation, jurisdiction, service delivery, customer confusion, that would all need to be weighed into that decisions before we were ordered to move back to an MPOE.

MR. PHILLIP: From a technical perspective -- I realize you're not a lawyer -- from a technical perspective, would BellSouth have any problem in identifying its customers if a minimum point of entry solution were instituted in Florida?

MR. MILNER: That's not the issue.

MR. PHILLIP: I know, but would you mind answering the question?

MR. MILNER: Could we identify where the demarcation was? Of course we could. That's not the

issue, however.

MR. PHILLIP: Could you identify your customers if there were competing ALECs providing service to other customers in the same MDU environment?

MR. MILNER: We possibly could or could not, depending on how many CLECs, you know, had their demarcations at the very same point.

MR. PHILLIP: Okay.

MR. MILNER: So, you know, I don't know the answer to that; but, again, I think that misses the mark.

MR. PHILLIP: Thank you.

MR. CUTTING: Any other comments?

(NO RESPONSE)

MR. CUTTING: Thank you.

MS. WHITE: Is the witness excused?

MR. CUTTING: Yes.

MR. CUTTING: Go back to the original listing. I believe we have the Central Florida Commercial Society and the Greater Orlando Association of Realtors.

MS. CALLEN: Hi, my name is Frankie Callen. I'm the vice president of governmental affairs for the Greater Orlando Association of Realtors.

I'm going to try and not reiterate points that have already been made so we can kind of help expedite this. I think, first of all, to a certain extent, we all

agree that there is an unlevel playing field here in Florida when it comes to providing telecommunications services; however, property owners didn't create that problem, nor should we be required to remedy it. Understanding that current providers right now have put out capital outlay in the past to provide this in buildings. You know, 20 years ago you didn't have a choice of who provided your phone company. It was simply whoever was there at the time as to who ended up providing it.

My members have no interest in getting into the telecommunications business. Their concerns with this issue are really pretty simple. If we have to provide nondiscriminatory access to our buildings for telecommunications companies, reality has to be taken into consideration. There is limited amount of space available in buildings to provide for telecommunications companies for their equipment, and the Commission needs to consider this in terms of when we are talking about existing buildings and when we are talking about new construction because there are really two very different issues there.

I also wanted to skip ahead in my remarks in terms of BellSouth when he was discussing in terms of the carriers of last resort in terms of whether or not building owners ought to be able to be compensated for space. In his presentation, the assumption was that tenants have a,

quote, unquote, right or rather telecommunications companies have a, quote, unquote, right to provide services to tenants. And unless I'm wrong, I'm not sure that has actually ever been established as a right that a tenant or a telecommunications company has.

Point B is we are entering into an entirely different area in terms of how we look at how we provide the telecommunications company. We are entering a new area in terms of relationships between property owners and the telecommunications company, and I would just simply like to point out, if BellSouth doesn't think it's fair that property owners should be able to charge for space, we don't think it's fair that telecommunications companies should be able to be paid for service. I mean we provide space as a service to tenants and we are compensated for that, and I was a little confused in BellSouth's feeling like that, that we are entering a new area in the way that relationships were done before are not going to be the way they are going to be done in the past. So I think it's important to remember that property owners aren't in the business because they don't want to make money. I mean the same thing with telecommunications companies, they are not in the business because they want to provide a service, they are in the business because it makes money for them.

The other point being is that if

telecommunications are going to have unlimited access into buildings there are a lot of considerations that have to be taken into account, again, the space. How are we to determine as property owners, if we can only have four companies in our building, how do we determine what those four companies are? And granted any incumbent telecommunications company ought to be required to bid for that service as any other new carrier or new provider would if they are coming into the area.

Property owners also have to be able to control access into their building in terms of security purposes, after hours entry, equipment. There is a huge liability issue that we haven't even talked about yet. When we start talking about putting equipment on roofs, when we start talking about hanging material and we start talking about telecommunications personnel coming into buildings and liability issues with security and that type of thing, that is also an area that the Commission needs to look at in terms of what requirements a property owner is going to have in providing that.

Property owners should also have the right to enter into any contractual relationship with a telecommunications company that is providing service into their building. That should also be considered a fair grounds for market. In other words, if a

telecommunications company is going to come into the area, they are not going to come into an area that they are not going to make money in; and I would assume that that would be true. The second thing is, is that property owners ought to be able to do contractual relationships or marketing agreements with companies. They ought not to be able to gouge telecommunications companies, and there is a question on whether or not they should actually be able to charge, if we want to use the term "a monthly rate for providing space." That is also another issue that the Commission is going to have to take a look at.

I'd also like to just reiterate shortly the comments made by the International Council of Shopping Centers in terms of who are we really doing this for and who are the real customers out there. My members have expressed a concern that their tenants or customers are not the ones with the problems. As far as they are concerned, all the tenants want from the telecommunications company is good service, responsive repair service and a bill that doesn't require a Ph.D. to understand. If they want to shop their phone service, then the market will dictate where they go on that. If it's cheaper for them to receive service from one telecommunications company over another, then obviously they will go and do that.

We'd also like the Commission to consider new and

emerging technologies in this discussion in terms of -- and I think a gentleman said it earlier, in 18 months we may be back here because the technology is totally different. We would like for you to consider that. We'd also like for the conversation to also move to the next step, which is what are we talking about when we start talking about microwaves, we start talking about antennas, and we start talking about different technology that is already out there in the market. And what as property owners are we going to be required to do when you start talking about use of roofs? Also, there are other considerations to be done, because property owners are also under contractual relationships with other companies. For example, someone mentioned, how about a roofer, somebody who comes in and provides roofing for them and they've had a new roof put on and you get six telecommunications companies who are running all over that roof poking holes in it and everything. Where is the liability of who is responsible for that roof after the property owner has already paid all of that money to get it fixed? These are just day-to-day management questions that property owners deal with on a daily basis in terms of having to provide this access for telecommunications companies.

I'd also just quickly like to talk about the gentlemen from Cox Cable Company who mentioned that

compensation should be -- that compensation in their mind was the idea that as a property owner that now we can provide choices to our tenants and that is what our compensation should be. This isn't something that we look at as being a great thing. This is not a -- We are doing it because we are almost going to have to do it in a way. So for our only compensation is to turn around and say to a tenant, well, you now have three choices; that doesn't do anything for us. It's not compensation in real terms of the space we have to give up or the money or the type of things I talked about before.

Also, I would also just like to finish with saying that when we talk about providing choices to our tenants or to our customers, the telecommunications company is unique in that it's simply -- it's like utility companies also where there has only been one person or one provider for so long; but if we are getting into a competitive market and we are getting into the marketplace, what you are asking property owners and building owners to do is to take on the responsibility to allow this marketplace to occur. In other words, we're the ones that are going to have to be responsible for providing the avenue for people to compete, and so I would just like to make that point. So property owners should not be the ones responsible to make this happen or to make it a fair

market. That's all.

MR. CUTTING: Any questions?

(NO RESPONSE)

MR. CUTTING: Next is GTE.

MR. LA PORTE: My name is Karl La Porte, and I represent GTE, and I'd like to thank the Commission for the opportunity to speak today. I would just like to provide kind of an overview of our comments and our positions and then just maybe touch on a few points that have been raised by some of the other parties.

Regarding direct access, GTE believes that certified telecommunications companies should have direct access to tenants in a multi-tenant environment. The multi-tenant location owner manages access, an essential element in the delivery of telecommunications to tenants, and telecommunications is essential to the public welfare. The owner should, therefore, be required to permit certified telecommunications companies nondiscriminatory access to space efficient to provide telecommunications service to tenants.

Regarding the definition of "multi-tenant," GTE believes that multi-tenant locations should be defined as a building or a continuous property that is under the control of a single owner of a management unit with more than one tenant that is not affiliated with the owner or management

unit. Multi-tenant environments include both new and existing facilities, such as multi-tenant residential apartment buildings, multi-tenant commercial office buildings, existing shared tenant service locations, condominiums, townhouses, duplexes, campus situations and business parks, shopping centers and any other facility arrangement that is not classified as a single unit.

GTE further believes that direct access should include the network functions that are enjoyed and currently available to most Floridians today, i.e., basic local service. While technology and regulatory changes are rapidly creating new opportunities for all customers to benefit from the vast array of services over existing and new telecommunication infrastructures, there is considerable uncertainty about the precise form of emerging telecommunications structure and what it will take in the future. Therefore, we believe that it's not certain whether multi-tenant telecommunications markets will be served by copper wire, co-axe, high capacity optics, wireless, satellite or hybrid combination of these or other technologies. Similarly, it's unknown what mix of telecommunication services that customers would want or be willing to pay for.

Tenants' rights on direct access should, therefore, be defined in accord with existing statutory

basic service definition rather than including items like Internet access, video and data. The Commission always has the option of expanding the scope of direct access as technologies and demand becomes better defined. In other words, if in the past, if the Commission or if a legislative body or regulatory body had defined that cars in the future, or say 20 years ago, should be steam or we should have eight track tape decks, that would be the technology, we just don't believe that -- that's not a good policy, public policy.

Regarding exclusionary contracts, GTE does not believe that exclusionary contracts are ever appropriate. First, each tenant should have the right to choose a telecommunications company or companies.

Second, if the company adopts the FCC's minimum point of entry as recommended by GTE, the location demarcation point will be readily accessible to new entrants which will effectively facilitate intralocation competition.

Third, the FCC has ruled under it's MPOE policy that the incumbent local exchange carrier owns existing inside wire but does not control the use of the wire; therefore, the new entrant has the option of using existing intralocation cabling if suitable or install new cabling. This option facilitates the new entrant's ability to enter

the market and argues against the employment of exclusionary contracts.

Finally, if the Commission or the legislature permitted exclusive contracts, it must recognize the effect of this policy on the existing carrier of last resort obligations. If multi-level location owners are permitted to negotiate exclusive agreements, then for all practical purposes the Commission or legislature will have concluded that the carrier of last resort, or COLR, obligation does not apply to multi-tenant locations.

Again, regarding -- GTE's recommendation is that the Commission adopt the minimum point of entry as recommended by the FCC in CC Docket 8857 with the caveat that, if the Commission does move from a maximum point of entry as exists today to an MPOE regime, the ILEC must be ensured full recovery of its affected facilities.

There has been some comment about California. GTE's experience in California was that they did adopt an MPOE regime. It was over a transition period over a number of years. California is a price-regulated state as is Florida for GTE, and the way the California commission handled that was approving an accelerated amortization of the inside wire. In many cases existing inside wire counts have relatively long depreciation lines, sometimes 20 years. What the California commission did is approve an

accelerated amortization of a five-year period for recovery of that plant, and they allowed the company to recover through a surcharge mechanism. For those of you that aren't familiar with California, they've had for a number of years a surcharge/surcredit mechanism which they use for a number of adjustments. It's not broken out by line item; it's just they use it for a number of adjustments. So they included this five-year amortization as a surcharge, and it only amounted to a few pennies per month in GTE's case because of the size.

Regarding the responsibilities of landlords and telecommunications companies, GTE would -- again, would promote, say, a minimum point of entry; and so for any new construction, obviously, it would be constructed with an MPOE with the owner responsible for the placement of inside wire cabling from the demarcation point to the tenant's location. Construction operation and maintenance and wiring of that service would be on the owner's side of the demarcation and would be the owner's responsibility.

In existing multi-tenant locations, the point of demarcation would be relocated to the minimum point of entry, if adopted by the Commission when one of the following conditions is fulfilled: Number 1, the building owner or customer asks GTE to move or change the physical location of the network termination.

Secondly, the building owner or customer requires new and/or additional network outside plant facilities. The point of demarcation for the new and/or additional facilities will be established at the minimum point of entry upon completion of the outside plant work order.

Thirdly, we would move to an MPOE when a new entrant telecommunications company requested the use of the incumbent companies intralocation cable. GTE believes that's, under those three conditions, to be the cleanest way to handle that transition.

The telecommunications company under the MPOE regime would be responsible for the maintenance, repair and service quality of facilities up to the point for the demarcation. Multi-tenant location owner or possibly tenant is responsible for installation, maintenance, repair and service quality of inside wire from that demarcation point to the tenant's location.

GTE believes also that the telecommunications company should have 24 hour -- 7/24 access to that point of demarcation and, of course, that would just generally be to some type of an equipment closet. The amount of space required would also depend on the type of facility placed, such as copper, or derived channels, the number of customers and tenants served and the types of services that are provided.

Regarding E911, there was -- I guess there was some question about on an MPOE regime whether you would just get the billing location or whether you would get apartment 12 or whatever. I think that was the concern or why this question was raised. GTE offers an optional PBX product called PS-911 which provides individual station location and automatic number identification within multi-tenant locations. So, therefore, even at the MPOE, demarcation, if this -- It would be an upgrade. Where provided, it would provide the actual location of the party. And that's all I have.

MR. CUTTING: Go ahead.

MR. FALVEY: Jim Falvey with e.spire. I just have a couple of quick questions. The same question as for BellSouth, do you affirmatively support legislation to require nondiscriminatory access in Florida?

MR. LA PORTE: Again, I'm not sure. Is legislation required for nondiscriminatory access? We are in favor of nondiscriminatory access, GTE is, as a policy of favoring nondiscriminatory access to the MPOE.

MR. FALVEY: So you kind of answered my question with a question, and I'm tempted to say, I get to ask the questions here. So I think that's a no. I think both BellSouth and you are saying, well, we support it but -- you know, in principle, but we don't support specific

legislation or recommend the Texas statute or this statute or that statute. Is that a fair characterization?

MR. LA PORTE: We do not support the Texas statute, and I'll give you an example why. That's been recently passed, and we have had the experience, and I'm not sure if it was -- I guess if it was a new location, a new building going in that -- and it was in our area, in our franchise area. The compensation for that space was excessive. In other words, if you did the math, it actually exceeded the -- and it was on a monthly basis, and it was a monthly recurring charge, and it actually exceeded the rent requirement for a tenant in that building. Of course, obviously, it's a small space, only 50 square feet or something; but again, it's in an unfurnished equipment room with a hundred watt light bulb and the rent was, we deemed to be excessive. So, yes, in answer to your question, we are not in favor of the Texas legislation.

MR. FALVEY: My next question, I think I want to take some of the science fiction out of the Internet access and the data aspect of this. You mention that you only support it for basic local service, and going back to a product that we offer, we have a PRI, and the customer chooses whether they want to have it. How many channels on that PRI will be dedicated to local service, how many channels to long distance, and how many channels to

Internet access? So let's say -- I think there are 24 channels. Feel free to correct me if I'm wrong. So let's say they started out with eight channels of each local, long distance and Internet access and they get mandatory building access to put the fiber in at the building and the next month the customer calls up and says, okay, I change my mind, I want 24 channels of Internet access over that same fiber. So just sort of to bring us into the current age of telecommunications that we are in, do I no longer have access to the building when the customer calls up and switches the channels over to 24 channels of Internet access, bearing in mind that the next month he could call me back and say, let's go, eight, eight, eight again?

MR. LA PORTE: In response to your question, I guess my attempted example of the steam car and the eight track, you may need to clarify that a little bit, if that answers your question. I don't think that it needs to be defined that tightly, but when you go from three eights to one 24 of a particular service, my point is I don't think it needs to be defined that tightly for access. I think it should be left open, and that was my point with we shouldn't have regulated it, mandated steam cars, we shouldn't have mandated eight track tape decks, and we shouldn't mandate voice, data and Internet, you know, or specific technologies.

MR. FALVEY: But, see, I thought what you said was that you would only get direct access for basic local service, and I guess my next example would be the guy that uses his Internet to make phone calls all the time, which again, is not science fiction, people do it all the time, particularly to far away places; and there is going to be a trend going forward where people gradually start to use that service more and more as the bugs get worked out. So I guess what I'm saying is, you are apparently, appear to be saying that the access should only be required for eight tracks and not for CDs and that we are trying to make -- you know, turn our CDs into something, whatever the next generation is after CDs.

MR. LA PORTE: Again, I was just trying --

MR. FALVEY: Would you comment on that, please?

MR. LA PORTE: I was just trying to define it as the lowest common denominator as it exists today, and basically I would have thought that would give anybody access, meaning basic local service. If we want to leave it open ended, then we can go from there.

MR. FALVEY: Fair enough.

MR. KATZENSTEIN: Mike Katzenstein. I have one quick question, and I will resist the urge to repeat our entire presentation this time.

First of all, we welcome and are quite refreshed

by GTE's position which shows a great deal of flexibility and, we believe, recognition of the reality of facilities-based competition. The question, you had mentioned that you would envision because of price regulation and accommodation in a surcharge which would be on a tariff basis for your -- all customers in your service area would receive a surcharge which would allow you essentially to advance the depreciations for the inside wire which is stranded, just to keep everything simple.

MR. LA PORTE: Yes.

MR. KATZENSTEIN: At the point -- so what confused me was you were suggesting that the premises wiring from the demarc point to the customer would remain property of the ILEC even after the MPOE was established. I thought in California that the commission ruled that that would become CPE, that you would get your cost recovery but that all carriers would have access, and it would be up to the property owner to figure out how it would be managed, maintained and who would pay what for the use of the wiring from and after the date that the MPOE was established.

MR. LA PORTE: Yes, that is correct. That is our position.

MR. KATZENSTEIN: Terrific. No further questions. Thank you.

MR. CUTTING: Thank you. Time Warner had

switched earlier in the day. Are they ready to present at this time?

MS. MAREK: Good afternoon. My name is Carol Marek. I'm the vice president of regulatory affairs for the southeast region for Time Warner Telecom, and I appreciate the opportunity to make a few comments here.

Both the Florida Statutes and the Telecommunications Act of 1996 had some broad policy mandates to try and foster and encourage competition in the local exchange. To that end, the legislature has asked the PSC to make some recommendations, specifically to whether or not there should be legislation enacted around allowing telecommunications companies access to multi-tenant buildings. I think there are some guiding principles.

One I believe was stated in the first workshop, that the interest of the consumers, in this case the tenants, should be paramount. If we look back in terms of the statutes that competition is in the public interest, that allowing competition -- or by allowing access into a building that competition will be fostered or encouraged by that and that consumers or the tenants will be able to receive the benefits of competition. So sort of the basic, if you look at the guiding principles, the conclusion really becomes that building access is in the public -- allowing building access is in the public

interest.

There are really three key issues, I think, that keep coming up here today: Direct access, demarcation point, and compensation. In terms of direct -- And I'll try and just summarize because being the last of the industry, telecommunications industry people we have really beat the horse. But the access to the -- Time Warner believes that the access should be to an entire building or a commercial complex under one common ownership. That would also be helpful in negotiating agreements where there would be one agreement per property, that the access should be on a nondiscriminatory and competitively neutral basis as compared to the ILEC and that it should include all services under the jurisdiction of the Florida Commission.

In terms of the demarcation point, the definition should be consistent with the federal minimum point of entry definition. Any definition that this Commission adopts should also include access to building wiring. I think we have heard that theme repeatedly today as well.

The real -- really this boils down to a show-me-the-money case. You know, we wouldn't be here if compensation or the money -- we weren't getting into everybody's pockets right now, and Time Warner really believes that there are fundamentally two ways of handling this. And when we are saying nondiscriminatory treatment,

I wanted to address the one comment that was made earlier. By nondiscriminatory we don't mean free, we mean nondiscriminatory. The two alternatives are that the property owners charge everybody or the property owners don't charge anybody, so that is really the mechanism or the definition of "nondiscriminatory" that we are hoping that is applied.

One recommendation for compensation would be that compensation should be based on the difference of the value of the property before and after the physical access is allowed or the loss incurred by the property owner as a result of allowing physical access. I think if you look at that Loretto case that was referenced earlier that the supreme court did, in fact, ruled that there was a taking but that when it went through all of the court systems -- and my attorney can help me with all of the legalese -- but the bottom line was, is that one of the state commissions ruled that a reasonable compensation fee was a dollar. I've got mine, and we can go home, but I'm ready to ante up my dollar if that is the reasonable just compensation. And I think the real reason for that is if you look at access, if you look at the property before allowing competitors in, and you look at the value of the property afterwards, we really argue that we are increasing the value of that property. We are increasing the value by offering more

services to the tenants of that building, and I think that is probably why the court came up with a dollar. That's all my comments for today.

MS. AUGER: I don't have to add anything after that.

MR. CUTTING: Okay. Just one small question. In your filings you made reference to a two-year contract limit as one of the possible criteria used for circumstances that would justify restrictions to access, and I was just wondering how you came up with that two-year limit.

MS. MAREK: It was only -- On exclusionary contracts?

MR. CUTTING: Right.

MS. MAREK: It was just trying to set -- There ought to be rights in terms of contracts between building owners and tenants and telecommunications companies, and we tried to also balance those interests when we looked at the rights and obligations of each of the three parties involved in this.

So when we started saying about exclusionary contracts, we said, well, two years was an arbitrary time frame, but it was one we thought, again, was reasonable. Again, also saying though that two or more providers had to be able -- have access to that building. There were other

restrictions around, that a bidding process, and probably most importantly that all tenants of the building at the time the contract is open for bids consented that exclusive arrangement; so again, we are going back to the consumer interest or the tenant interest.

MR. CUTTING: Thank you. And last but not least a BOMA representative is here.

MR. BREWERTON: Good afternoon. My name is John Brewerton. I am representing the Building Owners and Managers Association of Florida. Interestingly enough, today we thought that these proceedings were going to yield one thing, but it seems like we are in sort of a tug of war between the incumbent carriers and the alternative carriers and maybe the commercial office building tenants and the property manager or the rope in the tug of war.

First of all, let me reiterate something that we have said time and time again, that the commercial office building is definitely in favor of competition. We do think that competition is to the benefit of our buildings. We think it's for the benefit of our tenants. In the long run, everybody is going to benefit. Whether or not we are responsible for drops in stock prices among various carriers here, whether or not we are responsible for -- whether or not they can make money in their business or their profits are going down, we think that's a little bit

misguided.

The real issue here is, and I've heard a lot of statements to this effect today, that the telecommunications carriers are here today to protect the interest of tenants; and somewhere I'm missing something here. Somewhere I think the real estate industry is missing something because, nothing against the carriers personally, but since when did they become such great corporate citizens that they are really worried about the tenants? We all know that they want access to commercial office building tenants because that is where the profitable is, and that is fine; we are all in the business to make money. That is perfectly fine.

The tenants are not the ones complaining here. The commercial office building owners are only complaining when you try to shove something down their throats. If you have a legislature that enacts a mandatory access statute and says, you will let this guy onto your property and you cannot govern any term of access whatsoever as to what that person is going to have to do or not do on your property, you're causing that property owner a problem, a major problem.

Several of the people here in the real estate industry have talked about some management issues. I'm not going to reiterate all of those. Security is a major

issue. Contractors are being used by just about every one of these carriers that are here today. Those contractors have employees. Those employees have access to the buildings. We all know what kind of problems result from that.

There are cost issues associated with it, and I've heard the cost standard iterated a number of times today. The problem with the cost standard is then you force a property building owner to come here in front of this commission or in front of some other regulatory agency and establish what the building owners cost is to manage multiple carriers in the building. You're causing that property owner to spend more money to simply recover its own costs.

One of the major problems that the real estate industry had with the proposed mandatory access legislation was that in its original draft proposed by the telecom carriers it actually incorporated a concept that said nothing shall prohibit a landlord from recovering costs from the carrier. The problem was that that recovery of cost was simply an after-the-fact remedy which, once again, the landlord would have to go to court to try to enforce that remedy, to sue under a contract or whatever else. There are protections that landlords need to be able to put in their agreements with carriers, just like they do with

tenants. If a tenant comes to a building and wants to lease space in a building, the landlord typically says, okay, here is our standard operating lease; and then the parties enter into negotiations. If the tenant has specific telecommunications needs, those are negotiated.

Once again, someone alluded to numbers earlier of five to ten years on tenant leases. Those are probably a bit long. I say three to seven years is probably a little bit more accurate. But nevertheless, some of those leases are in effect already, and those tenants do come to property owners and say, look, I want to use an alternative carrier. Well, there are additional costs associated with managing an additional carrier in the building. When an incumbent carrier came to the building, they got free access, we'll all admit that here, and that's one of the biggest problems with the nondiscriminatory standard, from the real estate industry's perspective. The problem is that the first carrier got in for free, so to say that we are not urging free access or uncompensated access is really a bit misleading because it is free access if it's nondiscriminatory when compared to the incumbent carrier who has been there forever and brought the original E911 service to the building and brought the original dial tone to the building.

So you as a commission, you as staff members of

the Commission, are charged with making policy recommendations to the legislature; and you have, you know, a couple of alternatives. You can take the new carriers, the ALEC carriers, CLEC carriers, competitive access providers, whatever name you want to give them today, but you can take those guys and you can elevate them to the incumbent or monopolistic carrier status. You can give them free access like the first carrier got when it came to the building because he brought -- the first carrier, excuse me, not he -- the first carrier brought E911 service to the building and original dial tone. You can elevate the status of all the ALEC carriers to that of a monopolistic carrier, or you can look at maybe the alternative to that, the converse of bringing the monopolistic carrier down to the CLEC status or the ALEC status. Both of those cause problems.

If you impose a nondiscriminatory standard on a landlord, a landlord cannot go to BellSouth or GTE in their tariffed territories and say, You from now on are going to comply with these restrictions and these mandates to the building, mandates for getting access to the building, and you are going to pay me compensation. Because the only thing the landlord can do if the carrier says no, which the carrier does do, is try to terminate their service. And that is political nightmare. It's a public relations

nightmare for a building owner or a property manager. So the next step is, obviously, the CLECs would like to see the same terms and conditions; otherwise, there is a competitive advantage.

Somehow we are going to have to ferret out that issue because it seems that it's a much more inequitable situation. If you talk about balancing the interest of landlords and tenants and carriers, if you are talking about balancing the interests, somebody has got to pay for the cost of that access. There are additional risks that the landlord incurs. Somebody has got to pay for that access. Are those risks paid for in the form of the price for the telecommunications service, or are they paid for in the form of additional rent, or higher rent or higher operating costs for the tenants? We submit that since the carrier is the one that is going to profit from that business and for them to deny that they are not going to -- to deny that they are going to profit from the business, I can't understand; but the costs of that access should be borne by the carrier, not by the building owner. And eventually it's going to pass through to the tenant, we all know that. Whether it goes in the form of rent or increased prices for telecommunications service, one way or another the tenant is going to pay for it. So the question is, do you saddle the landlords with this obligation, who

really aren't getting an additional benefit from this personally, or is that obligation something that should be more likely borne by the telecommunications carriers who are profiting from this service.

The reasonable standard is a good standard and concept. I use it all the time in contracts. I represent property managers all over the country. We have probably done three or four hundred of these license agreements that you've heard talked about today just since January 1. The problem with statutorily mandating a reasonableness term is then you have parties in litigation fighting over what is reasonable. That's the entire problem with the Texas statute right now.

And speaking of Texas statutes, we have heard people refer to Ohio, you've heard them refer to Texas, you've heard them refer to Connecticut. Well, the Connecticut statute was passed before anybody knew what was going on, and there is only one city in that state that had any high-rise buildings anyway: Hartford. So then you might look at Ohio, they are contesting the Ohio state statute as we speak. And you look at the litigation and litigation expenses that have been incurred by landlords in the State of Texas, and it seems to me that if you put a reasonable standard in there, you are creating leverage in favor of a telecommunications carrier who has a much deeper

pocket than an individual building owner to litigate an issue; and I strongly suggest that you think about that.

One of the things you need to think about is what kind of leverages are you creating if there is going to be any compensation whatsoever, and we submit that there must be compensation. We suggest if you doubt that there should be any compensation here that you guys recommend to the full Commission that the Commission obtain from the attorney general's office an opinion on the constitutionality of a mandatory access provision. We've said this all along. You know, let's not argue as lawyers here in this room what the Loretto standard says. Let's have the attorney general give us an opinion on it before we go down that road and have to continue fighting this battle every year. When we fought this battle in April, we were told that the telecom carriers will be back, this issue is not over, we are going to fight it every year. We'd like to not have to fight this battle every single year. It's very expensive. We are a nonprofit trade association representing our owners throughout the country and this state, and it just seems a bit overburdensome.

Regarding the MPOE issue, BOMA does not have an official stand on that position yet. At this point we are content to remain with the status quo, but we are not opposed to any modification of that. We have members in

all other states. It seems that if it makes sense for everyone. Contractually -- If you don't have a mandatory access statute, we don't really care whether it's MPOE or demarcation point, to be honest with you, because contractually we are going to allocate those obligations, benefits and burdens, if you will, of maintaining the system and servicing the customer. We are going to allocate those to the carriers pursuant to license agreements.

And speaking of license agreements, let's talk about a case that was mentioned here earlier today regarding a pole attachment agreement, and by analogy, I think landlords have been portrayed here as monopolies, and if they are monopolies, I'm sure rents will be a lot higher in the state. But back to the issue, in the case, the Gulf Power case, we are talking about a pole attachment agreement here; and I've seen a number of these agreements. I don't think I've ever seen a pole attachment agreement in the last ten years, for example, that is less than 75 pages long, seven point type. This pole attachment agreement for a creosote wooden pole, for Christ's sake, addresses everything you could possibly imagine. And for a carrier to say that that's a reasonable document but yet for a landlord to protect its own property worth millions of dollars with tenant obligations pursuant to leases with

tenants, for a carrier to take the position that that type of license agreement is unreasonable or burdensome, I just can't understand it. It just doesn't make sense to me.

The marketing contracts that were referred to earlier, there have been a few isolated incidents that I'm aware of marketing contracts. I know that, for example, BellSouth in its home office territory in Georgia signed an agreement with BOMA Atlanta which was a marketing contract. BOMA is not necessarily in favor of that. That is an individual city where an individual board took a position on a particular issue, and they are entitled to do that. In the State of Florida, we are also advised that the City of Miami's BOMA chapter entered into a marketing agreement with BellSouth pursuant to which BellSouth agreed to pay any member of BOMA in that city -- or not pay, but to give them a credit to be offset against other charges incurred by that particular member based on percentage of square footage in the building that was actually under contract with BellSouth's customers. It's not an exclusive contract. It's not a preferred carrier contract. I'm not necessarily in favor of those.

And with respect to exclusive agreements, I'll tell you that I advise all my clients to stay as far away from it as you possibly can. If a landlord wants to enter into an exclusive agreement, it's probably his

constitutional right to do so. It may not be the most prudent thing in most cases but, you know, that's his constitutional right to do so. BOMA is not in favor of those.

Regarding the excessive rent issue, I've heard a number thrown out here of five thousand dollars a while ago of rent being paid -- five thousand dollars per month to a landlord to get access to tenants. I know that everyone of my clients would jump on that in a heartbeat. The five percent number that has been thrown out is a number that, while it may have been used, and it is being used in contractual negotiations, that number is actually being offered by one of the alternative carriers here in this room. So if a carrier is willing to pay five percent of gross revenues to a building owner to get access to that building owner's tenants and to put equipment in that building and do whatever else, why are you going to tie the hands of the building owner to enter in that contract with that particular carrier? That doesn't make sense. It doesn't make sense for the government to get involved in arms length negotiations between private parties. It's unnecessary government regulation. I understand the mandates of the Federal Act to try to remove barriers to competition, but I suggest that you look at the real barriers to competition and not try to portray the building

owners or allow anyone else to portray the building owners as the parties who are the barriers to competition.

Someone said earlier, with respect to the constitutional right to do business, I think you do need to weigh, once again, the relative interests of the parties, compare your right to own private property versus a telecommunications carrier's, quote, unquote, right to serve someone in your property. Let the free market ferret itself out. It's a very young industry. Rates have gone up and down. They are all over the place. It seems like it's just premature to try to regulate anything by this committee.

Lastly, a couple of parties said here today that -- you know, I guess gave their impressions of what the legislative intent was in its charge to you to conduct a study. I would certainly disagree with their interpretations, at least from the carriers. We don't think the legislative intent was to tell you to go back and tell them that they ought to enact a mandatory access statute. If that were the case, then they would have done just that last spring.

I would also like to remind you that mandatory access has been lobbied for very, very significantly at the federal level and at state levels all over the country. While three states may have adopted some forms of mandatory

access statute, congress expressly rejected it. A number of other states have expressly rejected it as well. So I would ask that you take that into consideration. That will conclude my comments. Do you have any questions?

MR. FALVEY: A couple of quick questions. Just a couple of quick questions and clarification.

MR. BREWERTON: Sure.

MR. FALVEY: Just for the record, I was born in Connecticut, and there are high rise facilities in Stamford, Bridgeport --

MS. BEDELL: Mr. Falvey, don't forget to share with our court reporter what your name is.

MR. FALVEY: Jim Falvey, vice president of regulatory affairs, e.spire Communications, Inc. And I was just saying for the record there are high rise building in Stamford, Bridgeport, New Haven and many other cities in Connecticut, as Time Warner, which is headquartered in Stamford, will attest. But leaving that aside, I guess my question is, are you aware that under the Texas statute, you can still put in limitations on liability, you can still govern the terms and conditions of your contract but that the statute does force you to come to the table and at least negotiate a contract?

MR. BREWERTON: I am intimately familiar with the statute. I am aware of those mandates to come to the table

and negotiate a contract. And once again, you know, I can speak for my clients and the people who are active in the BOMA organization here in Florida, those guys are coming to the table and negotiating contracts. I think it's been clearly stated here today that there are a few bad apples who may not be doing that; but I don't think you should fetter, if you will, or impose legislation on 98% of the market because of 2% of the bad apples, if that's what you want to call them. I think there are other remedies available.

MR. FALVEY: I would suggest that if it were 2% we wouldn't all be here, and that if the 2% are the high rise buildings in downtown Miami, we all have a very big problem in terms of competing in the market. And as I mentioned, the 98% will typically include provisions that are totally unacceptable and we still have to sign them. So I've given examples in my testimony. There has been some comment about it, no examples. Teligent has given examples, and those are just a few examples. But there is a lot of discussion about that people are going to rip things up and not put them back, that we have to worry about indemnification and so on, and I just want to make the point that in Texas as in anywhere else, we still sit down and we take all that into account in the contract.

You mentioned that the reasonableness standard

leads to litigation in Texas, and my company's experience, as I mentioned, has been that the reasonableness standard in Texas has led to negotiation and negotiated contracts. And so I was wondering if you would give me examples of this extensive litigation that has taken place in Texas as a result of the Texas statute.

MR. BREWERTON: Well, I think it's clear what happened in the Brooks Fiber situation. With respect -- I do agree that as between reasonable parties, if you have a reasonableness standard in the contract, 99 times out of a hundred you are going to get to a situation where the parties are going to work things out.

I would like to address the comment you just alluded to, which is one you raised earlier and I forgot to address. I think you mentioned that landlords -- contracts or license agreements with carriers are contracts of adhesion and you sign them even though you don't like them. I think that that standard would apply also to lease agreements with tenants, but they are still negotiated; and actually I negotiated an agreement with some attorneys from e.spire. They did express discontent with some provisions of the agreement but we did negotiate a significant number of them.

MR. FALVEY: One of those was probably -- I don't know if one of those was one of the ones we

mentioned, but we are very unhappy with them, and that's why I flew all the way down here, but I guess my question --

MR. BREWERTON: You flew all the way down here because you are unhappy with one agreement?

MR. FALVEY: No, no, maybe just the ones you negotiated. No. There are quite a few; that's my point.

But going back to this issue of free access, to be clear on that point, there is absolutely nothing that says you can't go back and negotiate with the RBOC. What I'm hearing you say is that the RBOC is much bigger than you and they have the ability to create what you've termed a PR nightmare if you have the gall to challenge them, and yet we don't have that ability, and we are not wired at the same level that they are; and, therefore, you are able to force unreasonable rates on these much smaller competitors. Am I missing something in terms of why you can't negotiate with the RBOCs and kick them out of the building if need be? I wouldn't think it would come to that, but --

MR. BREWERTON: Actually we would love to, but I challenge you to take on the burden of telling a tenant that you are going to disconnect his phone service because you don't like the fact that the RBOC will not sign a contract with you and pay you compensation or pay you for the cost of access to that building.

MR. FALVEY: But there are other providers that would step into the void, believe me.

MR. BREWERTON: In some cases. If you are talking about a very dense market, you're exactly right, but that's not always the case.

MR. FALVEY: I'm talking about the cases where we come in, and so there is, obviously, an alternative provider. And to me you're just illustrating the point that the RBOC is too big to negotiate with so you have to make -- recover the additional costs of new carriers as well as the costs of the incumbent, because you are not getting anything from them, all out of the new carriers.

MR. BREWERTON: Actually I didn't say that. I didn't say anything about recovering cost with respect to the incumbent's access to the property. I think there's -- you know, at least this is incumbent's argument that there is some quid pro quo there when the incumbent came to the building first and brought dial tone service and E911 service to the building and then got access as a result of that. The question is, what does the next carrier bring to the building? And I understand your point, believe me, and I agree with it fundamentally. But simply because the ILEC got in for free without an agreement should not mean that my client or any other building owner should be required to allow every other carrier that wants access to a property

or to a tenant free access to the building to put equipment on a roof top, to put equipment in an equipment room, to run cables in the risers, horizontal and vertical. I mean that is problematic. It raises additional risks and burdens.

MR. FALVEY: And I appreciate that, and I'm just making the point that it's not a simple request for free access. It's nondiscriminatory access, and I'm going to leave it at that.

MS. BEDELL: I think we have both Mr. Falvey's and Mr. Brewerton's point.

Ms. Caswell, do you have --

MS. CASWELL: Yeah, I just have one question. I'm Kim Caswell from GTE. And I would just like to ask if one of the chief motivating factors behind your position in this proceeding is creating maximum profit opportunities for building owners?

MR. BREWERTON: You know, that is what has been portrayed. I know that there was a marketing publication generated by BOMA International. It was called "Wired for Profit." You know, you can read whatever you want into the title. I think we made it perfectly clear to this Commission that we didn't necessarily endorse that book, that was a BOMA international book. But if you read the concepts within the book, they talk about license

agreements. It's meant to be a guide for people to address what is going on in the marketplace. And I don't -- You can pick it apart line by line. I can probably find more complaints with it than you can because I'm intimately familiar with it unfortunately. But I do think that there are some misconceptions about what property owners want in the grand scheme of things. They are not trying to get -- as it was portrayed to the legislature in March and April, we were told specifically that property owners were trying to get 40% overrides on telecom services, which is absolutely absurd.

MS. CASWELL: Yeah, just for the record, I would like to note the title of the publication is "Wired for Profit, The Property Management Professional's Guide to Capturing Opportunities in the Telecomunnications Market," and it was published, I believe, in January of 1998 by BOMA.

MR. BREWERTON: BOMA International, right?

MS. CASWELL: Yes, you are correct.

MR. BREWERTON: I think we have provided you guys with a copy of that already.

MS. BEDELL: I was going to tell Ms. Caswell. We were told about the publication, and then we asked BOMA to provide us with a copy and they have.

MS. CASWELL: Okay.

MR. CUTTING: Anything else to FOMA.

MR. MINTZ: My name is Mike Mintz. I'm with Teligent. I think John has done a really good job of distilling the issues. It's hard to disagree with how he has characterized some of the issues except I want to ask a couple of questions.

John, with regard to the management of having a carrier, other additional carriers in the building, and you mentioned there are contractors coming in, but those are issues that can be resolved just as you can resolve having electricians or plumbers come in the building. I mean you approve the contractors, and you make sure they are insured; and, in fact, there are provisions in the "Wired for Profit" for an agreement that would address those; is that not right?

MR. BREWERTON: It does address a lot of those issues, that's correct. It was intended to be a checkpoint -- a checklist, excuse me, for people to take to their attorneys within the respective states and evaluate with their engineers and their property managers what things apply, what things don't apply, what things they are having a problem with. I mean, for example, in one of the issues that D. K. Mink, who is sitting next to me who is our legislative committee chair in the State of Florida, just pointed out there are costs associated with every

carrier that comes in the building. She brought me this week photographs of a number of properties' internal rooms, equipment rooms from various members in her chapter where people have taken hammers and punched through fire rated walls. There are disconnected wires that are left hanging. Those are management nightmares, and there are costs associated with that on a basis.

MR. MINTZ: But those are issues that the telecom contractors are not -- you know, it's not particular to them. I mean you could have electricians or plumbers or --

MR. BREWERTON: No question, except as we discussed earlier, Mike, the telecom contractor, if you will, is in a different position because it has an ongoing presence in facilities in the building whereas a plumber may not or an electrician may not. They might come in and install something and sell it and then leave, whereas, a telecommunication carrier is conducting an ongoing business there and it has contractors coming in on an ongoing basis which have to be managed.

MR. MINTZ: And if they have an ongoing relationship, then they have an incentive to keep a good relationship with the building owner; is that right.

MR. BREWERTON: You would think so. I mean --

MS. MINK: Can I address this, Mike?

D. K. Mink with BOMA. You would think so. We

spent on one building one of our members brought forth about five thousand dollars on a 60 thousand square foot building, that was done two years ago. The fire Marshall came in and said, All your walls are permeated. You've got a fire risk here, plug up everything. That was two years ago. The current pictures today show conduit where you had telecommunications wires removed, and now other wires coming through there or new holes in the wire walls where, whether it's been a screwdriver or a hammer. These are telecommunication wires. But that's just -- I mean that is a minor point. They run through fire dampers in there so when you have your fire inspector come back. You have ongoing problems.

So with deregulation, you need to know who is in your room, who is installing it. You don't know what wire it is. Your existing buildings -- your point of demarcation might be in the common area of a tenant's space, so you have a-multi liability issue there. Your current carriers do not want to sign a license agreement that would take care of a liability issue now as any other contractor coming in our building will do and we make sure we have. In fact, the liability is on us to prove that they were in that room and that they are the ones that drilled that wire. If we don't have the information from our tenant, because that's a customer of the carrier, we

don't even know what wire is coming into the building or what they are installing. In an open air plenum return you have to have a fire rated conduit of fire rated wire. That is not necessarily being done because they are not aware of it.

MR. MINTZ: John, let me go to the next question. I hear your concerns about owners wanting to recover the cost of managing multiple carriers in the building and the additional carrier, but aren't the owners really interested in more than recovering costs? Aren't they interested in also profiting from that second carrier, profits that they don't ask or get from the incumbent?

MR. BREWERTON: It's a trap question. I like it. As we said earlier, to suggest that building owners do not want do make profits on the space in their building is ridiculous. That is what they are in the business for. There's -- you know, it's been estimated by a Wall Street Journal article just two months ago there are going to be three hundred thousand new roof top sites in the United States within the next two years. Roof top is becoming valuable space, so is space in equipment rooms, so is space in risers. This Commission right now is addressing issues and looking at issues regarding utility dereg. That is space that maybe alternatively would be occupied by you or be occupied by one of our competitors or maybe a power

company, so that space is valuable. That's the reason they built buildings and they buy buildings, is to make money off of their space, no question about it.

MR. MINTZ: Thank you. That is all the questions that I have. Stuart.

MR. KUPINSKY: That's fine.

MR. BREWERTON: One point of clarification, the question is whether we are talking about excessive profits, and the portrayal has been, once again, at the legislative level that, you know, you are looking at 30 or 40 percent. Most of the agreements that we're signing are relatively nominal sums, but they do allow the building owner to recover costs, for example, the personnel that have to manage carriers in the building, five thousand dollar cost here, two thousand dollar cost there, et cetera.

MS. CALLEN: I just want to, if I could, mention something in terms of -- Frankie Callen with the Greater Orlando Association of Realtors. In terms of property owners, his comment about asking whether or not property owners are in the business of making money off a telecommunications company, if there is an opportunity for a property owner to make money off a second telecommunications company coming into a building, I would assume that there would also then be the opportunity to make the money off the first guy that came in the building.

And if we are talking about a market competition, if -- and just for conversation purposes, let's use Apple Phone Company is the one that is already in there and Pear Phone Company wants to come in; and if you, as a public service commission, tell me as a property owner I have to let everybody who wants in to come in, at a minimum I have to be able to cover -- I have to be able to recover anything it costs me to let Apple and Pear come in my building. Whatever monies or whatever profit occurs after that point in time would be the Public Service Commission's jurisdiction to tell me what I can and cannot use or what I can and cannot generate off that agreement.

Now if I'm going to enter -- if you allow me to enter into contractual relationships with Apple, Pear Orange and Grape --

MS. BEDELL: And Microsoft.

MS. CALLEN: -- and Microsoft or whoever and you give me broad guidelines, that's what the market is going to control. But it's really insulting for telephone companies to come up to us as property owners and say, Let us in to do whatever we want to do and don't think about making money off of it. I mean that is why we are here, is because the telephone companies want to come in and make money. And that's okay, nobody has a problem with that. But don't insult property owners and say, Because the truth

of the matter is we've got your customers. Now if you guys want to go out and build buildings, feel free to do it. Use a realtor, but go build them, and rent them out and use your service, then do that. But don't turn around and say this is going to be all okay for telecommunications company and your anti-consumer because you want to recover your cost and you want to make money at the same time.

MR. MINTZ: Could I just respond to that? The last thing we want to do is insult the building owners. We are trying to do deals with them. Let me clarify a couple of things.

MR. BREWERTON: That's why we are here.

MR. MINTZ: Teligent, and I don't think any of the other CLECs are asking for mandatory access. What we have been asking is for nondiscriminatory treatment, and if you want to make money off of carriers, that's fine, just charge the ILEC as well.

MR. BREWERTON: We'd love to.

MS. CALLEN: Yeah.

MR. CUTTING: We're all reasonable people. Why don't we take about a 15-minute break and then we'll come back and have some general discussions.

(BRIEF RECESS)

MS. BEDELL: We are ready to go back on the record. Hopefully we won't have to take up too much more

of your time.

Since we have had such lively discussion this afternoon already, we are going to move straight to the announcements portion so those of you who have planes to catch or other commitments can plan on how to spend the rest of your afternoon, and then we will go back to the discussion if we still need to have some.

We do appreciate everybody's comments. We understand that you all have come with particular concerns and interests, and we appreciate your sharing them with us.

Our next meeting is September the 15th. If we can, we will try to reserve this room. The room will be in the notice. Prior to the 15th, we would appreciate any comments that you would like to make in writing, any material you would like to send us, anything you think that we have not covered or that we should have discussed, anything that has not been raised in the issues, you know, we, this will be your -- this is the last scheduled opportunity to receive material from you.

That material will be due on August 26th, that's two weeks. The transcript will be ready?

THE COURT REPORTER: Shooting for the end of next week.

MS. BEDELL: Shooting for the end of next week.

In terms of filing your comments, we are going to attempt, we didn't do so well this last time, but if you file them on diskette and if the computer system is up and if the server is up at FSU, you may be able to get them. We did our best. We did our best out here in the frontier and -- but at any rate, if you file them on diskette, we will get them on the system. And as far as I know, everything that was filed on diskette is now on the system. Once it gets -- The fellows here tell me it is up.

MR. HOPPE: The system.

MS. BEDELL: The system, the FSU system is up.

MR. CUTTING: Yes.

MS. BEDELL: And as far as we know, the computers are not down, today.

Our final meeting, you know, we may be able to send you a list of questions that we would like people to address if we have some final questions that we would like to have more information on. Those will come to you early enough for you to have time to prepare for those, I hope. We will open it up for discussion again at that time to make sure that we hear everything we've got to hear from everybody.

I don't have any other announcements to make. Does anybody want to -- Is there any further discussion that we need to have today? Is there anybody we didn't --

MR. CUTTING: We are all reasonable people.

MS. BEDELL: Kim.

MS. CASWELL: Can I just ask if BOMA filed their comments on disk and/or if it got onto the Internet? Because we didn't get them.

MS. BEDELL: BOMA filed their comments last Thursday.

MR. BREWERTON: Wednesday.

MR. CUTTING: Wednesday. Our computers were down Wednesday, Thursday and Friday.

MR. BREWERTON: We did send them on disk though. We tried to file electronically, and we couldn't get through to the computer.

MS. CASWELL: It will be posted for us to access?

MR. CUTTING: You could not have accessed them on Tuesday, Wednesday -- no, Monday or Tuesday.

MS. CASWELL: But they are there now?

MR. CUTTING: You should be able to get to them today.

MS. CASWELL: Okay. Thanks.

MS. BEDELL: If you go and check with Brad Martin in records, he might be able to tell you if it's actually there, loaded yet.

MS. CASWELL: Okay. Thanks.

MR. CUTTING: Those are the glasses that were

left last time in case anybody wants them. Do we have anything else?

(NO RESPONSE)

MS. BEDELL: If not, we really appreciate your time, your interest, your concerns. Thank you very much.

(WHEREUPON, THE HEARING WAS ADJOURNED)

* * * *

CERTIFICATE

STATE OF FLORIDA)
COUNTY OF LEON)

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 16th day of August, 1998.

Nancy S. Metzke

NANCY S. METZKE, CCR, RPR