

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

980000B

In re: Report to the Legislature regarding Access by  
Telecommunications Companies to Customers in Multitenant  
Environments

PROCEEDINGS: SPECIAL INTERNAL AFFAIRS

BEFORE: CHAIRMAN JOE GARCIA  
 COMMISSIONER J. TERRY DEASON  
 COMMISSIONER SUSAN F. CLARK  
 COMMISSIONER JULIA L. JOHNSON  
 COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, January 26, 1999

TIME: Commenced at 9:35 a.m.

PLACE: Betty Easley Conference Center  
 Room 148  
 4075 Esplanade Way  
 Tallahassee, Florida

REPORTED BY: Debra R. Krick  
 Court Reporter and Notary

DOCUMENT NUMBER-DATE  
01409 FEB-38  
FPSC-RECORDS/REPORTING

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- JOHN CUTTING, FPSC staff
  
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- BERT LOCKE, PM Realty Group
- FLOYD SELF, OpTel
- STAN GREER, BellSouth
- KENNETH HOFFMAN, Teleport Communications & AT&T
- JEFF WAHLEN, Sprint Florida
- JODI CHASE, Florida Apartment Association

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## P R O C E E D I N G S

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2           CHAIRMAN GARCIA: Well, in a way of providing a  
3 little bit of structure, let me tell you what we are  
4 going to attempt to do.

5           We're first going to address the multitenant.  
6 We will address the report first and try to see if we  
7 can reach a consensus on what the staff presented us  
8 in the report. We will allow parties to speak  
9 specifically on the changes that have been made to  
10 the report.

11           I don't want a rephrasing of what we did or why  
12 we are wrong or why we are right. On the broader  
13 report, I want you to address the changes that have  
14 been made since you last spoke here. Clearly, if the  
15 Commissioners have questions, that's their  
16 prerogative, and we will go from there.

17           If we have time, then we will try to address the  
18 possible legislative changes. If we don't, then we  
19 may just leave that for another occasion, or someone  
20 suggested not do it at all. But that, again, is up  
21 to the majority.

22           We will then go into the Fair and Reasonable  
23 report. We will address that one first, and we will  
24 hear from the parties.

25           Before I go any further, there are three sign-up

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1 sheets in the back. If you intend to speak on any --  
2 the fair and reasonable or the Universal Service, I  
3 need you to sign up, so that we have an idea of how  
4 long we are going to run today, and so that staff can  
5 work best.

6 So please sign up if you are going to speak. We  
7 will then -- we will do fair and reasonable, and we  
8 will hear from everyone here. And then after that,  
9 we will go to the Universal Service.

10 I assume that towards the end of the fair and  
11 reasonable, I -- as well as the rest of the  
12 Commissioners -- may have some suggestions to staff,  
13 and maybe ask them to sort of think about some  
14 things. And then we will do the Universal Service.

15 When we conclude that one, then -- and we have  
16 heard from everyone, then, I guess we will begin to  
17 discuss among ourselves, if there are certain issues  
18 that we want to hash out or certain ideas we want to  
19 impart to staff. And clearly, we all will try to do  
20 it as we go through this.

21 Any questions? Good.

22 I am going to ask the parties who have comments  
23 on the multitenant to speak. If I recall, last time  
24 Mr. Brewerton went first. So let's go in reverse  
25 order and let him go last, since I am sure he will

1 have something to say.

2 I am going to limit you, though. I want you to  
3 stay under three minutes. I am going to hold you to  
4 that. And I want you to only talk about where there  
5 are changes. If you don't, our counsel -- who has  
6 had to read this probably 30 or 40 more times than we  
7 up here -- will point it out to me, and I will cut  
8 you off.

9 We want to have order, and we want to move  
10 quickly through this. There are a lot of people in  
11 the audience who aren't typically at these hearings.  
12 And the last thing we want to do is make them sit  
13 through a contentious discussion on minutia that  
14 we've already had a discussion on previously.

15 That said, why don't we start on this side.

16 Mr. Hoffman, why don't you begin?

17 MR. HOFFMAN: Thank you, Mr. Chairman. My name  
18 is Kenneth Hoffman, and I am here this morning on  
19 behalf of Teleport Communications Group, Inc., and  
20 AT&T.

21 And let me begin by saying that we appreciate  
22 the hard-working effort by your staff on this  
23 project. We support a substantial amount of the  
24 revised report. And in the little time that I have,  
25 let me go through my revisions that I would propose

1 to the report.

2 First of all, in connection with the issue of  
3 excluding tenancies of 13 months or less, we would  
4 suggest that that's problematic from the standpoint  
5 of promoting competition; because it would exclude  
6 small businesses and residents with one-year leases.  
7 So we would suggest recommending exclusion of  
8 tenancies of less than 12 months.

9 Secondly, Commissioners, the staff also has  
10 recommended exclusion of condos, co-ops and  
11 homeowners associations. By doing so, you  
12 potentially remove a large segment of the population  
13 from the benefits of competition. And we would  
14 oppose this recommendation.

15 Third, Commissioners, with respect to the  
16 development of rules, we support the development of  
17 rules and Commission authority over this issue. We  
18 think it's premature at this point to make any  
19 reference in the report to the Legislature, that the  
20 rules should follow the STS rule.

21 We are not saying necessarily that that's right  
22 or wrong at this time. We think it's just premature  
23 at this point to make any judgments about what  
24 multitenant environment access rules should look  
25 like.

1 Fifth, Commissioners, we point out and we  
2 appreciate the fact that, in the revised report, that  
3 the staff has referenced the Gulf Power decision. On  
4 a footnote on page 35, we would ask still for more  
5 balanced discussion of the Gulf Power decision in the  
6 final report to the Legislature. Because we think  
7 that the Gulf Power decision stands for the  
8 proposition that a mandatory access statute, while it  
9 may constitute a taking, is not an illegal taking, so  
10 long as there is a mechanism for compensation.

11 Next, Commissioners, we would recommend striking  
12 the reference on page 36 to the Burt Harris Property  
13 Act and the prospect that a mandatory access law  
14 could violate that act. There is no case law  
15 interpreting that 1995 law. We think it's a stretch  
16 for the Commission to render an opinion that a  
17 mandatory access law would violate the Burt Harris  
18 Act, particularly when the Commission has recognized  
19 in this report that it is not the expert on property  
20 rights.

21 Finally, Commissioners, we would ask that you  
22 include some language in the final report, clarifying  
23 that access to multitenant environments ought to be  
24 on a technologically neutral basis.

25 That concludes my comments. I thank you for

1 your time.

2 CHAIRMAN GARCIA: Okay.

3 MR. HALLEY: Hi. My name is Gunnar Halley. I  
4 am here on behalf of Teligent and WinStar  
5 Communications.

6 I would also like to express our appreciation  
7 for the hard-working, indulging efforts of the  
8 Commission and staff in relation to this report. We  
9 think the revisions --

10 CHAIRMAN GARCIA: Gunnar Halley?

11 MR. HALLEY: Gunnar, G-u-n-n-a-r.

12 CHAIRMAN GARCIA: Gunnar.

13 MR. HALLEY: Yes.

14 We think the report represents a substantial  
15 improvement over the initial report. And we are  
16 pleased with the changes overall.

17 I would like to echo Teleport's recommendations  
18 for further improvement, particularly with respect to  
19 the 13-month tenancy. As you may know, often  
20 tenancies are established at 12-month intervals  
21 for -- with renewal options. So by making tenancies  
22 of 13 months or less than 13 months excluded from  
23 this report, you may exclude all of those tenancies  
24 that are 12 months with renewals. So we would  
25 suggest making the excluded tenancies, those of less

1 than 12 months.

2 Secondly, we would like to echo the  
3 technology-neutral comments expressed by Mr. Hoffman.  
4 Again, as we stated at the meeting on January 4th,  
5 ALEC's using technologies different from those of the  
6 ILEC, we feel should expressly be included within the  
7 ambit of the report's recommendations, and any rules  
8 in -- developed in relation thereto.

9 Aside from that, we are quite pleased with this  
10 report, and again thank the Commission for all of its  
11 efforts.

12 CHAIRMAN GARCIA: Thank you.

13 Counsel, I would like to ask you that, when we  
14 completed going that way, I want you to simply  
15 discuss with us real quick their suggestions. I  
16 don't think you have to recap all of them, which one  
17 of those have been included in our report? And I  
18 guess any of you can discuss that. Which of those we  
19 might have adopted in some shape, way or form to  
20 address their concerns. And then I guess we can go  
21 Commissioner by Commissioner through this.

22 Sir.

23 MR. LOCKE: Actually, I was going to speak to  
24 the process and the why you referred to it in the  
25 rules. So I am going to defer to John Brewerton.

1           MR. BREWERTON: Good morning. My name is John  
2 Brewerton. I represent Bell of Florida. Thank you  
3 for the opportunity to address some of the issues  
4 here with you this morning.

5           One of the things I think is most important to  
6 address here, is staff has carved out these -- the  
7 13-month tenancy issue. And I think each of the  
8 carriers here that are trying to get it reduced to 12  
9 months are really reinforcing our position all along;  
10 that all of our purpose for being here is to address  
11 high-rise office buildings and commercial office  
12 tenancies.

13           This is not going to promote competition for  
14 residential service. It's not going to promote  
15 competition for other parties other than for  
16 commercial office buildings.

17           We think the report specifically should also  
18 include considerations that the landlord can take  
19 into account; not just aesthetics, security and the  
20 safety of the property, but also the reasonable best  
21 interests of all tenants. And we also think that  
22 technology should be taken into consideration.

23           The dispute resolution process urged in the  
24 report, I think, should include a provision which  
25 requires a tenant to be involved in the process. It

1 should not allow for a carrier to haul a landlord  
2 into Tallahassee every time the landlord is not  
3 satisfied with the process, even though there is not  
4 a tenant involved in the dispute.

5 We also would request that the tenant not only  
6 participate in the complaint, but also do so at a --  
7 of its own volition and not being financed by a  
8 particular carrier's deep pockets. We think it's  
9 important for the tenant to have a valid complaint, a  
10 true complaint against the landlord, because it can't  
11 get a choice of service, rather than to simply allow  
12 a telecommunications carrier to allege that a tenant  
13 has a problem and allege that a landlord is creating  
14 a problem without a tenant being involved in the  
15 process.

16 The compensation sections of the report, we  
17 think, are a bit inequitable, because they simply  
18 provide for compensation based on a cost basis to the  
19 COLR. We think, at the very minimum, that cost basis  
20 should be the cost basis to the landlord.

21 If you are reimbursing the landlord for costs  
22 and you're providing a mechanism for compensation to  
23 the landlord for costs, that should be based on the  
24 landlord's cost, not on the COLR's cost, number one.

25 Number two, there is a reference in the report



1 to a return on investment to the COLR's investment in  
2 it's facilities. We think that the landlord should  
3 also be entitled to a return on its investment. The  
4 landlord is in the business of investing in  
5 properties and getting a return on their interest in  
6 those properties. They should not be denied the  
7 right to get a return on their investments.

8 We also think on the compensation section, that  
9 it only addresses the beginning of service to a  
10 particular tenant -- thirty more seconds -- the  
11 beginning of service to a particular tenant, we think  
12 it should encompass the entire relationship. In  
13 other words, the duration of service to that  
14 particular tenant.

15 We also think that there should be a provision  
16 in here which allows for payment to landlords or to  
17 carriers of attorney's fees, in the event of a  
18 dispute. And the resolution of that dispute, we  
19 typically would suggest an arbitration type clause,  
20 which awards attorney's fees, as typical remedies  
21 in the event that the landlords do prevail in a  
22 dispute before the Public Service Commission.

23 We think that, overall, this report will not  
24 promote competition. We think it's not going to  
25 promote good faith negotiations. We think it is

1 going to cause more problems than good.

2 We have also addressed our comments to both  
3 Teleport's, as well as the staff's, drafts of the  
4 legislation, which we sent to you by FAX in packets.

5 CHAIRMAN GARCIA: Thank you, Mr. Brewerton.

6 MR. BREWERTON: Thank you.

7 CHAIRMAN GARCIA: Sir?

8 MR. SPEARS: Thank you, Mr. Chairman,  
9 Commissioners. Richard Spears, Community of  
10 Associations Institute for Our Legislative Alliance.

11 First, we thank you very much for including the  
12 language which exempts specifically condos, co-ops  
13 and homeowners associations from the other provisions  
14 of this report. We respectfully suggest that by  
15 doing it the way you are doing it, it does not, in  
16 fact, stifle competition; because, in fact, any ALEC  
17 could come before the Board of Directors of a condo,  
18 co-op or a homeowners association -- or a full  
19 meeting of the membership -- make his case as to why  
20 his service would be better and subject himself to a  
21 democratic decision of the tenants, who are also the  
22 owners. So we thank you very much for including that  
23 language, and I will be quiet.

24 CHAIRMAN GARCIA: Very nice of you, Mr.  
25 Spears.

1 Sir?

2 MR. SELF: Thank you, Commissioners.

3 I spoke last time on the demarcation point  
4 issue, and I simply wanted to let you know that we  
5 believe that the proposal, that's now in the report  
6 -- with respect to having the workshop -- we believe  
7 will give us the opportunity to address our concerns,  
8 so we think that's a satisfactory approach to that.  
9 And we would simply urge the Commission to have those  
10 workshops as quickly as possible; hopefully, before  
11 the legislative session.

12 Thank you.

13 CHAIRMAN GARCIA: Mr. Self, you are  
14 representing?

15 MR. SELF: Representing OpTel.

16 Thank you.

17 CHAIRMAN GARCIA: Very good.

18 Counsel can address some of the issues.

19 MR. GREER: Excuse me, I switched seats with  
20 Mr. Hoffman.

21 Stan Greer on behalf of BellSouth.

22 Commissioners, we had two essentially basic  
23 concerns with the proposal report. Essentially, the  
24 first one is the groups of customers that you  
25 excluded from the multitenant definition. The main

1 concern that we had is the service quality standards.  
2 And we have standards to meet. Does the exclusion of  
3 these groups of customers relieve us, essentially,  
4 of the service quality standards for those types --  
5 those groups of customers?

6 The second one is the cost associated with the  
7 provision. It seems like there needs to be some kind  
8 of cap, if you will -- you know, as the STS rule,  
9 which said, not above the cost of the  
10 telecommunications provider, if they would have  
11 provided service.

12 And the other part is the requirement for the  
13 telecommunications carrier and the tenant to file a  
14 complaint with the Commission. That seems fairly  
15 burdensome on us, the COLR, since we do not have the  
16 requirement or the ability to -- essentially, not to  
17 serve the tenant in the building. That's what we  
18 would be looking for in some kind of report to the  
19 Legislature.

20 MS. BEDELL: We can address some of these  
21 issues, but we also have some specific changes that  
22 we have -- we would like to recommend.

23 I will go through the comments first, and then I  
24 will let Mr. Cutting address the specific changes  
25 that staff, in looking through the last couple --

1           CHAIRMAN GARCIA: Do some of the changes address  
2 the concerns of the parties?

3           MS. BEDELL: A couple of them. But I think if  
4 we go through these, we can do that. And then he can  
5 do the specifics.

6           CHAIRMAN GARCIA: Very good.

7           MS. BEDELL: The 13 months or less exclusion,  
8 there are a lot of one-year contracts. We thought  
9 that this would protect some of the landlords'  
10 concerns, because there are so many, particularly  
11 residential tenancies. And we were under the  
12 impression that most commercial tenancies are more  
13 than 13 months. That is certainly -- that was just  
14 our best -- our best recommendation to you all was to  
15 exclude the one-year tenancies.

16           The -- we included the condos, co-ops and  
17 homeowners associations based on the discussions that  
18 were at the last Internal Affairs. And we still  
19 would agree that perhaps where the members of a condo  
20 or co-op have a vote in the -- you know, in the  
21 decisions about what happens in the common areas of  
22 the building, that they should be excluded from the  
23 multitenant environment, if any legislation is  
24 passed.

25           The STS rule, people are reading a whole lot

1 more into that than we intended. We were just  
2 suggesting that perhaps as the beginning for cost  
3 standards, that that might be a place where the  
4 Commission started. If that is a great deal of  
5 trouble for folks, we can take it out. It was really  
6 just for informational purposes. It would certainly  
7 be part of a rule-making proceeding, and anything can  
8 be done differently. And if you all would like to  
9 have that out, we can certainly take it out.

10 CHAIRMAN GARCIA: What do you mean, it would be  
11 part of a rule-making hearing; in terms of how we  
12 have done things of this nature in the past?

13 MS. BEDELL: If legislation passed and it was in  
14 our jurisdiction, you know, we would -- again, we're  
15 creatures of habit. We would start some place that  
16 we are --

17 CHAIRMAN GARCIA: Start somewhere.

18 MS. BEDELL: -- familiar with. But it doesn't  
19 mean that we would end up there. And we were just  
20 trying to give folks some idea of how we might  
21 determine cost fairly.

22 CHAIRMAN GARCIA: Very good.

23 MS. BEDELL: On the Gulf Power decision, we can  
24 -- I am sorry, yes.

25 COMMISSIONER JOHNSON: Year to date, though, it

1 wasn't necessary to have it in the fuel legislation.

2 MS. BEDELL: It's not absolutely necessary. We  
3 were just putting that in for information about how  
4 you might go about determining fair cost. We could  
5 just have a sentence that, you know, if the  
6 legislation were here, the Commission would  
7 promulgate rules, the appropriate rules. We don't  
8 even have to say that --

9 COMMISSIONER JOHNSON: Okay.

10 MS. BEDELL: -- you know.

11 On the Gulf Power decision Mr. Hoffman filed, on  
12 behalf of his clients, some language that we can  
13 certainly include on the -- on that case. I could  
14 read it to you, if you would like.

15 We considered it more -- I mean, it's just more  
16 case law. It's fine. It's not a problem. If you  
17 all would like to have it in -- we had decided  
18 yesterday that we -- you know, perhaps we needed to  
19 have it in there.

20 On including the Burt Harris Act, we were trying  
21 to give the Legislature an overview of what was out  
22 there that protects both any statute that -- you  
23 know, what's required to have a constitutional  
24 statute. What's out there to protect the landlords  
25 from any unconstitutional acts. And that is just one

1 more piece.

2 Mr. Hoffman is absolutely correct that we are  
3 not expert -- or Mr. Halley or whoever it was that  
4 said we are not experts in property law, we don't  
5 hold ourselves out to be. But this is law that is on  
6 the books about, you know, governmental actions that  
7 do take something of value from private property  
8 owners. That's why we have got it in there. I don't  
9 know that it mitigates against our recommendation for  
10 legislation at all.

11 COMMISSIONER JOHNSON: Ms. Bedell.

12 MS. BEDELL: Uh-huh.

13 COMMISSIONER JOHNSON: On that point, the Burt  
14 Harris Act -- it would apply to the legislative  
15 action, I guess?

16 MS. BEDELL: Yes. It applies to any  
17 governmental action.

18 COMMISSIONER JOHNSON: Okay.

19 MS. BEDELL: Whether it is --

20 COMMISSIONER JOHNSON: Statutory.

21 MS. BEDELL: Municipal or legislative, state  
22 legislative, any governmental action.

23 You know, like if a municipality enacted some  
24 kind of ordinance similar to the Legislature in  
25 passing an act, it's a broad statute.



1           COMMISSIONER JOHNSON: So if the Legislature  
2 passed a law that allowed something, would it  
3 conflict it with the Burt Harris Act?

4           MS. BEDELL: You could come and get redressed  
5 under the statute.

6           COMMISSIONER JOHNSON: And it has or has not  
7 been applied?

8           MS. BEDELL: I did not find any interpretations  
9 of it. But that was several months ago.

10          COMMISSIONER CLARK: Wait a minute, Cathy. Let  
11 me ask you, if there is a specific statute on the  
12 issue of access by a telecommunications carrier, it's  
13 not necessarily a foregone conclusion that you would  
14 still have some cause of action under the Burt  
15 Harris.

16          MS. BEDELL: No. I was just trying to lay out  
17 the law that guides these kinds of legislative  
18 actions and what kind of remedies the landlords might  
19 have if they -- if they felt like they had been  
20 harmed in some fashion.

21                 I mean, there is -- it's -- I am not -- I was  
22 not trying to presume it. I was just laying out  
23 where -- you know, what you can do, you know, if you  
24 think you --

25          COMMISSIONER CLARK: And I am not sure laying

1 out that -- laying it out is something you might be  
2 able to do. In fact -- would, in fact, be likely for  
3 this reason. If this is the legislative act and you  
4 have a later legislative act that's more  
5 specific -- and it strikes me that -- we should cite  
6 to the Burt Harris only for the notion that the  
7 Legislature has in the past been very concerned about  
8 property rights. And I don't think we should  
9 intimate in any way that it would have application to  
10 any action for access in these circumstances.

11 MS. BEDELL: Yeah. And what I had -- the  
12 introductory sentence that I have there as -- that --  
13 mandating access to tenants, it may adversely affect  
14 landlords' property interests.

15 And when I said that, I meant, you know, without  
16 compensation. You know, if you don't do it right,  
17 there, you know --

18 COMMISSIONER CLARK: Well, why don't we say  
19 that, without compensation?

20 MS. BEDELL: Well, yeah. That's -- we can add  
21 without just compensation to that paragraph.

22 COMMISSIONER JOHNSON: What page is that on?

23 MS. BEDELL: That's on page 36.

24 On the technologically-neutral point, we would  
25 certainly agree that anything that is done, should be

1 done in a technologically-neutral basis. We did not  
2 include it as a specific point, for example, in the  
3 standards, because we believe that something that is  
4 non-discriminatory would also be technologically-  
5 neutral.

6 We can certainly add it if you all think that  
7 that's important. I find it troublesome --

8 CHAIRMAN GARCIA: Don't we address that in there  
9 somewhere? Don't we mention --

10 MS. BEDELL: We have some narrative in there,  
11 but we do not have it in the statutory -- in the  
12 recommendation of the standards, because we have  
13 non-discriminatory and reasonable in there. But we  
14 don't have a specific separate piece on  
15 technologically-neutral.

16 We can -- it just -- singling it out, you know,  
17 it's supposed to have some special meaning. In our  
18 minds, discrimination -- nondiscrimination would mean  
19 that you are doing things on a technologically-  
20 neutral basis. But we can certainly -- we can  
21 certainly add that in if it's absolutely -- if you  
22 all believe that it's necessary.

23 Mr. Brewerton was concerned about the tenant  
24 being involved in the process. As far as we know,  
25 that's our intent. We have done that.

1 Mr. Brewerton also addressed the STS --

2 CHAIRMAN GARCIA: If I read that properly, a  
3 tenant must be involved. He cannot be a carrier,  
4 simply, that's running on a loop next to a building.  
5 So he sort of says, I want in. They need a tenant  
6 from that building to request service.

7 MS. BEDELL: Correct. And the tenant with them  
8 to bring a complaint.

9 CHAIRMAN GARCIA: Correct. Okay.

10 MS. BEDELL: Mr. Brewerton picked up something  
11 that we had -- I don't know, we made an inadvertent  
12 error in referring to only beginning service. And we  
13 were changing those places in the report -- John can  
14 give you the specific page numbers -- where we have  
15 said beginning service, where we have changed it to  
16 providing service, which would get that.

17 CHAIRMAN GARCIA: Does that address your  
18 concern, Mr. Brewerton?

19 MR. BREWERTON: Yes. Thank you.

20 MS. BEDELL: And if you have an administrative  
21 proceeding at the Commission -- Mr. Brewerton was  
22 concerned about the attorney's fees. You know, there  
23 are -- there are provisions for attorney's fees in  
24 administrative proceedings and that -- that's sort of  
25 self-executing. It doesn't need any specific

1 legislations.

2 COMMISSIONER CLARK: But under what basis are  
3 attorney's fees to be awarded, when it's a frivolous  
4 action?

5 MS. BEDELL: Correct.

6 COMMISSIONER CLARK: Okay.

7 MS. BEDELL: I wouldn't -- yeah. I wouldn't --  
8 I don't think we need any more than what is already  
9 in the statute.

10 COMMISSIONER CLARK: Okay.

11 MS. BEDELL: And we did not intend to interfere  
12 in any way in the statutory scheme from the COLRs as  
13 they are now, for the carriers of last resort in  
14 response to Mr. Greer's comments. And we can go  
15 back through and make sure that we have not offended  
16 the current statute related to the carriers of last  
17 resort one more time. But that was certainly not our  
18 intention.

19 And in excluding certain classes of customers  
20 from the multitenant environment recommendation, that  
21 we are only suggesting that those people would not  
22 have the same claim to access that other tenants  
23 would have.

24 CHAIRMAN GARCIA: So you are not excusing your  
25 COLR responsibility?

1 MS. BEDELL: No. No. That certainly was not  
2 our intent to do that.

3 We recognize that perhaps having the  
4 telecommunications company and the tenant both  
5 involved in the process might be burdensome, but we  
6 think that it's absolutely essential. It protects  
7 the landlord from any -- well, it protects the  
8 landlord from ALECs who may wish to just come into  
9 the building without having a particular tenant. It  
10 also protects the ALECs from tenants who may wish to  
11 have service that actually just can't be provided.

12 CHAIRMAN GARCIA: I want to go back, because I  
13 think that addresses sort of a mixing of two issues  
14 in my mind; but it addresses something that Mr.  
15 Brewerton said. But the issue of a landlord in an  
16 arbitration before us with some type of remedy,  
17 because clearly this isn't the domain of landlords.

18 I am sure they don't look forward -- nobody  
19 looks forward to having their issues decided before a  
20 governmental body, even less so by a governmental  
21 body that they have rare instance to even deal with,  
22 which is the Florida Public Service Commission. So  
23 he makes a good point that, if a landlord were to  
24 sort of win, what is that standard now, what is the  
25 administrative standard where they would be able to

1 get their attorney's fees?

2 MS. BEDELL: I hate to completely wing it. But  
3 certainly if it's a frivolous appeal, you know, if  
4 the --

5 COMMISSIONER CLARK: I think there are  
6 different standards for when the attorney's fees are  
7 requested against the Agency.

8 MS. BEDELL: Right.

9 COMMISSIONER CLARK: And that's a lesser  
10 standard. And I am not sure what it is when it's two  
11 private parties.

12 MS. BEDELL: You know, we could certainly  
13 include a paragraph about how attorney's fees work in  
14 the administrative process.

15 CHAIRMAN GARCIA: I don't know. I would almost  
16 like there to be some kind of standard where the  
17 landlord has some type of -- I guess you can't -- you  
18 can't skew the standard, but the standard -- you  
19 know, when they enter this type of litigation, I  
20 guess it would cut both ways. You know, if we set it  
21 at a certain standard --

22 MR. BREWERTON: That's fine.

23 CHAIRMAN GARCIA: Mr. Brewerton, I would tend to  
24 think about that before you say it, because clearly  
25 if you are bothered by this venue, you're going to be

1           bothered by the fact that the parties you deal  
2           with come before this venue on a very regular basis  
3           and will probably know these rules quite well. So I  
4           think a standard, when it's frivolous, I think it  
5           protects you from unnecessary litigation costs. But  
6           I worry about setting a standard that's too high,  
7           because then the property owners aren't going to  
8           fight it. At least not here. So I would just tend  
9           to be careful.

10           Clearly, I think Mr. Brewerton is right, though.  
11           If we could state that in there so that it's  
12           something that we make the Legislature aware that we  
13           are trying to follow the lead that they have  
14           established in that area, and it's something that  
15           he's aware of that this is just not --

16           COMMISSIONER CLARK: Just so I am clear, it  
17           would be some language that indicates there was a  
18           suggestion on the part of property owners that  
19           recovery of attorney's fees, under certain  
20           circumstances, would be appropriate, and just let it  
21           go at that?

22           CHAIRMAN GARCIA: Yeah. That would be fine.

23           COMMISSIONER CLARK: And then in the meantime,  
24           you might look at what the APA provides. And if  
25           that's sufficient, and you agree that that's



1 sufficient, maybe we can just add that, and just say  
2 that it appears it does or does not need to be in the  
3 legislation, because it's covered here.

4 CHAIRMAN GARCIA: Maybe we should just leave it  
5 as an issue. The way Susan stated without going  
6 through much farther, clearly -- the Legislature is a  
7 much smarter body than we are in the bigger scope of  
8 things. Let them decide where they want to go or  
9 where they don't want to go. It's certainly an issue  
10 they should address.

11 And I would suggest, Mr. Brewerton, you may need  
12 to be careful on that, because of -- when one  
13 establishes a standard, we want to make it fair to  
14 everyone; and you may find out that being fair to  
15 everyone may not work out in your best interest.

16 MS. BEDELL: That concludes my response to the  
17 comments that were made. And John has the  
18 corrections, if you all --

19 CHAIRMAN GARCIA: These are corrections to the  
20 report that he is going to -- very good.

21 COMMISSIONER JOHNSON: Ms. Bedell, did you  
22 respond to Mr. Brewerton's comment about the cost  
23 basis of the landlord?

24 MS. BEDELL: No. I think I probably just  
25 brushed right over that, didn't I?

1           COMMISSIONER JOHNSON: The landlord should get a  
2 return on their investment, that whole argument.

3           MS. BEDELL: That's a tough issue that we -- and  
4 then I apologize for -- I did skip over it. I didn't  
5 mean to.

6           The fee issue is something that I considered to  
7 be a particularly difficult one in this process, but  
8 we think that a telecommunications company should be  
9 able to come into a building and not face an  
10 arbitrary fee in addition to all the costs that it  
11 might require to get in there physically.

12           A reseller ALEC, who doesn't have the investment  
13 in the equipment, doesn't have to pay a fee to serve  
14 a tenant in the building. The COLR doesn't have to  
15 pay a fee to serve a tenant in the building. And we  
16 believe that in the -- you know, in the spirit of  
17 competition, that there shouldn't be a fee just to  
18 put your foot in the door of the building.

19           And the -- if -- Mr. Moser may be able to help  
20 me. I think that where I wasn't clear where Mr.  
21 Brewerton was referring to the return on the  
22 investment. But we don't intend to treat the  
23 landlord -- we don't intend to deny him, you know,  
24 recovery for the costs, you know, for using -- he can  
25 contract for the use of the space in the building. He

1 can contract for the use of wire or -- you know,  
2 whatever those kinds of things are that interfered  
3 with what he actually owns. Just like he leases his  
4 property to his tenant.

5 But we didn't -- we are recommending that there  
6 not be a fee just for the privilege of doing business  
7 in the building.

8 COMMISSIONER DEASON: What about your cost  
9 standard, how does that apply?

10 MS. BEDELL: Well, the cost standard that we  
11 were suggesting, you know, it should be reasonable  
12 costs, it should be actual costs.

13 COMMISSIONER DEASON: Doesn't cost normally  
14 encompass a concept of return on investment?

15 MS. BEDELL: Certainly. Certainly.

16 COMMISSIONER JOHNSON: Because that was what I  
17 was kind of wondering. The way he phrased the  
18 question about the cost basis of the landlord and  
19 whether the landlord gets a return on the investment,  
20 I was thinking that maybe we did deal with that,  
21 maybe that will be addressed. And I didn't even  
22 think -- although he might have been raising a fee  
23 issue, I wasn't looking at it in the context of a  
24 special fee.

25 COMMISSIONER JACOBS: I understand your

1 recommendation to say that the tenants should be pick  
2 that up; is that correct?

3 MS. BEDELL: The tenants are responsible,  
4 perhaps, for some costs. But that was something  
5 that, you know, we were trying to -- other than  
6 specifically suggesting that the tenants are  
7 responsible for easements, you know, we would  
8 recommend that to the extent possible that cost  
9 issues be negotiated between all three of the folks  
10 that are involved in trying to get access, because  
11 there may be some costs that the tenant is willing to  
12 pick up that would, you know, make something work.

13 COMMISSIONER JACOBS: What if the tenant picks  
14 it up, what does that do to determine their rights of  
15 ownership; or for that matter, maintenance  
16 responsibilities?

17 MS. BEDELL: It wouldn't -- I don't think it  
18 would shift the burden. I think that any  
19 telecommunications equipment would remain in the  
20 hands of the company that installed it.

21 If there was a cost to -- you know, like if you  
22 have -- just something, you had to knock a hole in  
23 the wall, and it had to be patched up again, you  
24 know, the landlord is entitled to have that wall  
25 patched back up again. And, you know, somebody

1 should pay for that.

2 COMMISSIONER JACOBS: Now, so that sounds like  
3 would be resolved in the negotiation of what's  
4 reasonable.

5 MS. BEDELL: Hopefully. I mean, not even have  
6 to come to --

7 COMMISSIONER JACOBS: I think it would be useful  
8 to kind of -- if we added that as some guidance in  
9 that recommendation about what we view to be  
10 reasonable on negotiation.

11 MS. BEDELL: Yeah. And we can also add the  
12 return of investment as contemplated in the  
13 determining costs. And that could also be  
14 something --

15 CHAIRMAN GARCIA: I think that would go a long  
16 way from Mr. Brewerton.

17 COMMISSIONER CLARK: I have to confess that I  
18 wasn't completely understanding what that was about.  
19 I thought it was return on investment had to do with  
20 when you might have -- when you might have a change  
21 in the demarcation point, and that what is currently  
22 the wire that belongs to the phone company, you might  
23 change to the ownership of the landlord. I am not  
24 really sure I understood what the issue was with  
25 return on investment.

1 MS. BEDELL: Well, we could --

2 COMMISSIONER CLARK: Mr. Brewerton, what is your  
3 issue with that?

4 MR. BREWERTON: The issue is that, throughout  
5 this report, when we talk about a compensation  
6 standard, on the one hand, we talk about reasonable  
7 and nondiscriminatory; and then on the other hand,  
8 then we talk about reimbursement of costs. And we  
9 compare it to the STS rule based on what it would  
10 cost the COLR to serve a particular tenant out of  
11 pocket.

12 And maybe I am wrong here, but I guess in my  
13 general understanding of the term costs, you know,  
14 contractually, we usually mean out-of-pocket costs.  
15 We don't mean returns on investment.

16 And the concept is that that is a cost to the  
17 landlord. If nothing else, it's an opportunity cost.  
18 And I don't think there is anywhere in this report  
19 that says we can charge them for space.

20 CHAIRMAN GARCIA: Give me an example of an  
21 opportunity cost.

22 MR. BREWERTON: If, in these days, janitorial  
23 companies, for example, are paying to lease closet  
24 space in buildings, the opportunity cost is that, if  
25 I have to give that space to a carrier to serve

1 tenants in my building, I am losing rent on someone  
2 else that might be paying me for that space.

3 and --

4 COMMISSIONER CLARK: Well, that's a cost.

5 MR. BREWERTON: I just would like to see the  
6 report specifically state the return on investment  
7 concept, because I -- I don't see it as a cost.

8 COMMISSIONER CLARK: You know what, maybe me if  
9 we take out the notion of the STS as suggested, we  
10 can avoid all of this. And then those things can be  
11 flushed out in rules.

12 MS. BEDELL: Certainly.

13 CHAIRMAN GARCIA: Okay. Go on.

14 COMMISSIONER DEASON: Before we get into the  
15 specific changes or corrections, what about Mr.  
16 Greer's question, as I understood it to be,  
17 concerning service quality standards for those  
18 customers which are exempted?

19 Did I understand your issue correctly, Mr.  
20 Greer?

21 MR. GREER: Yes, Commissioner. Essentially, if  
22 you exempt those categories of customers from access  
23 requirements, then essentially we may -- we will  
24 probably run into some problems as far as the  
25 compliance with service quality standards within

1 those building locations.

2 CHAIRMAN GARCIA: You didn't intend to exempt  
3 it.

4 MS. BEDELL: We do not intend to exempt them.  
5 It may be -- in my mind, you read the statutes  
6 together. But we don't intend by excluding from the,  
7 you know, right to come before a body and have access  
8 determined, if you can't get a carrier that you would  
9 like to have, we don't intend to exclude all of the  
10 rest of the package group for those people to have  
11 access to the COLR.

12 MR. GREER: Commissioner, I think what we are  
13 looking for is a right not to serve. I mean, there  
14 is mandatory access in these buildings, if you don't  
15 require mandatory access. Then essentially what we  
16 are looking for is the right to say, well, we think  
17 we ought to serve that building or we don't, because  
18 of the economic reasons, or we can't come to some  
19 agreement with the company.

20 COMMISSIONER CLARK: Mr. Greer, I have no  
21 understanding of what you're getting at. What are  
22 you talking about with those that are exempted? Do  
23 you mean condos?

24 MR. GREER: For example, for a building, we have  
25 requirements out of service over 24 hours to repair



1 those within 24 hours. If we don't meet that  
2 standard, then it's a hit against the company.

3 COMMISSIONER CLARK: What does this have to do  
4 with this issue?

5 MR. GREER: Well, if you take out the  
6 requirements, if you exempt these folks from having  
7 to provide access to the companies to provide  
8 service, then our -- probably, we are going to be  
9 over 24 hours before we can work out some agreement  
10 to fix a customer's problem within that building  
11 location.

12 COMMISSIONER CLARK: Exempt them in what way?

13 MR. GREER: We need some kind of -- excuse me?

14 COMMISSIONER CLARK: Which are you talking about  
15 that we've exempted?

16 MR. GREER: The condominiums.

17 COMMISSIONER CLARK: We are just exempting them  
18 from the notion of access by competitive carriers.

19 MR. GREER: Well, but it's not necessarily a  
20 competitive carrier, is it? Access by carrier -- I  
21 mean, are you still requiring COLR access?

22 COMMISSIONER CLARK: Yes.

23 CHAIRMAN GARCIA: Yes. Yes. They are still  
24 yours. If you are the carrier of the last resort in  
25 that area, you still have to serve it.

1 MR. GREER: I didn't read it that way.

2 CHAIRMAN GARCIA: Well, do we have to state it  
3 as stronger?

4 MR. GREER: Well, it just wasn't clear that --

5 CHAIRMAN GARCIA: Let's state the obvious there,  
6 also. I would assume -- clearly, we are not  
7 relieving you of any of those obligations. Where you  
8 are, you stay, unless you --

9 MR. GREER: And that's what concerned us, that  
10 looked like it would --

11 CHAIRMAN GARCIA: Let me ask you this concern,  
12 what happens when -- this is curiosity -- in one of  
13 those situations where we do have a competitive  
14 situation -- and let's say Teligent takes the  
15 building. In other words, wins over a condo  
16 association, takes the building. What happens if  
17 Teligent and the landlord, 12 months down the line,  
18 decide to break that relationship. In this case, the  
19 condo association breaks that relationship. Does  
20 BellSouth still have COLR obligations to those  
21 tenants?

22 MR. MOSES: I would say they would, but it would  
23 be up to the tenant to obtain the access for the COLR  
24 to come in there, which is under the current rules.

25 CHAIRMAN GARCIA: Commissioners, I guess that --

1           COMMISSIONER DEASON: You said it would be up to  
2 the tenant to obtain that access. Can you hold  
3 BellSouth responsible if there is some type of  
4 inferior access where they don't have the ability to  
5 go in and determine the cause of an outage to that  
6 customer, do we hold them still to the 24-hour  
7 requirement and things of that nature?

8           MR. MOSES: If they are getting a request to  
9 serve a customer that is exempted under the various  
10 scenarios that we have talked about here, it may be  
11 possible that they couldn't get access in there,  
12 unless the tenant had a complaint. And then they  
13 could possibly get through this process or the civil  
14 courts. But I don't think that they would  
15 necessarily mandate access to that customer, because  
16 that was the purpose of putting those exemptions in  
17 there, to let those certain tenancies to have some  
18 controls over who came in to served that building.

19           COMMISSIONER DEASON: So you are saying that  
20 it's possible that for those exempted entities, they  
21 could sign an exclusive agreement with an alternative  
22 carrier and basically deny BellSouth to serve any  
23 customer in the building, even though they are the  
24 carrier of last resort? Is that envisioned? I am  
25 trying to understand.

1 MR. MOSES: I believe that's true.

2 COMMISSIONER JACOBS: How would we -- if -- it  
3 sounds like the landlord would be the -- would  
4 essentially make that determination, that the carrier  
5 of last resort no longer has access to that building,  
6 how would we implement that?

7 MR. MOSES: If you have excluded out a  
8 tenancy -- just for the homeowners association, for  
9 example. And you said, okay, the homeowners  
10 association, you have got the ability to determine  
11 who is going to come in here, because it's exempted  
12 out, because of the very short duration of time of  
13 the tenancies. Right there, you have precluded  
14 everyone from having access to that building. And I  
15 don't think that this report goes to the extent that  
16 it's going to protect the ILEC from being able to  
17 come in there any more so than an ALEC coming in  
18 there.

19 COMMISSIONER CLARK: Well, I think we need to  
20 make it clear that this is not intended to change the  
21 requirements for the carrier of last resort; that the  
22 tenants continue to have access by the carrier of  
23 last resort will always be there.

24 COMMISSIONER DEASON: So let me see -- you are  
25 saying that, even for those exempted entities, they

1 should not have the authority to agree among  
2 themselves that they would not allow access to the  
3 carrier of last resort. They would not have the  
4 authority to do that. They always have to have --  
5 carrier of last resort always has to have access?

6 MR. MOSES: I believe that was the intent of the  
7 carrier of last resort statute, yes.

8 COMMISSIONER DEASON: I'm just trying to  
9 understand. First of all, what is staff's position  
10 on that?

11 MS. BEDELL: When we first drafted this  
12 section, we were using exemptions such as those in  
13 the call aggregator rule, okay. And when you have a  
14 call aggregator, the tenant doesn't have the  
15 opportunity -- you know, if you check into a hotel  
16 room, you can't call down to room service and have  
17 them deliver the ALEC of your choice.

18 You know, you can dial for your long distance  
19 service of choice, but, you know, in terms of local  
20 service, you can't do that. And that's where we were  
21 going with that piece.

22 COMMISSIONER DEASON: And I guess my point is,  
23 if that's where we are going, well, then the argument  
24 that you can't hold the same service standards that  
25 we apply to the carrier of last resort, that that

1 argument perhaps has merit.

2 MR. MOSES: No, sir, it doesn't, because if they  
3 are already serving that customer, they still have a  
4 presence there. They have already got access. This  
5 report goes to actually getting initial access to get  
6 in to serve the customer to begin with. I believe,  
7 if I understood Mr. Greer correctly, what his concern  
8 was is, if we are in here serving someone, is this  
9 going to preclude us from getting access within 24  
10 hours to fix that customer's repair service.

11 MR. GREER: Well, it's a combination of both. I  
12 mean, as a COLR, you have mandatory requirement by  
13 the -- to serve the customers. And if we can't get  
14 access even to the ones we have access to now,  
15 depending on what happens in the MPOE proceeding the  
16 Commission is going to do, that's fine.

17 But on a going forward basis, if we can't get  
18 access to the customer, then we need some relief from  
19 the mandatory, mandatory server requirement. And  
20 that's where we run into a problem. And it sounds  
21 like that it wasn't -- well --

22 CHAIRMAN GARCIA: We are going to restate it the  
23 way Commissioner Clark suggested, I think, just to  
24 clarify it a bit. But we will get there when we get  
25 there, I would assume is the answer to that question.

1 I think we are saying you still have those COLR  
2 obligations.

3 COMMISSIONER CLARK: I don't see how we can  
4 change this -- I mean, the statute had indicated that  
5 you have to access to the carrier of last resort.  
6 They have already spoken on that issue.

7 CHAIRMAN GARCIA: Okay. Does counsel have  
8 something to add?

9 MR. REHWINKLE: Charles Rehwinkle on behalf of  
10 Sprint Florida.

11 Commissioner, we came up to support what Mr.  
12 Greer is saying on the issue of access. We see it as  
13 a particularly acute concern when you have a brand  
14 new apartment complex, let's say, where a competitive  
15 carrier or someone other than an incumbent carrier  
16 serves it at the outset, when you have a tenant that  
17 decides he wants the ILEC, the carrier of last  
18 resort to serve, that's where we are seeing the  
19 problems. And we foresee a problem with this rule  
20 conflicting with the statutory obligations, so we  
21 would support that concern.

22 CHAIRMAN GARCIA: Okay.

23 COMMISSIONER DEASON: Well, what's the fix to  
24 the problem? I understand there's a concern. But we  
25 just identify it as a problem and let the Legislature

1 deal with it?

2 MR. GREER: Well, Commissioner, I think the fix  
3 for the problem is getting the COLR -- and that may  
4 be a statutory fix -- giving the COLR the ability to  
5 make the decision whether or not they are going to  
6 serve the building or not, depending on what happens  
7 with the MPOE and the cost that we are going to be  
8 able to incur to serve the building.

9 I mean, there was some discussion on various  
10 cost proposals, whether it's the MTE's cost or the  
11 COLR's cost.

12 CHAIRMAN GARCIA: So you are looking for an  
13 exemption to your COLR status for exempted entity.

14 MR. GREER: Yeah. I mean, that's --  
15 essentially, we want to have that opportunity to make  
16 that call. As far as I read this document, we don't  
17 have that ability now, because, you know, we have the  
18 mandatory requirement to serve. But there is nothing  
19 in here that says, if we can't gain access, then we  
20 have the right to say, well, we want to pay the cost  
21 or we don't want to pay the cost. And let the  
22 competition provide service to the building.

23 MS. BEDELL: Commissioners, I would like to  
24 just respond very briefly on the fact that they have  
25 got that problem with apartments now. I mean, what



1 we do won't make any difference. I was a little bit  
2 more concerned about when we added the condos and the  
3 co-ops, I really don't know how that impacts them.  
4 But we didn't intend to change the COLR  
5 responsibility.

6 CHAIRMAN GARCIA: And let's --

7 MS. BEDELL: We didn't discuss that in any other  
8 workshops.

9 CHAIRMAN GARCIA: Okay. And that will be -- as  
10 part of the changes that are going to be made, that's  
11 going to be added in there.

12 COMMISSIONER JACOBS: And I think that's  
13 particularly -- what you just said is particularly  
14 important to convey to the Legislature.

15 MS. BEDELL: That we have no intention of  
16 giving --

17 COMMISSIONER JACOBS: To deviate from --

18 MS. BEDELL: From the obligations of the COLR.

19 CHAIRMAN GARCIA: Susan's language dealt with  
20 that. All right.

21 MR. CUTTING: There are a few basic changes to  
22 the report. They begin the Executive Summary on  
23 Roman V. The same change carries through in several  
24 other locations. On Roman V, five lines up from the  
25 bottom, the first underlying sentence says, in

1 addition, the landlord and the ALEC can negotiate  
2 appropriate competition for cost of installation  
3 easements or other costs related to delete the word  
4 beginning, and insert the word providing service to  
5 the tenant. The beginning is deleted, and the word  
6 provided is inserted.

7 That same change is also on Roman VII. Number  
8 two of the highlighted and underlined section, the  
9 same sentence, the second line of it says, or other  
10 cost related to beginning service. Delete the word  
11 beginning and insert the word providing service to  
12 the tenant.

13 COMMISSIONER JOHNSON: Where is that? I don't  
14 see it.

15 MR. CUTTING: I am on Roman VII, number two,  
16 about halfway down the page. The sentence begins, a  
17 landlord may charge a utility. The second line of  
18 that sentence, or other costs related to beginning  
19 service.

20 COMMISSIONER JOHNSON: Okay. Thank you.

21 MR. CUTTING: Next reference to that is on page  
22 55. At the bottom of the page, there is also a  
23 number two that's underlined. It's new added text.  
24 The same word beginning will be deleted, and insert  
25 the word providing service.

1           And the final reference is on page 63. It is  
2 also the number two. The same sentence again,  
3 deletion of the word beginning, and insertion of the  
4 word providing in that sentence.

5           Roughly the same sort of change begins on Roman  
6 III, Executive Summary. Under the recommendation for  
7 definition of multitenant environment  
8 telecommunications services, the last line says, for  
9 purposes of MTE access, the Commission recommends the  
10 definition of telecommunications services pursuant to  
11 Chapter 364, insert .02, should not be amended.  
12 Making a specific statutory reference as opposed to a  
13 general reference.

14           COMMISSIONER JACOBS: Instead of chapter, you  
15 are going to say section, then, correct?

16           MR. CUTTING: Yes. Section 364.02.

17           The next reference is on page 17, the same  
18 reference we just discussed. Under the  
19 recommendation about two inches down from the top of  
20 the page, for purposes of MTE access, the sentence  
21 goes on, pursuant to, it will be Section 364.02.

22           The reference, again, is found on page 20 of the  
23 report, the last line, pursuant to Section 364.02 at  
24 the top of the page.

25           The final reference is on page 58, right about

1 the middle of the page under the recommendation,  
2 again, we change to Section 364.02.

3 And I have just two other changes. On page 35,  
4 Ms. Bedell already made reference to insertion of  
5 text regarding the Gulf Power case, and it will go on  
6 page 35. And on the last line of page 35, the  
7 sentence ends with the phrase, will not be lawful.  
8 Delete will not be and insert is. The word is.

9 COMMISSIONER JOHNSON: Read that sentence to me  
10 again.

11 COMMISSIONER CLARK: Should be is not lawful.

12 MR. CUTTING: Excuse me, yes. Is not lawful.  
13 I'm sorry. I deleted more than I wanted to there.  
14 Excuse me. I said it twice.

15 COMMISSIONER JOHNSON: Okay.

16 MR. CUTTING: That concludes the minor changes  
17 in the text.

18 CHAIRMAN GARCIA: Is that it? That's it?

19 Okay. Well, Commissioners, let me tell you  
20 where we are going to proceed from here. I will  
21 entertain any motions on this report. And then what  
22 I am going to ask is that staff -- I spent most of  
23 the night working on -- or at least most of the day  
24 working on the proposed legislation. And I am going  
25 to have them give it to all the parties. We are

1 going to come back at a time certain, two o'clock. We  
2 are going to pursue this same procedure here on the  
3 legislation. Have all your objections to any changes  
4 that have been made -- obviously, you have never seen  
5 this before, because -- I mean, you have seen it  
6 before, but you have never seen this last -- tell us  
7 the problems you have with that language, and then we  
8 will listen to all of you. And then if we want to  
9 vote it out, we will vote it out then. If we don't  
10 want to include new language, we won't.

11 So I would suggest that time certain, get your  
12 copy from Ms. Bedell, who will give you the language  
13 that has had some changes. And we will deal with  
14 that at a time certain, two o'clock. That said --

15 COMMISSIONER JOHNSON: There were -- is it time  
16 for discussion?

17 CHAIRMAN GARCIA: Yes.

18 COMMISSIONER JOHNSON: There were a couple of  
19 issues that Ms. Bedell ran through that I understood  
20 that staff didn't have a problem with. And you were  
21 kind of teeing them up for the Commissioners.

22 I think Commissioner Clark had suggested some  
23 change in language on the page -- I think it was 56  
24 that talked about the Burt Harris Act, and you were  
25 going to add without compensation somewhere.

1 Ms. Bedell, did you mark that?

2 MS. BEDELL: I think I --

3 CHAIRMAN GARCIA: Ms. Bedell, why don't we do  
4 this, you -- we -- I think Commissioner Clark gave  
5 you some suggestions, and you had sort of acquiesced  
6 to certain of those things. Why don't we state those  
7 at the beginning so that we don't walk through this,  
8 because I think what Ms. Johnson is going to do -- we  
9 may have already addressed some of these things so we  
10 don't have to top down them again.

11 MS. BEDELL: Hold on one second. I have moved  
12 from the statutes to the report.

13 On page -- on page 36 at the top of the page,  
14 the paragraph begins, mandatory access to tenants,  
15 that should be mandatory access without compensation  
16 to tenants. That was the change for that.

17 COMMISSIONER JOHNSON: Was there anything in  
18 here on that same -- are you leaving Burt Harris?  
19 Were you getting ready to leave the Burt Harris Act  
20 discussion?

21 MS. BEDELL: Yes.

22 COMMISSIONER JOHNSON: Let me ask you another  
23 question about that then. It struck me -- and I  
24 don't know if it was in language or in discussions  
25 that we have had where it seemed to imply that, if

1 the Legislature wanted to indeed change the law in  
2 this text, that it would somehow be in violation of  
3 Burt Harris and Burt Harris would govern. And I  
4 don't know if that was in discussions, or if I saw  
5 this somewhere. And maybe you can help me by just  
6 answering the question. Do we have anything in this  
7 particular section that suggests that the Legislature  
8 could not -- that the Legislature's conduct would  
9 constitute local -- or government conduct that would  
10 violate the Burt Harris Act?

11 MS. BEDELL: Our intention for putting this in  
12 here was just to lay out all the law that relates to  
13 property-related issues where there might be some  
14 issue about compensation. We didn't intend to  
15 suggest that any legislation that would be taken up  
16 would violate any laws.

17 COMMISSIONER JOHNSON: Okay.

18 CHAIRMAN GARCIA: Didn't Commissioner Clark  
19 sort of give you some language on Burt Harris that  
20 we --

21 MS. BEDELL: Well, what we had said was the  
22 mandatory access may violate -- may violate. I mean,  
23 it wouldn't be -- it would be also unconstitutional.  
24 But we had moved past the constitutional issue into  
25 the state statute. And then by adding the without

1 compensation clarification.

2 CHAIRMAN GARCIA: Okay.

3 COMMISSIONER JOHNSON: You think that covers it?

4 MS. BEDELL: I think that -- I think that -- I  
5 mean, I am sure people would probably still like to  
6 have it out. And I just -- and --

7 COMMISSIONER CLARK: To me, the Burt Harris is  
8 really just a statement of the principals the  
9 Legislature wants to have in effect for property  
10 owners in Florida. And it seems to me, I think an  
11 argument can be made that what's going to apply is  
12 any statute that specifically addresses access to  
13 telecommunications carriers. And if it says, with  
14 reasonable access, it will be consistent with Burt  
15 Harris; but really what Burt Harris does doesn't  
16 matter, because you will have a specific statute.

17 CHAIRMAN GARCIA: Okay. We will state it that  
18 way.

19 COMMISSIONER JOHNSON: Yeah. I will read this  
20 section again, and that's fine, just to make sure  
21 it's consistent with what you just said, Susan.  
22 Because when I was first reading, I was like --

23 COMMISSIONER CLARK: Yeah. The real issue to me  
24 is, is there a constitutional issue? Because, even  
25 if there is a statute, the Legislature can change it



1 any time they want to. And I think all we want to do  
2 is alert them that they have passed this kind of  
3 statute, and that --

4 MS. BEDELL: Burt Harris applies where whatever  
5 interference with property rights doesn't rise to a  
6 constitutional --

7 COMMISSIONER CLARK: Oh.

8 MS. BEDELL: -- it's the next step down.

9 COMMISSIONER CLARK: Yeah. But I still don't  
10 think it is clear that if you have a specific statute  
11 dealing with access and it provides for compensation,  
12 then I don't think Burt Harris would apply.

13 MS. BEDELL: Yes. I was trying to make a  
14 case --

15 COMMISSIONER DEASON: It's just more  
16 informational to the Legislature.

17 COMMISSIONER CLARK: Yes.

18 COMMISSIONER DEASON: Just flesh out what the  
19 whole issue is -

20 COMMISSIONER CLARK: Right.

21 COMMISSIONER DEASON: -- is the way I read it.

22 MS. BEDELL: And some of the reasons why it's  
23 important to have compensation included as an aspect  
24 of mandatory access. If have you just straight flat  
25 out, you have got to let everybody in without the

1 other part, you have all kind of problems.

2 COMMISSIONER CLARK: So I kind of think if they  
3 just put without compensation, that covers it.

4 CHAIRMAN GARCIA: Do you have anything else,  
5 Commissioner Johnson?

6 COMMISSIONER JOHNSON: Not on that section.  
7 You're going to go ahead and walk through all of the  
8 changes that may be made?

9 MS. BEDELL: The -- adding the Gulf Power  
10 language?

11 COMMISSIONER JOHNSON: Uh-huh.

12 MS. BEDELL: Do you want me to read to you what  
13 it is that we would --

14 COMMISSIONER JOHNSON: No. I don't.

15 CHAIRMAN GARCIA: Yeah. You are just folding  
16 that into the --

17 MS. BEDELL: Right.

18 CHAIRMAN GARCIA: That's fine. You don't have  
19 to read it through that, unless some Commissioner  
20 wants it.

21 Okay.

22 COMMISSIONER JOHNSON: Competitive neutrality.

23 MS. BEDELL: Technological neutrality.

24 CHAIRMAN GARCIA: I would like to see some  
25 language. Me, personally. You know, I just think it

1 needs to be addressed somewhere, specifically. I  
2 think you did in there.

3 MS. BEDELL: Do you want it in the discussion,  
4 or would you like to see it shown specifically in the  
5 standards where we have that list of --

6 CHAIRMAN GARCIA: I would like it in the  
7 standards, if possible.

8 MS. BEDELL: Okay. Because I think we may  
9 actually have it in the text. I can go back and  
10 look. But we can certainly add it, for example, on  
11 page 49, and then again in the places where it falls  
12 out --

13 COMMISSIONER JOHNSON: Okay.

14 MS. BEDELL: -- into the other pages that that  
15 goes with.

16 COMMISSIONER JOHNSON: The only other thing I  
17 had, Cathy, was the STS. You said that we could  
18 leave that out?

19 MS. BEDELL: Yes. We can certainly take that  
20 out. It seems to have caused more concern than we  
21 ever intended.

22 I think that in its place it might be important  
23 to put, you know, that perhaps if the Commission has  
24 jurisdiction over this, that rules -- you know,  
25 appropriate rules will be promulgated. But we don't

1 even need that. We'll just take it --

2 CHAIRMAN GARCIA: Okay. Very good. If there is  
3 an objection, all right. Okay.

4 Are there any other questions by Commissioners?  
5 If there is not, I will entertain a motion.

6 COMMISSIONER CLARK: Wait a minute. I did point  
7 out -- I am not quite sure how you wanted to deal  
8 with these things. Some things that I did point out  
9 to you -- to staff. And I am not sure if they agreed  
10 with them, or if we need to cover them now.

11 For instance, in exclusionary contracts, there  
12 is an added language that says, although negotiations  
13 for access to -- I am sorry, I am on page five, and  
14 it's elsewhere, Roman numeral V. And MTEs could be  
15 controlled by landlords in the telecommunications  
16 companies, that is not Commission's recommendation,  
17 nor is it compatible with the goal of competition.

18 It wasn't -- that sounded like an exclusionary  
19 contract to me. And I was not sure what staff was  
20 trying to get at, and they simply suggested taking it  
21 out. If it meant something to somebody else --

22 MS. BEDELL: Yes. We had intended something  
23 that obviously wasn't clear, and wasn't clear on  
24 reading it. Again, we were referring to where the  
25 landlords have control of access totally, and not

1 have a tenant driven kind of access. And we can  
2 certainly take that out.

3 COMMISSIONER CLARK: Okay. Yeah. I think it  
4 should -- and it just confused me.

5 CHAIRMAN GARCIA: Okay.

6 MS. BEDELL: And when it comes out of here, it  
7 also comes out of the --

8 CHAIRMAN GARCIA: Right. It falls out. That's  
9 fine.

10 MS. BEDELL: -- other places.

11 COMMISSIONER CLARK: The other thing was, on the  
12 recommendation of jurisdiction, I thought it would be  
13 appropriate to indicate that the jurisdiction could  
14 be in the courts or at the Commission.

15 And the advantage of the courts is they do have,  
16 routinely deal with property rights. The advantage  
17 of the Commission would be that we routinely deal  
18 with telecommunications matters, and by having it in  
19 one entity, you are more likely to have a more  
20 uniform application of the standards. I would give  
21 the choice to the Legislature.

22 CHAIRMAN GARCIA: Right.

23 COMMISSIONER CLARK: But I would point out  
24 advantages, and I --

25 CHAIRMAN GARCIA: For each --

1 COMMISSIONER CLARK: Yeah.

2 CHAIRMAN GARCIA: -- sort of having discussion?

3 COMMISSIONER CLARK: Yeah.

4 CHAIRMAN GARCIA: Okay.

5 COMMISSIONER CLARK: And I just would -- I think  
6 you just have to change the language a little bit.

7 CHAIRMAN GARCIA: Of course, I wouldn't mind if  
8 the rationale were stronger for us. But then since  
9 it's the person --

10 COMMISSIONER CLARK: You see, I think that's  
11 very competitive.

12 CHAIRMAN GARCIA: Yeah. I agree.

13 COMMISSIONER CLARK: And it uniformed.

14 CHAIRMAN GARCIA: I agree.

15 COMMISSIONER DEASON: I need some clarification  
16 on Commissioner Clark's concern on Roman V, the top  
17 of that page. What was the change that was being  
18 suggested?

19 COMMISSIONER CLARK: Take it out. It sounds to  
20 me when you have something controlled by the  
21 landlords and the telecommunications providers, you  
22 are talking about exclusionary contracts. I didn't  
23 understand what that sentence was intended to  
24 accomplish.

25 MS. BEDELL: And that would be just that middle

1 sentence, the although negotiations for access to  
2 tenants and MTE's could be controlled by landlord.

3 COMMISSIONER DEASON: So the conclusion there at  
4 the end of that paragraph, concerning the  
5 recommendation on exclusionary contracts would stay?

6 MS. BEDELL: Yes. Yes. It would be that, you  
7 know, if the Legislature didn't agree with us about  
8 the whole access thing, you know, and didn't think  
9 that it should be tenant driven, that would -- and it  
10 does lose something when it's stuck right there.

11 CHAIRMAN GARCIA: Okay.

12 COMMISSIONER CLARK: Mr. Chairman, I think the  
13 only other suggestion was on issue three, on the  
14 demarcation point. And staff says they'll conduct a  
15 workshop to gather information on the efficacy of  
16 rule-making. I thought we should say we didn't reach  
17 any conclusion that we should change our demarcation  
18 point. We didn't reach a conclusion of whether it  
19 should be the federal or what we have in our rule,  
20 but we determine that we need to look at it again.

21 CHAIRMAN GARCIA: Okay.

22 COMMISSIONER CLARK: And it should go to  
23 rule-making.

24 CHAIRMAN GARCIA: I don't think there is an  
25 objection to that. Do you have that, Ms. Bedell,

1 that concept?

2 MS. BEDELL: Yes, we do.

3 CHAIRMAN GARCIA: Okay.

4 MS. BEDELL: We don't have a problem with that.

5 And also, I believe that Commissioner Clark  
6 wanted a clarification on the discussion about the  
7 key difference between the demarcation point and the  
8 MPOE?

9 COMMISSIONER CLARK: Right.

10 MS. BEDELL: Being that it was -- we had it  
11 reversed.

12 COMMISSIONER CLARK: To me, the key difference  
13 is the demarcation point under our rules are at the  
14 customer's individual premises, rather than at the  
15 entry, the minimum point of entry to the building.

16 They thought the -- staff viewed the key  
17 differences being that the landlord gets to choose if  
18 the telecommunications provider didn't decide.

19 MS. BEDELL: We just reversed what -- the first  
20 thing we said about the key difference. We can just  
21 reverse those sentences.

22 COMMISSIONER CLARK: Or just say the differences  
23 are, and not give one precedence, or the other. It  
24 doesn't matter to me.

25 CHAIRMAN GARCIA: Okay.



1           COMMISSIONER CLARK: The only other thing, Mr.  
2 Chairman, I think, was on page 48. And I was  
3 concerned about -- staff seems to focus on fees,  
4 additional fees being charged for access, and they  
5 recommend against that. But if they do, then it  
6 needs to be the same for the carrier of last resort  
7 and others. And it struck me that, not only do the  
8 fees need to be the same, but the compensation,  
9 reasonable compensation needs to be the same. And I  
10 think staff agreed with that.

11           MS. BEDELL: Certainly. But we believe that  
12 would be non-discriminatory compensation.

13           COMMISSIONER CLARK: Right. And I got confused,  
14 because you seemed to focus on fees and not deal with  
15 compensation.

16           MS. BEDELL: Right. And -- yeah. And this part  
17 focused on the fees, because that is an issue that  
18 exists today.

19           CHAIRMAN GARCIA: Right.

20           COMMISSIONER CLARK: I think the other was  
21 changing a reference to other states to these states.  
22 I think that was a grammatical correction, but I  
23 think that was all.

24           CHAIRMAN GARCIA: Okay. I will entertain a  
25 motion.

1           COMMISSIONER DEASON: Let me ask -- are we  
2 approving the report, accepting the report? We're  
3 approving the report as modified, is the action that  
4 the staff requested?

5           MS. BEDELL: We would love to have it approved  
6 as modified.

7           COMMISSIONER DEASON: I so move.

8           COMMISSIONER CLARK: Second.

9           CHAIRMAN GARCIA: There being a motion and  
10 second. All those in favor, signify by saying aye.

11           (Chorus of ayes.)

12           CHAIRMAN GARCIA: All opposed?

13           Very well. Show that this item passed, the  
14 report passed with -- by a unanimous vote.

15           We will return this issue at two o'clock.

16           You will get from Ms. Bedell the language. We  
17 will then have a discussion, more or less, along the  
18 same lines; tell us what you think doesn't work.  
19 Then we will have discussion with Ms. Bedell and  
20 staff about it. And then if we can reach a  
21 consensus, we will vote that out then.

22           That said, we are going to take --

23           COMMISSIONER CLARK: Can I ask one --

24           CHAIRMAN GARCIA: Sure.

25           MS. BEDELL: I need something, too.

1           COMMISSIONER CLARK: There was -- one thing we  
2 talked about in terms of the recommendation, I think  
3 Mr. Brewerton was -- there were some people that felt  
4 nothing needed to be done. And I thought that it  
5 would be appropriate -- and I am not sure if we  
6 concluded any changes needed to be made that we would  
7 say that we couldn't reach any conclusion that this  
8 is, in fact, impeding competition.

9           You have the property owner saying it's not.  
10 You have the people who want access saying it is.  
11 But if the Legislature wanted to be proactive, it  
12 would be helpful to set out what is reasonable and  
13 nondiscriminatory access. And that's what we are  
14 recommending, if they choose to be proactive in this  
15 area.

16           CHAIRMAN GARCIA: Okay. That means we have  
17 before we -- this is the sign-up sheet, which the  
18 next report we are going to take up fair,  
19 reasonable -- fair and reasonable Florida  
20 residential.

21           We have Ernie Bach, Carlos McDonald, John Fons,  
22 Tom McCabe, Michael Gross, Ed Paschall, Rita Warren,  
23 Rick Nelson, Charles Beck and Benjamin Ochshorn.

24           We are going to take a --

25           MS. BEDELL: Commissioner, before we break --

1           yeah. I need to know -- if that was acquiescence to  
2           add the statement that Commissioner Clark wants in  
3           addition to the other changes?

4           CHAIRMAN GARCIA: Yes.

5           MS. BELL: Okay. And then, also, the copies  
6           of the -- of staff's legislation will be available in  
7           about 10 minutes outside in the middle between the  
8           two hearing rooms.

9           CHAIRMAN GARCIA: Very good. So we will see all  
10          of you. And then I am going to take a five-minute  
11          break until 10 till. That will -- let the parties  
12          that are going to speak come up here. And then we  
13          will be hearing from you. So five minutes.

14          We will be prompt.

15          (Whereupon, a recess was had at 10:45 p.m.)

16          (Hearing reconvened at 2:05 p.m.)

17          CHAIRMAN GARCIA: All right. We are going to  
18          follow the procedures set forth before -- hang on one  
19          second, because I neglected to --

20          (Discussion off the record.)

21          CHAIRMAN GARCIA: All right. Let me just give  
22          you parameters here for the rest of you, even though  
23          the rest of your are not here. So that being the  
24          case, I will not give parameters. I will wait until  
25          they filter back in the room.

1           Staff, what we were going to do is you were  
2 going to go quickly over your draft of the rule. And  
3 then we were going to allow the parties, as we had  
4 done before, to tell us what their -- what their  
5 problems are with those issues. And then we will,  
6 hopefully, be able to vote this afternoon. Okay?

7           Very good.

8           MS. BEDELL: Thank you, Mr. Chairman.

9           The first section of staff's draft language is a  
10 definition section to include a definition of  
11 multitenant environment. I believe that we were  
12 trying to correct an error that was in subsection  
13 (d). And in doing so, just made another mistake. So  
14 the (d) should read, those short-term tenancies  
15 served by call aggregators.

16           We were trying to get in that big long list  
17 that's in our rule of short-term tenancies that is  
18 described in the report.

19           The next section is the big section on  
20 multitenant.

21           COMMISSIONER DEASON: Let me interrupt you just  
22 a second.

23           Is the term call aggregators defined in the  
24 statute?

25           MS. BEDELL: It may not be. Commissioner

1 Deason, we double-checked. I didn't find it, and I  
2 don't know how you do the rule without making it a  
3 statute, quite frankly. I mean, I -- we may have  
4 to -- it may be that we may more appropriately have  
5 to just enunciate what all of those are. I don't  
6 know.

7 COMMISSIONER DEASON: Do we define it in a rule?

8 MS. BEDELL: We have it defined in a rule. We  
9 had cited the rule, and we were -- we were told that  
10 it might not be appropriate to actually cite a rule  
11 in the statute. And so we were trying to get around  
12 that.

13 COMMISSIONER DEASON: Well, okay. It just seems  
14 to me that the term call aggregator, while we may  
15 know what it means, it may not be apparent within the  
16 statute itself.

17 MS. BEDELL: Yes. If it is appropriate, we can  
18 certainly put that it -- served by call aggregators  
19 is defined by commission rule.

20 COMMISSIONER JACOBS: I had the same kind of  
21 concerns about a couple of other terms. One was  
22 exclusionary contracts, and the other was marketing  
23 agreements.

24 MS. BEDELL: We can certainly add those to the  
25 definitions section if you think we need to.

1           COMMISSIONER JACOBS: Yeah. I think that it's  
2 central to the operation of the statute. And in this  
3 instance, these are probably rather common terms that  
4 are used in many other contexts. And you want to be  
5 very clear here about the context in which they are  
6 being used.

7           MS. BEDELL: Yes, sir. We can take the  
8 definition that we had in the report and add that,  
9 add each of those as additional items.

10          COMMISSIONER JACOBS: Okay.

11          MS. BEDELL: The Section 2 that we crafted is  
12 the fundamental part of setting out the multitenant  
13 provisions.

14          The first paragraph gives us jurisdiction over  
15 the disputes. The second paragraph provides that  
16 exclusionary contracts are prohibited. The third  
17 paragraph requires disclosure of marketing agreements  
18 if they exist. The fourth paragraph is the threshold  
19 for bringing a complaint.

20          From the copies that we provided everyone on  
21 Friday, there is a change to subparagraph (b). And  
22 we just added a couple of words for clarification, so  
23 that -- it says that if a landlord is unresponsive to  
24 a request for access. Before, we had if they were  
25 unresponsive to the request.

1 Paragraph (c), we have added a whole clause, so  
2 that it now reads that, if the landlord fails to  
3 timely respond, if access is denied, or if reasonable  
4 and nondiscriminatory terms for access cannot be  
5 agreed upon, the telecommunications company of the  
6 tenant may file a petition with the Commission.

7 Paragraph five, we have -- just laying out the  
8 standards, it's been pointed out to us by some folks  
9 that probably provide you with comments to this  
10 effect that these are probably more standards  
11 actually for access, that we would then rely on when  
12 we were reviewing any disputes.

13 But nonetheless, that paragraph five, we are  
14 laying out those things that we believe would  
15 establish reasonable and nondiscriminatory access.

16 We have first encouraged the parties to  
17 negotiate. Second, requiring that whatever charges  
18 that the landlord charges to a company or the tenant  
19 will be reasonable and nondiscriminatory. We have  
20 held that the tenants should be responsible for  
21 obtain easements, which is similar to the practice  
22 that we have today.

23 A landlord may impose conditions reasonably  
24 necessary for safety, security and aesthetics; which  
25 I believe addresses some of the concerns that the



1 landlords had about access, physical access.

2 Paragraph (e), a landlord may not deny access to  
3 space or conduit that is previously dedicated to  
4 public service, if it is sufficient to accommodate  
5 the facilities needed.

6 Paragraph (f), we have added the word  
7 "reasonably" in front of sufficient, so that it now  
8 reads the landlord may deny access where the space or  
9 conduit required for installation is not reasonably  
10 sufficient to accommodate the request.

11 The last part of that is, the landlord may not  
12 deny access where -- or excuse me, may deny access  
13 where the installation would harm the aesthetics of  
14 the building.

15 Paragraph (g), a landlord may not charge a fee  
16 for the privilege or license to do a business with  
17 multitenant environment.

18 Paragraph (h) should probably be six. And we  
19 have been told that our December 31 date in that  
20 paragraph is far too optimistic. And so staff would  
21 like to have that paragraph six read that the  
22 Commission shall promulgate rules for the purpose of  
23 implementing the provisions of this section.

24 I would add that we do not have -- we did not  
25 draft a provision relating to the responsibilities of

1 the COLR, but we can certainly add a section saying  
2 something to the effect that nothing in this section  
3 shall abdicate the responsibilities of the COLR, or  
4 it's something that would ensure that we were not  
5 trying to override the COLR responsibilities in this  
6 section.

7 CHAIRMAN GARCIA: I am sorry, what did you say?

8 MS. BEDELL: We would want to -- we may -- based  
9 on the comments this morning, we may want to have  
10 some statement that the -- we were not overriding the  
11 current responsibilities of the COLR.

12 CHAIRMAN GARCIA: Okay. Well, as we listen from  
13 parties, maybe someone can figure out where to stick  
14 that in.

15 Cathy, I want to -- explain to me (g) again, the  
16 last one you just said, landlord should not charge a  
17 fee for the privilege or license to do business with  
18 a multitenant environment.

19 MS. BEDELL: We -- our recommendation in the  
20 report was that -- just to get in the door, there  
21 ought not to be a fee; that charges by a landlord  
22 should be cost based.

23 COMMISSIONER CLARK: It would be like a  
24 franchise fee --

25 MS. BEDELL: Right.

1           COMMISSIONER CLARK: -- for a multitenant  
2 building.

3           CHAIRMAN GARCIA: Well, it just brings into  
4 question, what happens when the condo association has  
5 several parties negotiating for its decision; and  
6 they said, well, you have got to give us basic  
7 service at this price. Is that -- can you see that  
8 as a price, where you've got a --

9           MS. BEDELL: That's a rate.

10          CHAIRMAN GARCIA: That's fine.

11          And what if they said -- could they ask for a  
12 fee to get into the building, in other words, to win  
13 to the contract? Would they bid out the contract for  
14 the benefit of the group? And would that -- let's  
15 say that the condo association asked for a  
16 participant. You know, one participant said, I will  
17 pay you \$500, and I will do all of this. That  
18 couldn't be done?

19          MS. BEDELL: We are prohibiting the landlord  
20 from saying that if you want to do business in my  
21 building, you have to give me money.

22          CHAIRMAN GARCIA: Okay.

23          MS. BEDELL: And then, if you want to put wires  
24 in the building, I am going to charge you for using  
25 that space and the wires.

1 CHAIRMAN GARCIA: Right.

2 MS. BEDELL: But just for the privilege of doing  
3 business, we are saying that the landlord can't  
4 demand that.

5 CHAIRMAN GARCIA: Very good. That makes sense.  
6 Okay. I just wanted to understand the rule.

7 All right. That said, Commissioners, if you  
8 don't mind, we will listen to the parties, and we'll  
9 start on that side of the table and work our way this  
10 way.

11 Mr. Brewerton, I guess that lets you go first if  
12 you would like to.

13 A VOICE: We would like Mr. Brewerton to go  
14 later.

15 CHAIRMAN GARCIA: Okay. Very good.

16 What I would like -- Ms. Bedell will cut you off  
17 if you don't, and Commissioner Clark will probably  
18 point it out if Ms. Bedell doesn't. We will give you  
19 a few minutes to go through it, tell us what you  
20 disagree with in the staff's suggestion. I don't  
21 want -- I don't want a whole discussion on the  
22 proposed statutory language, unless you want to just  
23 add that you don't want us to include it. That's  
24 fine, also, or do include it.

25 Very well.

1 MR. SPEARS: Thank you, Mr. Chairman.

2 COMMISSIONER JOHNSON: I have a question for  
3 staff. I know this goes without saying, but this is  
4 consistent and incorporates any changes we made to  
5 the report?

6 MS. BEDELL: Yes. It came straight out of the  
7 report to start with. And the only thing that's not  
8 actually in the report is that we would do the rules.  
9 But that's just sort of pro forma. I mean, we would  
10 have to do rules anyway.

11 COMMISSIONER JOHNSON: Okay. Is there any  
12 language in here about the technologically-neutral?

13 MS. BEDELL: We did not include that. We -- you  
14 know, we -- you know, we believe that if you are  
15 nondiscriminatory, then, you know, you are  
16 technologically-neutral. We can, certainly, add it  
17 in here.

18 COMMISSIONER JOHNSON: Okay.

19 MS. BEDELL: You know, we can say that all  
20 access shall be provided on a technologically-neutral  
21 basis. If that --

22 COMMISSIONER JOHNSON: I would like that  
23 language. And we will determine where it best fits.

24 CHAIRMAN GARCIA: I am sure staff can figure out  
25 where we can stick it in, if that's our pleasure.

1           Very well.

2           MR. SPEARS: Thank you, Mr. Chairman.

3           Richard Spears, CAI. We like the staff report  
4           that excludes the condos, co-ops and homeowners  
5           associations. I understand that some others may have  
6           some modifying language that they wish to insert by  
7           defining where there has been some delegation to  
8           Boards of Directors and things like that. We would  
9           oppose that for the reason, first of all, this is  
10          quite clear the way it is, and any further  
11          explanation beclouds the issue, and may have a  
12          tendency to be observed by some as a way to eliminate  
13          the membership from participation, and provide that  
14          only the Boards would do that.

15          So we like the language just the way it is. And  
16          at the top of page one and respectfully recommend  
17          that you leave it that way.

18          CHAIRMAN GARCIA: Thank you, Mr. Spears.

19          MR. SPEARS: Thank you, sir.

20          MS. CHASE: Thank you, Mr. Chairman.

21          I am Jodi Chase representing the Florida  
22          Apartment Association. And I have to say that at  
23          this time the association cannot agree to anything  
24          that's in this bill, because we haven't had  
25          sufficient time to talk about it and look at it. So

1 we cannot agree to the bill.

2 What I can do -- I have got quite a long and  
3 detailed list of questions that I have with the bill.  
4 But rather than spend all the time necessary to go  
5 through all of those questions, let me just hit a  
6 couple of the high points, because I have got really  
7 quite a few.

8 The first large issue --

9 CHAIRMAN GARCIA: Keeping in mind we are going  
10 to try to keep up under five minutes, the high  
11 points.

12 MS. CHASE: Yes. That's what I am trying to do  
13 is the high points.

14 The first large issue that I see in the bill is  
15 that we cannot agree, I am sorry, to give the Public  
16 Service Commission jurisdiction, exclusive  
17 jurisdiction over this. These apartment complexes  
18 are owned by Aunt Mable down the street. And Aunt  
19 Mable down the street cannot compete with the  
20 hundreds of people who have been here all through  
21 this summer.

22 And I think Aunt Mable -- if Aunt Mable is  
23 forced to have to do this, Aunt Mable wants a jury to  
24 make the decision and does not want a  
25 telecommunications company, a global conglomerate to

1 drag her before this body.

2 CHAIRMAN GARCIA: Okay.

3 MS. CHASE: The second issue that we have is  
4 that the bill only allows the tenant and the  
5 telecommunications company to object to whether or  
6 not negotiations were fruitful. It does not allow  
7 the landlord or the property owner to do that. And  
8 perhaps, the property owner wants to bring the  
9 telecom company before some body. And the draft does  
10 not allow that in subsection (c) on page two.

11 Another systemic problem with this piece of  
12 legislation is that it puts tenants in control of  
13 property owners.

14 CHAIRMAN GARCIA: Excuse me, I am going to ask  
15 staff to respond to all the problems that the  
16 companies will have. So I ask you, just like you did  
17 last time to -- so that we can do it in quick order.

18 Continue, Ms. Chase.

19 MS. CHASE: It puts tenants in control of  
20 certain aspects of the property that I believe  
21 overturn many, many years of landlord-tenant law;  
22 overturn landlord-tenant statutes and overturn a  
23 large body of case law. And I think that that's not  
24 appropriate for us to do.

25 Those are some of the high points. The list is



1 much longer, but maybe we can deal with it another  
2 time.

3 CHAIRMAN GARCIA: You have still got a minute.  
4 So if you want to just go ahead and give us --  
5 continue.

6 MS. CHASE: It doesn't define what a landlord is  
7 unresponsive. It doesn't say what unresponsive  
8 means. We cannot agree to not allow exclusionary  
9 contracts. Sometimes exclusionary contracts are good  
10 for tenants.

11 These are fact questions on the second page that  
12 should be decided by a jury. I think there are some  
13 procedural issues in here that the court might not  
14 want the Legislature to address. There is nothing in  
15 here that says that a telecom company has to repair  
16 the property. There is nothing that says they have  
17 to indemnify the landowner. There is nothing in here  
18 that says they have to guarantee the rights of other  
19 tenants.

20 The property owner has to guarantee those other  
21 rights. And now, we are inserting somebody else into  
22 the property that has no responsibility for the  
23 rights of the other tenants. And the property owner  
24 will get blamed for those problems.

25 So I think our problems with the draft are

1 systemic, and that we are really not prepared at this  
2 time to agree to legislation. We are not commenting  
3 on the report, but we can't agree to the legislation.

4 CHAIRMAN GARCIA: Thank you, Ms. Chase.

5 MR. HALLEY: Hi. My name is Gunnar Halley. I  
6 am here on behalf of Teligent and WinStar.

7 I just want to say, first of all, that we do  
8 like the proposed legislation very much. I  
9 appreciate the efforts that went into this.

10 There are a few items I would like to comment  
11 on. First is that there is nowhere in the statute  
12 does it affirmatively require landlords to provide  
13 nondiscriminatory reasonable and technologically-  
14 neutral access.

15 If you look on page three, Section 5(b), a  
16 landlord's charges must be assessed in reasonable and  
17 nondiscriminatory terms; and, as we discussed  
18 earlier, technologically-neutral. But access to --  
19 it's critical that access and not just compensation  
20 be provided on a reasonable and nondiscriminatory and  
21 technologically neutral terms.

22 If access isn't provided, then the compensation  
23 provisions are annulled. And they are irrelevant.

24 And I would suggest that just in that Section  
25 (b), language be added -- this has, a landlord shall

1 offer access on reasonable, nondiscriminatory and  
2 technologically-neutral terms, and may charge a  
3 telecommunications company, et cetera, et cetera, et  
4 cetera.

5 COMMISSIONER JOHNSON: I'm sorry, that clause  
6 would go --

7 MR. HALLEY: In Section 5(b) on page three. It's  
8 -- I am sorry --

9 COMMISSIONER JACOBS: Wouldn't it be better to  
10 go to 5(a)?

11 MR. HALLEY: Pardon me?

12 COMMISSIONER JACOBS: Would it better just to  
13 add that to 5(a)?

14 MR. HALLEY: I can see where it would fit within  
15 5(a), so long as access is required to be provided.  
16 5(a) seems to address negotiations. 5(b) addresses  
17 the landlord's obligation.

18 COMMISSIONER JOHNSON: What was the terminology?

19 MR. HALLEY: Landlord shall offer access on  
20 reasonable, nondiscriminatory and technologically-  
21 neutral terms. And then it would pick up with, may  
22 charge the telecommunications company, so that we  
23 address both access and compensation.

24 COMMISSIONER JOHNSON: Okay.

25 MR. HALLEY: The second proposal, we would have

1 is, again, related to the 13-month tendency. I can  
2 understand the landlord's concerns about not wanting  
3 tenants who are constantly moving in and out to cause  
4 a disruption to a building that may be result of  
5 several telecommunications carriers accessing the  
6 building. But to the extent that either commercial  
7 and residential tenants have 12-month leases that are  
8 renewed annually, some tenants may have been there  
9 for five, six years, and would not enjoy the benefits  
10 of competition under this provision. So we would  
11 suggest that all tenancies of 13 months or less in  
12 duration be excluded.

13 CHAIRMAN GARCIA: Let me say this so we don't  
14 make this error going on.

15 What we have in the report has been approved,  
16 so --

17 MR. HALLEY: Right.

18 CHAIRMAN GARCIA: -- basically what flows from  
19 the legislative statutory language has to be  
20 conformity to that. So we are not going to change  
21 the statute, then go back into the report.

22 MR. HALLEY: Okay. I don't know if this would  
23 require that, but you can tell me. And I don't mean  
24 to --

25 CHAIRMAN GARCIA: All right.

1 MR. HALLEY: -- complicate the process.

2 We would just suggest that the 13 months or less  
3 in duration, that in duration be interpreted into a  
4 manner that means if somebody has actually been there  
5 for 13 months, whether or not their lease says it's a  
6 12-month lease; that once they have been there for  
7 13-months, they are -- they can benefit from the --

8 COMMISSIONER CLARK: It strikes me that the  
9 tenant can deal with that. If they wanted to get the  
10 ability to choose their carrier, they can say, look,  
11 I am not going to agree to a yearly lease that's  
12 renewable. I want a two-year lease.

13 MR. HALLEY: Well, we are finding it  
14 difficult --

15 CHAIRMAN GARCIA: We have already interpreted  
16 that. I don't think we interpreted it your way. I  
17 think it's part of the report already.

18 If you have got another point, you should make  
19 it, because you are out of time.

20 MR. HALLEY: Okay. I guess that's it. Thank  
21 you very much.

22 CHAIRMAN GARCIA: Thank you very much.

23 MR. WAHLEN: Good afternoon.

24 I am Jeff Wahlen, on behalf of Sprint Florida.

25 I have one detailed specific suggestion and then

1 just a general comment to think about.

2 On the second page --

3 CHAIRMAN GARCIA: Which one are you  
4 representing?

5 MR. WAHLEN: Sprint Florida.

6 Second page, parenthesis (a), the very top,  
7 tenants, landlords and telecommunications provider  
8 shall make every effort to negotiate access. When  
9 you say every effort in the law; that means that you  
10 have done absolutely, positively everything that you  
11 could have done. And that is an extraordinarily high  
12 standard. And while everybody wants to work  
13 diligently, I would suggest that we insert the word  
14 "reasonable effort" or "work diligently" I or  
15 something that would not give rise to the possibility  
16 that someone would say, well, you could have done one  
17 more thing, even though you've tried 99, and,  
18 therefore, you can't come and get this dispute  
19 resolved.

20 So I would just say, make every reasonable  
21 effort or make diligent efforts to negotiate access.

22 The second comment is a general -- a more  
23 general comment, and that it would relate to the  
24 structure of this. The content of this is good.  
25 When you get to the bottom of the first page where it

1 talks about in resolving disputes related to the  
2 access, the following standards shall apply.

3 We agree with Ms. Bedell that those should  
4 really be framed as the standards for access. And  
5 then the standard for resolving disputes should be  
6 that the standards for access be implemented.

7 And as an analogy, I would draw your attention  
8 to the 1996 act, the Telecommunications Act, which we  
9 are all familiar with.

10 In Section 251, it outlines the duties and  
11 conditions that telephone companies and new entrants  
12 should follow.

13 And then in 252, it says, everybody should work  
14 together to meet those standards. They should  
15 negotiate. If they can't negotiate, mediation is  
16 available. And if mediation doesn't work, then you  
17 can arbitrate. And when you arbitrate, the  
18 Commission, the State Commission should implement the  
19 standards in Section 251.

20 So what I am suggesting from an organizational  
21 standpoint is that the Commission clearly identify  
22 the standards for access, then set forth the  
23 conditions under which you can come to the Commission  
24 for a determination, which is in here. And then once  
25 you're there, make it clear that the standard for

1 decision is to implement the standards for access  
2 that the Legislature has set. The y, whether you  
3 are before the Commission or out negotiating,  
4 everyone will know what the standards for access are.

5 Thank you.

6 CHAIRMAN GARCIA: Thank you, Mr. Wahlen.

7 MR. HOFFMAN: Thank you, Mr. Chairman.

8 Kenneth Hoffman on behalf of TCG.

9 Let me first adopt and incorporate the points  
10 that Mr. Halley made and that Mr. Wahlen just made,  
11 particularly with respect to setting forth some  
12 standards and then having the Commission adopt those  
13 standards when it resolves disputes.

14 I am trying to work, Commissioners, off of a  
15 document that I have handed out to you that responds  
16 to the staff proposal, and I will move as quickly as  
17 I can.

18 Let me just begin by saying that this proposal  
19 essentially incorporates the staff proposal, but I  
20 have highlighted additional language that I have  
21 added to staff's proposal.

22 The first language that I have highlighted for  
23 you is found on page one, and goes to the top of page  
24 two. That is legislative finding and Commission  
25 jurisdiction language, which I believe that staff did



1 not have a problem with. And in the original  
2 proposal that we submitted, I think the staff found  
3 that we had placed it in the substantive bill  
4 incorrectly. So we put it in the right spot.

5 Page two, Mr. Halley has already covered the  
6 13-month issue. I won't go back over that.

7 On the condos and co-ops, again, Commissioners,  
8 what we have done there is try to come up with a  
9 compromise which would provide access to condo or  
10 co-op owners who have not delegated responsibility  
11 for one provider to a governing Board.

12 And I would submit to you, Mr. Chairman, because  
13 I don't want to get astray with your directions, that  
14 if you are inclined to go with this compromise, I  
15 think you would need to reconsider the report that  
16 you just approved.

17 CHAIRMAN GARCIA: And I would suggest you don't  
18 go into it.

19 MR. HOFFMAN: Okay.

20 Page three, the point that I want to highlight  
21 on the bottom of page three is we have included a  
22 provision that is not in the staff's proposal, which  
23 essentially says that nothing would preclude a  
24 company from installing their facilities in a  
25 multitenant environment prior to the Commission's

1 disposition of the charges. So we just don't want to  
2 be held up if we are trying to resolve this matter  
3 before the Commission when we have been granted  
4 access, when all that remains at issue are the  
5 charges.

6 Moving to page four, we have included some  
7 language in there that says it's essentially a  
8 statutory charge for reasonable and nondiscriminatory  
9 access as the beginning sentence. And after that  
10 sentence, we get into the standards that the staff  
11 have in their bill for resolving access disputes. A  
12 few of them that I would like to point out to you.

13 On number (c), on letter (c), we were a little  
14 confused by the staff's use of the word easement. We  
15 recall from the workshops and from the comments,  
16 particularly those of Ms. Chase, that she has raised  
17 some concerns about going across the easement of  
18 another apartment owner.

19 So our intention there was to make it clear that  
20 when we are talking about an easement, we are talking  
21 about an easement across another tenant's premises,  
22 rather than -- and I am not sure where the staff was  
23 coming from -- construing the wire, for example,  
24 behind the door up to the customer's premises to be  
25 some form of easement.

1           The problem we have with that is that if were to  
2 have to pay for that, that's essentially an access or  
3 privilege fee, which we are trying to prohibit under  
4 this bill.

5           CHAIRMAN GARCIA: I am sure staff will tell you  
6 what they perceive that was.

7           MR. HOFFMAN: Okay.

8           Under letter (e), in the staff's proposal on  
9 page three under letter (f), there is the reference  
10 to the aesthetics where the installation would harm  
11 the aesthetics. We have just tried to apply a more  
12 reasonable standard there by setting forth language  
13 which says, where the installation of facilities  
14 would unreasonably interfere with the aesthetics of  
15 the property.

16          CHAIRMAN GARCIA: Okay.

17          MR. HOFFMAN: And then finally, last point, the  
18 technologically-neutral language, we add that based  
19 on your discussion in the this morning.

20          COMMISSIONER CLARK: Mr. Hoffman, why have you  
21 added -- on (e), why have you added that up? That's  
22 already covered, when it says reasonably necessary  
23 for the aesthetics of the property.

24          MR. HOFFMAN: Well, Commissioner Clark, on  
25 letter (f) -- I am looking at letter (f) of the staff

1 proposal on page three, it says, or where the  
2 installation would harm the aesthetics of the  
3 building.

4 COMMISSIONER CLARK: I was looking at your  
5 draft.

6 MR. HOFFMAN: Right.

7 And my draft is trying to provide some level of  
8 reasonableness to the issue of the aesthetics by  
9 saying that the landlord could deny access --

10 CHAIRMAN GARCIA: I had that same question with  
11 staff yesterday. And perhaps we can engage in that  
12 discussion when they try to answer your point.

13 MR. HOFFMAN: Thank you.

14 CHAIRMAN GARCIA: Fine?

15 COMMISSIONER CLARK: Yes.

16 COMMISSIONER JOHNSON: Do you have -- do you  
17 have language that would work in the staff draft deal  
18 with that, unreasonably interfere --

19 CHAIRMAN GARCIA: The reasonableness standard,  
20 he just wanted to add the reasonable standard to the  
21 harm.

22 Right?

23 MR. HOFFMAN: Commissioner Johnson, on the staff  
24 draft, the way to change it, where it says, where the  
25 installation would harm the aesthetics of the

1 building, the way to change it would be to say, where  
2 the installation would unreasonably interfere with  
3 the aesthetics of the building.

4 COMMISSIONER JOHNSON: Okay. Thank you.

5 CHAIRMAN GARCIA: Thank you.

6 Mr. Brewerton, there you are. Okay.

7 MR. BREWERTON: Thank you.

8 John Brewerton, representing Bell Florida.

9 First of all, I would like to reiterate our  
10 positions with respect to the paralleling the  
11 concerns that Ms. Jodi Chase discussed earlier;  
12 particularly those related to a general objection to  
13 the passing or recommending of any legislation.

14 One of the things that we would like to see  
15 carved out as a concern -- this is brought up in the  
16 discussion at the end of the report, which we did not  
17 have a chance to address, deals with a proposed  
18 exemption in the event that the tenants have an  
19 association with a commercial office building, which  
20 is not that uncommon.

21 So if the tenants decide in a commercial office  
22 building they want to grant access to three carriers  
23 in the building, the landlord should have the  
24 obligation to grant access to other carriers that may  
25 want access to those tenants. And we would like to

1 see that additional carve-out and eight added.

2 On line 16, Commission shall have exclusive  
3 jurisdiction. That's something we would have to  
4 disagree with in toto. We think that there are other  
5 remedies available in state law that should be  
6 allowed to stay in place, which should not take --  
7 just because they have a telecommunications issue,  
8 they should not take centuries of landlord-tenant law  
9 and throw it out the window.

10 With respect to the line 30 on page one, after  
11 the word tenant, we would suggest -- or inserting the  
12 words "or landlord may file a petition with the  
13 Commission for review."

14 COMMISSIONER CLARK: You know, I am trying to  
15 think why the landlord would ever do that.

16 MR. BREWERTON: Well, I can tell you one of the  
17 issues that was just raised that I haven't gotten to  
18 yet was raised by Mr. Hoffman. The expressed issue  
19 that we are addressing in California right now is  
20 that carriers have a power of eminent domain.

21 We know -- we have been told that carriers in  
22 these proceedings are concurrently seeking a power of  
23 eminent domain through the Legislature. So the  
24 question is, if they have the right to access today,  
25 and they can demand physical access to the property

1 pending some resolution of what the reasonable charge  
2 is going to be or nondiscriminatory charge or terms  
3 and conditions, if they automatically have the right,  
4 then it's absolutely necessary that the landlord  
5 should be able to protect its rights before they  
6 actually get access to the property.

7 One of the other issues here that we have talked  
8 about --

9 COMMISSIONER CLARK: I still don't understand  
10 that.

11 MR. BREWERTON: Okay.

12 COMMISSIONER CLARK: It doesn't seem to me --

13 CHAIRMAN GARCIA: You're addressing the point  
14 that Mr. Hoffman --

15 MR. BREWERTON: That's exactly where it comes  
16 in. Particularly if you decide to accept his  
17 comments.

18 COMMISSIONER CLARK: He just said that that  
19 comment is premised on the basis they are successful  
20 in getting the right to eminent domain; is that  
21 right?

22 CHAIRMAN GARCIA: No. I think he is arguing Mr.  
23 Hoffman's point where Mr. Hoffman said they would not  
24 be denied access. So if all that was being debated  
25 was the --

1 MR. BREWERTON: Virtually, you're giving them a  
2 power of eminent domain without paying anything  
3 pending the dispute.

4 COMMISSIONER CLARK: No. What Mr. Hoffman said  
5 was, where they have agreed on everything, that they  
6 are going to get access, they just can't agree on the  
7 price. That is the circumstances under which he  
8 wants to be able to come here.

9 MR. BREWERTON: I understand. And that is the  
10 very issue that we are having to deal with in  
11 California today. We've had --

12 COMMISSIONER CLARK: But you said that very  
13 issue is because they have the right of eminent  
14 domain. It's not because the landlord said, okay,  
15 you can come on the premises.

16 MR. BREWERTON: If you give them that right to  
17 come onto our property today, pending the resolution,  
18 you have given them the power of eminent domain.

19 COMMISSIONER CLARK: We are not doing that, as I  
20 understand it.

21 MR. BREWERTON: I would debate that issue with  
22 you, Commissioner, if --

23 COMMISSIONER CLARK: Well, tell me where in the  
24 statute we are doing it, what we are proposing we are  
25 doing.



1 MR. BREWERTON: It's not in the statute right  
2 now. I am just addressing the comment.

3 COMMISSIONER CLARK: Okay.

4 MR. BREWERTON: Line one, page three; tenants,  
5 landlord and telecommunications provider shall make  
6 every -- I concur with the Sprint comment, it should  
7 be reasonable effort -- to negotiate. And line two,  
8 terms and conditions for access instead of just  
9 access.

10 And the line four, on page three, we've talked  
11 about this earlier; the cost of installation. I  
12 think it should be absolutely clear that costs should  
13 include a return on investment, so that we are all on  
14 the same page.

15 COMMISSIONER JOHNSON: Go back to the one  
16 before, the language that you were suggesting. You  
17 agree with the comment of reasonable effort to  
18 negotiate, but then you added some more words?

19 MR. BREWERTON: Yes. I think reasonable is  
20 definitely something we would agree with. And the  
21 second line, after the word negotiate, I think I  
22 would like to see the words "terms and conditions"  
23 for access --

24 COMMISSIONER JOHNSON: Okay.

25 MR. BREWERTON: -- as opposed to negotiate

1 access, just so we are clear. The concept in lines  
2 six and seven, imposing conditions reasonably  
3 necessary for the safety, security and aesthetics of  
4 the property. Once again, we would like to request  
5 that the best interest of the tenants of the property  
6 also be considered here.

7 The landlord is in the business of managing  
8 properties in which people work. That landlord has  
9 to be involved in the process of something that's in  
10 the best interest of all tenants as opposed to one  
11 particular tenant. The -- and line nine --

12 COMMISSIONER JOHNSON: So what are you  
13 suggesting?

14 MR. BREWERTON: I think we should add, in  
15 addition to safety, security and aesthetics of the  
16 property; it should be safety, security, aesthetics  
17 of the property and best interest of the tenants.

18 I think the concept should be addressed there,  
19 and the landlord should have the ability to manage  
20 its own property.

21 COMMISSIONER CLARK: Well, I think you're  
22 essentially eviscerating the statute when you do  
23 that. You give them the right of total review.  
24 That's the way I would view it.

25 The landlord has the ability to say, I simply

1 don't think it's in the best interest of my tenants.

2 COMMISSIONER DEASON: That's what our job is  
3 supposed to be, to determine that, assuming we  
4 have --

5 MR. BREWERTON: I guess we have a problem with  
6 this Commission taking authority over our properties  
7 and managing the day-to-day affairs.

8 CHAIRMAN GARCIA: Do you expect us to draft a  
9 statute that does nothing? So while I understand --

10 MR. BREWERTON: Sure, I do.

11 CHAIRMAN GARCIA: -- I can probably appreciate  
12 that, I don't think that's our job. Maybe you can  
13 harsh that out with the Legislature.

14 COMMISSIONER CLARK: I think that's your basic  
15 premise is that, as a landlord, you should be able to  
16 say yes or no, and it be within your sole discretion.  
17 And I think that's an argument you have made and can  
18 continue to make at the Legislature. And to put that  
19 kind of language in here, in my view, then the  
20 statute does nothing.

21 MR. BREWERTON: If it addresses your concern,  
22 the best interest of the tenants and the reasonable  
23 discretion of the landlord, I think that would be  
24 fine. But what you are doing is, you're saying here  
25 that it can't even be taken into consideration of the

1 negotiations.

2 It looks to me like this is an exclusive list of  
3 conditions; and anything that's not related to these  
4 three issues, the landlord can't take into  
5 consideration.

6 Line nine --

7 COMMISSIONER DEASON: Let me ask you a question  
8 on that.

9 MR. BREWERTON: Sure.

10 COMMISSIONER DEASON: I mean, the concepts of  
11 safety, security and aesthetics; isn't that for  
12 purposes of your tenants? I mean, you want your  
13 tenants to be safe and have security and to have --  
14 live in a building that is, you know, looks  
15 attractive. I am trying to understand what your  
16 proposal really adds to what's here already.

17 MR. BREWERTON: Let's say we have 1.2 million  
18 square foot building. Let's say you have seven  
19 carriers providing service in the building. You have  
20 multiple tenants in the building. You have one 500  
21 square foot tenant in the building who demands  
22 another carrier. That additional carrier is going to  
23 burden the raceway and the service available to other  
24 tenants in the property.

25 Under those circumstances, the landlord should

1 have the right, in conjunction with the balance of  
2 the tenants, to make a decision as to whether or not  
3 it's in the best interest of all tenants in the  
4 building to allow an additional carrier on the  
5 property.

6 CHAIRMAN GARCIA: Doesn't he though? Under the  
7 present standard, wouldn't the landlord be able to  
8 raise an objection before us?

9 COMMISSIONER CLARK: Right. It seems to me he  
10 could -- he could say it's unreasonable to affect the  
11 other service being provided for their seven carriers  
12 because of this one. If it is -- in fact, has that  
13 input back. Reasonably and nondiscriminatory access,  
14 it would strike me that the first prong isn't met.  
15 It's not reasonable.

16 MR. BREWERTON: Okay. Posing our comments.

17 Line nine, before the word, access, at the end  
18 of the line, we would like to request the word  
19 "additional" be inserted there, because we are  
20 talking about access for an additional carrier.

21 Every additional carrier that comes to the  
22 building is where you impose this standard. It may  
23 be assumed on your part, but we don't think it's  
24 appropriate.

25 In line 11, reasonably sufficient to accommodate

1 the request to where the installation would harm the  
2 aesthetics of the property, we think goes a bit far.  
3 What should happen is, it should be an adverse impact  
4 as opposed to harm.

5 The aesthetics, as well as the safety and  
6 security of the building, or safety or security,  
7 those concepts are addressed above in line six. We  
8 would like to see, since we are referring to  
9 aesthetics here, incorporate the same two other  
10 concepts, so we don't have a different standard  
11 there.

12 CHAIRMAN GARCIA: Is that it?

13 MR. BREWERTON: (g), line 13. No landlord --  
14 excuse me, a landlord shall not charge a fee for the  
15 privilege or license. A license is an interest in  
16 real estate. So we would like to clarify -- we've  
17 been saying this all along. We would like to clarify  
18 that, if you are talking about a, quote, unquote,  
19 access fee, which is the objection, or the privilege  
20 fee, that's one thing. If you say that we cannot  
21 charge for a license, an interest in real estate that  
22 we are bringing to a third party, we would like to  
23 see the word license striked.

24 If you want to say an access fee, a privilege  
25 fee, that's one thing. A license fee is something

1 different.

2 CHAIRMAN GARCIA: Okay.

3 COMMISSIONER CLARK: I don't understand. What  
4 would it be? What would you be charging to these --

5 CHAIRMAN GARCIA: Is this the closet space  
6 argument you were talking about?

7 MR. BREWERTON: That's exactly what it is. It's  
8 rooftop space, it's underground space, it's office  
9 space within the building.

10 COMMISSIONER CLARK: I think that's a cost.  
11 That's a reasonable charge for the use of the  
12 facility. It's not a license.

13 MR. BREWERTON: I'm just trying to eliminate  
14 confusion on our part, because if you say that we  
15 cannot charge a fee for a license to do business on  
16 our property, that implies to us that I cannot charge  
17 for a license fee or a lease fee or a rental fee,  
18 which, a lot of times, these carriers consider them  
19 synonymous.

20 So if we are thinking about a privilege fee or  
21 an access fee, let's say privilege fee or access fee.  
22 Let's not say license.

23 CHAIRMAN GARCIA: Okay.

24 COMMISSIONER JACOBS: Excuse me.

25 CHAIRMAN GARCIA: Let's -- is that it?

1 MR. BREWERTON: Yes, sir.

2 CHAIRMAN GARCIA: Okay.

3 COMMISSIONER JACOBS: Can you further clarify in  
4 that instance and say that it's wholly unrelated to  
5 any real estate interest?

6 MR. BREWERTON: I am sorry?

7 COMMISSIONER JACOBS: Should we also make it  
8 clear that it's unrelated to any real estate  
9 interest, because if that charge has to do with  
10 access, I would not want to be absolutely excluding  
11 that. I would want the absolute exclusion there to  
12 say, any time you have a license that has to do with  
13 real estate interest that's outside the bounds. But  
14 we have some fee that's within the bounds of  
15 providing access to that building, we don't want to  
16 get hung up on terms.

17 MR. BREWERTON: The only comment I would have  
18 with respect to that concept, Commissioner Jacobs, is  
19 that, most oftentimes, landlords like to structure  
20 these relationships as license agreements. The  
21 reason being that we don't -- if there is a breach by  
22 a carrier -- and there are breaches by carriers under  
23 existing agreements, if there is a breach by a  
24 carrier, we don't want to be limited to the remedy of  
25 a forceable entry and detainer action, to try to get



1 an enforcement of a license agreement or a lease  
2 agreement, if it's called a lease. So we structure  
3 most of them as license agreements.

4 COMMISSIONER CLARK: I don't understand the  
5 advantage of one over the other.

6 MR. BREWERTON: The advantage of a license  
7 agreement versus a lease --

8 COMMISSIONER CLARK: Yeah. Why is it in their  
9 interest to structure it that way. Then what do they  
10 have to do to seek redress for any damages? \*\*\*

11 MR. BREWERTON: They being landlords?

12 COMMISSIONER CLARK: Landlords.

13 MR. BREWERTON: That depends on what the terms  
14 of the license agreement provides. I mean, that's  
15 something we are negotiating between the parties,  
16 right?

17 COMMISSIONER CLARK: What are typical  
18 requirements?

19 MR. BREWERTON: Typical requirements --

20 COMMISSIONER CLARK: For the license. You are  
21 saying --

22 MR. BREWERTON: Maintenance, upkeep, repair of  
23 the property, for example. If a carrier is deficient  
24 in complying with those obligations, the license  
25 agreements typically address things that the landlord

1 can do. For example, correct at the carrier's  
2 expense and charge the carrier back; rather than  
3 having to go declare the carrier in default of a  
4 lease agreement and try to evict the carrier from the  
5 property.

6 COMMISSIONER CLARK: Okay. It strikes me that  
7 those may be some things that we would include in a  
8 rule.

9 MS. BEDELL: Correct. We can also -- we can  
10 just shorten that section.

11 MR. BREWERTON: Does the Commission have an  
12 objection to including an exclusion regarding tenant  
13 associations?

14 COMMISSIONER CLARK: Commercial tenant?

15 MR. BREWERTON: Pardon?

16 COMMISSIONER CLARK: Commercial tenant?

17 MR. BREWERTON: Right.

18 COMMISSIONER CLARK: I don't know enough to  
19 conclude one way or the other.

20 MR. BREWERTON: It's not that uncommon. The  
21 question is, if the tenants have a vote -- and I  
22 think we were discussing this earlier. If the  
23 tenants have a vote and the tenants decide that they  
24 want these --

25 CHAIRMAN GARCIA: All right. Mr. Brewerton, you

1 mentioned that as a point. And I wanted staff to go  
2 through all of the suggestions that were made, and  
3 then it will be at the pleasure of the Commissioners  
4 what we put in and what we take out. So --

5 MS. BEDELL: Ready?

6 CHAIRMAN GARCIA: I am playing the self-advocate  
7 today.

8 MR. SELF: I will be extremely brief,  
9 Commissioners.

10 Floyd Self on behalf of OpTel. OpTel is an ALEC  
11 that focuses principally on the residential market.  
12 We believe that the staff draft goes a long way to  
13 helping the industry, especially the commercial  
14 situations that falls kind of short on the  
15 residential side. I think that Mr. Hoffman -- the  
16 changes that Mr. Hoffman has proposed will help  
17 remedy that situation and provide some additional  
18 benefits for residential situation.

19 So I support the comments that he made as well  
20 as Mr. Halley and Mr. Wahlen.

21 The only other thing I would add at this point  
22 is the point that Commissioner Jacobs raised, which  
23 is with respect to some of the definitions.  
24 Certainly, we think it s very important that  
25 exclusionary contracts and marketing agreements be

1 defined.

2 In addition, it would probably also be  
3 appropriate to define easements and perhaps the use  
4 of the word "fee" that appears on page three, line  
5 13. One of the concerns that we have is, you can  
6 have situations where there are, quote, exclusive  
7 marketing agreements. And as part of that marketing  
8 agreement, you have a situation where the carrier is  
9 paying some kind of additional compensation, perhaps  
10 a sharing of revenue with the landlord.

11 And I gather from going back and rereading the  
12 report, that that's the type of situation that would  
13 not be prohibited. But it could be a little  
14 ambiguous without the terms exclusionary contract,  
15 marketing agreement and potentially the word "fee"  
16 being defined in the statute.

17 CHAIRMAN GARCIA: Thank you.

18 MR. SELF: Thank you.

19 CHAIRMAN GARCIA: Staff.

20 MS. BEDELL: The first comment that was made was  
21 concerning our jurisdiction. We are only drafting  
22 this legislation with the thought that, if the  
23 Legislature wants to give us jurisdiction, this is  
24 what we would propose the statute ought to look like.

25 CHAIRMAN GARCIA: Okay.

1 MS. BEDELL: There is concern that we haven't  
2 provided the landlord with an avenue to come and  
3 bring a complaint. But the idea -- and I was  
4 troubled by that, because the whole idea is that  
5 these are people who are trying to get access to the  
6 landlord. The landlord would not be trying to get  
7 access to himself. I have not seen where --

8 CHAIRMAN GARCIA: Would you address Mr.  
9 Brewerton's comment? I think he refined Ms. Chase's  
10 point about where a landlord goes?

11 MS. CHASE: That wasn't my point.

12 CHAIRMAN GARCIA: Okay. Why don't you tell us.

13 MS. CHASE: I will have to sit on his lap, I  
14 think.

15 We, during the workshops, talked about  
16 situations where a tenant might ask for access to  
17 a -- some particular facilities-based carrier, and  
18 that person may say, no, you know, it's not  
19 economically feasible for me to come into this  
20 building.

21 In that case, I think the landlord ought to have  
22 the opportunity to bring the carrier. And then,  
23 also, when we talk about the whole issue of  
24 reasonable --

25 CHAIRMAN GARCIA: Explain to me what you meant

1 again.

2 MS. CHASE: Well, sometimes, some of these  
3 apartment complexes, let's say, are military  
4 installations, and they are kind of in the middle  
5 of nowhere. And it is going to cost a whole bunch of  
6 money for OpTel to put something up there in  
7 Pensacola where there is only about 15 people living  
8 in the building and one person wants it. And, you  
9 know, what's good for the goose is good for the  
10 gander.

11 So if they say no, and the tenant wants it, and  
12 we are bound by this, well, then they ought to be  
13 bound by it, too. But you see, we have no remedy,  
14 because you have taken away all of our rights, and  
15 you haven't given us any in return.

16 COMMISSIONER CLARK: That is an interesting  
17 concept, and it reminds me of EAEX, equal access  
18 exchange areas, where at the time equal access was  
19 instituted, we said, you know, carriers need to have  
20 equal access to the customers; and, likewise, the  
21 customers ought to have equal access to anyone who  
22 wants to serve in that area. And it strikes me that  
23 maybe it would be a good idea.

24 MS. CHASE: We had a long, long, long discussion  
25 about this.

1           CHAIRMAN GARCIA: Walk me through it. I am  
2 sorry, you lost me.

3           What you are saying is, that the landlord  
4 doesn't -- you would want the landlord to have a  
5 right to bring in a carrier who doesn't want to  
6 serve?

7           MS. CHASE: Yes, sir; because what you have done  
8 in this statute is, you give the tenant and the  
9 telecom company the right to complain about the  
10 landlord. But you don't give the tenant and the  
11 landlord the right to complain about the telecom  
12 company.

13           You see, you're giving -- you're only giving  
14 rights to one side.

15           CHAIRMAN GARCIA: Let me -- just walk me through  
16 it, because I am a bit slow.

17           MS. CHASE: Okay.

18           CHAIRMAN GARCIA: In this case, what you would  
19 be saying is, that you would have a right, as a  
20 landlord, to request any carrier in the state to  
21 provide access to your -- to provide service to your  
22 building if you wished?

23           MS. CHASE: Well, I think that that's  
24 reasonable, if I have got the space, and if I am  
25 charging them anything, and if it's not going to harm

1 the aesthetics, and if it is going to bring  
2 competition to my tenants --

3 COMMISSIONER CLARK: You know, Jodi.

4 MS. CHASE: But if the tenant -- see, the basis  
5 of this bill is that the tenants are asking for it.  
6 So, you know, I am not asking you to give me the  
7 right as a landlord to ask for it. But what I am  
8 saying is, what you have done here is you have given  
9 the tenant and the telecom companies -- you assume  
10 that they are in partnership in this. And at some  
11 times, their interests may not be in unity.

12 And I think you should give the tenant the right  
13 to complain about the telecom company as well; the  
14 tenant, the right to force the company to come in.  
15 If everybody else around it has it, but this is a low  
16 income housing facility -- I mean, I only represent  
17 where people live. And maybe it's a very low income  
18 place, and it is all cinderblock on the outside, and  
19 it's going to be difficult for the telecom company to  
20 do it, but they did it down the street where all the  
21 FSU students live, but they won't come in where my  
22 low income minority people live, you know -- and the  
23 landlord is willing to do it, then we ought to have a  
24 right to appear and complain about that.

25 COMMISSIONER CLARK: Now, I think that is



1 something we should explore maybe outside this. But  
2 I will say that that was a concept that when -- when  
3 the Commission first introduced equal access, where  
4 all the carriers would have the opportunity to have  
5 access to customers, one of the things the Commission  
6 did was said, in that given area, where you establish  
7 a POT for an EAEA, you not only have the privilege of  
8 serving those customers, you must serve those  
9 customers in that area that asked to serve that.

10 I am not sure if that concept can be implemented  
11 here, but I think it is something we should look at.

12 MS. BEDELL: Well, the current statutory scheme  
13 has the COLR in that place.

14 COMMISSIONER DEASON: I am sorry, has the what?

15 MS. BEDELL: The carrier of last resort.

16 COMMISSIONER DEASON: That's what I am saying.  
17 This concept seemed, to me, to raise a much broader  
18 issue than just multitenant.

19 MS. BEDELL: Yes.

20 COMMISSIONER DEASON: It basically brings into  
21 question as to whether any company that's  
22 certificated in Florida has an obligation to serve  
23 anybody anywhere.

24 MS. BEDELL: And I don't think we have gotten  
25 that far in the statute yet.

1 MS. CHASE: Well, Commissioners, in all due  
2 respect, we talked about this during the workshops.  
3 And what was said during the workshops was, well,  
4 there are some places we just don't want to have to  
5 serve. Well, you know, I am not so sure that's a  
6 good answer.

7 But the other issue on this, on giving the  
8 landlord the right to appear. You know, you are  
9 talking about a quasi-legal proceeding here. And the  
10 way you have set up this statute, the landlord is  
11 always going to be the defendant. The landlord can  
12 never be the plaintiff.

13 And there are times when a landlord may be  
14 negotiating with --

15 CHAIRMAN GARCIA: Give me an example, because  
16 this -- the -- I just can't go as far as you saw in  
17 that other one, but --

18 MS. CHASE: Okay.

19 CHAIRMAN GARCIA: -- give me an example where a  
20 landlord can seek for redress.

21 MS. CHASE: Let me give you another -- this is a  
22 separate issue, other than the issue of the company  
23 just saying, you know, I don't want -- your tenants  
24 asked, but I don't want to come in.

25 CHAIRMAN GARCIA: Right.

1 MS. CHASE: If a landlord is negotiating with a  
2 company, and the landlord is negotiating in good  
3 faith, and the market -- you see, part of our premise  
4 here is that, when your tenants want something, by  
5 golly, you're either going to get it, or you are  
6 going to lose your tenants.

7 So if you have tenants asking you for a service,  
8 and you are trying to get the service, and the  
9 landlord believes that the telecom company is being  
10 unreasonable, because, for example, they only want  
11 access during high traffic times, and you want to  
12 give them access, you know, at nighttime, why  
13 shouldn't the landlord then be allowed to be the  
14 bringer of the complaint to this body, and the  
15 landlord say, look, I want him to come in, but he --

16 CHAIRMAN GARCIA: How would that work, Ms.  
17 Bedell?

18 MS. BEDELL: Well, the answer to that is what we  
19 were just talking about. There is no obligation to  
20 serve.

21 MS. CHASE: Well, we are not talking about an  
22 obligation to serve. We are talking about conditions  
23 for reasonable access. You see, you are creating a  
24 whole new statute here and a whole new set of legal  
25 rates.

1           And the way this statute is drafted,  
2           reasonableness all depends on the actions of the  
3           landlord. It doesn't depend on the actions of the  
4           company. And there are realistic conditions. If you  
5           have got student housing, there are times when you  
6           don't want trucks on the property. And if the  
7           telecom company says, the only time I can do my  
8           maintenance --

9           CHAIRMAN GARCIA: Ms. Chase, I got you. Could  
10          you explain how we would deal with that type of  
11          problem?

12          MS. BEDELL: Well, we did not contemplate  
13          dealing with that kind of problem. We  
14          contemplated --

15          COMMISSIONER CLARK: Because the landlord would  
16          simply say, that's unreasonable, and I am not doing  
17          it?

18          MS. BEDELL: If the company wants the business  
19          enough, they will work on getting --

20          CHAIRMAN GARCIA: Right. But our statute  
21          contemplates it, if the landlord says no, and they  
22          bring you here, it seems reasonable that FSU doesn't  
23          want trucks on their property between such and such a  
24          time. You don't get access.

25          MS. CHASE: What if the landlord -- the point

1 that I am trying to make -- and I am sorry, I must  
2 not be communicating it well. What if the landlord  
3 really wants to say yes? Okay? All you have done  
4 here is, you have assumed that the landlord always  
5 wants to say no.

6 Well, the market reality is that sometimes the  
7 landlord really wants to say yes, and they just can't  
8 work it out.

9 CHAIRMAN GARCIA: But if the --

10 MS. CHASE: And I think it's -- you know, my  
11 point here is that you're -- you're only giving  
12 rights to one person that says if you are saying --

13 CHAIRMAN GARCIA: Let me restate it. What you  
14 are saying is -- let's say they want to limit the  
15 particular time, and then the carrier says, well, if  
16 I have to do it at that time, I am not going to do it  
17 at all.

18 MS. CHASE: Yes, sir.

19 And then the landlord -- can't the landlord say,  
20 we had everything else worked out, my tenants really  
21 want this, they have asked. I think that the Public  
22 Service Commission should decide whether or not  
23 that's reasonable.

24 CHAIRMAN GARCIA: Should it be something once  
25 you start the process, you're obligated to serve?

1 MS. CHASE: Absolutely not, absolutely not. I  
2 don't think that you -- but look at the language in  
3 your bill, because the language in your bill says, on  
4 page two, if the landlord fails to timely respond, if  
5 access is denied or if reasonable and  
6 nondiscriminatory terms for access cannot be agreed  
7 upon, I think what your language assumes is that it's  
8 the landlord who can't agree upon them.

9 What if the telecom company can't agree upon  
10 them? You see, what your statute here is saying is  
11 that the telecom companies can come in and cherry  
12 pick, and then they can decide what they believe to  
13 be reasonable, because, you see, if I am a  
14 defendant -- I am a defendant, all I have are limited  
15 defenses.

16 They have got the burden of proof. They put the  
17 case on. So they come before the Public Service  
18 Commission and say, you know, we really tried to be  
19 reasonable, we can only come in at night, we think  
20 that that's the most reasonable time. All I can do  
21 is try to overturn their burden. And all I can do,  
22 as a defendant, is say to you they didn't meet their  
23 burden. I can't tell you what's reasonable or not  
24 reasonable.

25 I think you have to give us a right to be a

1 plaintiff every now and then.

2 CHAIRMAN GARCIA: Okay. Ms. Bedell.

3 MS. BEDELL: The statute was crafted to give  
4 tenants access to telecommunications companies. The  
5 landlords just happen to be right in the middle of  
6 this.

7 The tenant -- I mean, I find Ms. Chase's  
8 argument very tempting, but doesn't get us where we  
9 are trying to get for the problem that we are trying  
10 to solve; which is, if a tenant, who is in a  
11 building, wants to have service from a company who is  
12 not in the building, that they have to work through  
13 the landlord. What we were told were the kinds of  
14 problems -- those problems that we did have  
15 information on in drafting this report were problems  
16 like the landlord never called us back.

17 Well, we were trying to fix that in this by  
18 saying, okay, if the landlord is not responsive,  
19 what's the next step?

20 CHAIRMAN GARCIA: I understand. All right.

21 MS. BEDELL: I mean, it made --

22 CHAIRMAN GARCIA: Okay. You have explained it.  
23 Miss -- I am the one that asked her the question. So  
24 why don't you continue?

25 MS. BEDELL: Okay. But it doesn't preclude us

1 from setting up some sort of complaint process, if,  
2 you know, somewhere down the road if we, in fact,  
3 have jurisdiction for landlords to come if they  
4 believe that some --

5 CHAIRMAN GARCIA: It strikes me as a natural  
6 consequence that would be something that we would end  
7 up doing.

8 MS. BEDELL: But for actually having access, for  
9 a tenant to have access to a company requires this  
10 middle person to be involved. And we are trying to  
11 set some standards so that that can be worked out.

12 COMMISSIONER JACOBS: On page three, at the top  
13 of the page of your draft, I guess that's Section  
14 5(a)?

15 MS. BEDELL: Yes, sir.

16 COMMISSIONER JACOBS: The circumstances that Ms.  
17 Chase just described; isn't your obligation here for  
18 the telecommunications providers and the tenants to  
19 negotiate in good faith? If they don't -- if either  
20 one of those don't negotiate in good faith, what  
21 happens here?

22 MS. BEDELL: One of two things happens. If they  
23 don't negotiate in good faith, then a complaint could  
24 be brought. But we haven't provided the avenue for  
25 the landlord to bring a complaint to the tenant



1 and/or the telecommunications company.

2 COMMISSIONER JACOBS: Well, my question is,  
3 doesn't this impose upon all parties equally an  
4 obligation -- so if they fail that obligation,  
5 doesn't the other party have some recourse?

6 MS. BEDELL: It -- it -- yes. It's written that  
7 way. Yes, sir.

8 COMMISSIONER JACOBS: So I take it you don't  
9 read it that way?

10 MS. CHASE: Well, Mr. Jacobs, it doesn't give us  
11 the right to bring the action. It may say that  
12 everyone shall make every effort to negotiate access  
13 to a tenant requesting service, but then it doesn't  
14 give us standing. We don't have standing.

15 We flat out under the -- under page two, do not  
16 have standing. And so in a court, motion dismissed,  
17 case dismissed, you don't have standing.

18 If you are creating a statutory cause of action,  
19 which is what you are doing creating your quasi --  
20 making yourselves into a quasi-judicial body and  
21 creating a new cause of action, you're determining  
22 who has legal standing to complain. And I don't --  
23 landlords don't have any standing.

24 COMMISSIONER JACOBS: How about if we add a  
25 statement that any party shall have recourse to seek

1 redress pursuant to this obligation?

2 MS. BEDELL: In the statutory scheme, we believe  
3 that it was important that you have a tenant and a  
4 phone company that wanted to work together, that had  
5 agreed that they wanted to do something together, to  
6 preclude landlords from having to defend from ALECs  
7 saying they wanted to serve a building with no tenant  
8 involved at all; and to also protect the ALECs from  
9 the tenants who want to be served when the ALEC has  
10 absolutely no interest, even -- you know, perhaps not  
11 even in the general geographic area that the tenant  
12 is in.

13 So we were trying to tie them together.

14 COMMISSIONER JACOBS: Right. And I think this  
15 clause does it. All I am suggesting is -- and I  
16 think any party here could bring a complaint that any  
17 of the other two or one mentioned in this provision  
18 has not met the obligation to negotiate in good  
19 faith.

20 But to clear it up, what I am suggesting is,  
21 would it be harmful or unduly expansive to simply  
22 state that?

23 MS. BEDELL: We could -- one of the things we  
24 could do is, we could take the obligation to  
25 negotiate out as a separate section, and suggest that

1 failing -- you know, in the event that the parties  
2 failed to negotiate in good faith, an action could be  
3 brought by any of the parties.

4 CHAIRMAN GARCIA: An action to what?

5 MS. BEDELL: On the failure to --

6 CHAIRMAN GARCIA: What if a landlord doesn't  
7 want to -- what if the ALEC doesn't want to  
8 negotiate? They don't serve the building. I mean,  
9 this is -- I sort of distilled what you had suggested  
10 before. And I am sorry I wandered off for a while.  
11 Ms. Chase did present a very compelling argument.

12 This is an access bill. This is about people  
13 being able to get into the buildings. There is where  
14 we have the problem.

15 Ms. Chase's contentions, while they are possible  
16 scenarios, can still be dealt with by this Commission  
17 if there is a problem. But what we are looking for  
18 is access to the building, so that these companies  
19 can function in our state, so we can open competition  
20 to -- I think that the scenario to have a land -- to  
21 have an -- a carrier that doesn't want to negotiate  
22 with the landlord is absurd.

23 If he doesn't negotiate with the landlord, he  
24 didn't start the process, he doesn't come before this  
25 Commission. And if he doesn't negotiate in good

1 faith and comes before us, and says, I want to be  
2 able to work at FSU campus at 4:00 in the morning,  
3 and the landlord says, sorry, we just don't work at  
4 that time, then he doesn't get in.

5 COMMISSIONER JACOBS: Well, the only instance  
6 that I can see that happening is where the tenant  
7 goes against the landlord, and the landlord wants to  
8 impede -- what's that, the technical legal term.  
9 They want to bring in the provider as having not  
10 negotiated in good faith as a defense against the  
11 tenant.

12 CHAIRMAN GARCIA: I don't even begin to  
13 understand that. But that's probably my fault.

14 What do you mean? Give me an example.

15 COMMISSIONER JACOBS: The tenant asked for  
16 service. Then negotiations failed. The tenant  
17 blames the landlord, brings an action against the  
18 landlord. The landlord wants to say that, we tried,  
19 we could not come to reasonable terms. And they want  
20 to use that as a defense in the action brought by the  
21 tenant.

22 MR. HOFFMAN: Mr. Chairman, I think in response  
23 to his question -- Commissioner Jacobs question, the  
24 landlord can file affirmative defenses, and answer an  
25 affirmative defense complaint.

1 MS. CHASE: And --

2 MR. HOFFMAN: Excuse me. That's where the  
3 landlord can then raise those positions. But I  
4 think, cutting to the chase, so to speak, on this,  
5 that issue, together with the tenant association  
6 issue, together with excluding the word license  
7 issue, are not in your report.

8 You told me, don't go into condos and co-ops.  
9 We are not going to do the report again.

10 CHAIRMAN GARCIA: All right.

11 Will you continue, Ms. Bedell? We will address  
12 your -- we can address it when she's finished  
13 summarizing our position, staff position.

14 MS. BEDELL: Ms. Chase made a comment that I am  
15 not sure I can accurately repeat. The tenants are  
16 now in control of certain aspects the landlord  
17 previously wasn't. That's certainly not our  
18 intention. And we are only trying to get the access  
19 to the tenants in the most reasonable fashion, if  
20 possible.

21 CHAIRMAN GARCIA: Okay.

22 MS. BEDELL: The next comment that was raised  
23 was that there was no definition of unresponsive. I  
24 don't know how -- because al' that is triggered by  
25 unresponsive is that the next step is that somebody

1 files a written request. I don't know that it rises  
2 to the level of something that would need to be  
3 defined, because if -- you know, if there was some  
4 misunderstanding, something in writing would  
5 certainly take care of it.

6 There was -- we do -- staff feels very strongly  
7 that exclusionary contracts are anti-competitive. We  
8 are not aware of instances where they would not be.

9 There were comments that we think were addressed  
10 -- Ms. Chase raised comments about indemnification  
11 and about repairs that we tried to take care of in  
12 subsection (d) of paragraph five, where you can  
13 impose conditions reasonably necessary for safety,  
14 security, aesthetics. That is certainly where you  
15 can put in an indemnification.

16 COMMISSIONER CLARK: Are you saying that that  
17 would be something that to be fleshed out in the  
18 rules?

19 MS. BEDELL: That would be something, yes,  
20 fleshed out in the rules and in the contracts.

21 CHAIRMAN GARCIA: But maybe it's a good point to  
22 add that in there. Can we add that?

23 MS. BEDELL: Well, that's what -- usually  
24 indemnification is related to the same two issues for  
25 security issues or some kind of harm to the property.

1 That's a general order of business that --

2 COMMISSIONER CLARK: Then your concern is, by  
3 listing that you may limit the breadth of what is  
4 included under safety, and it's better just to leave  
5 that to rule-making with the understanding that  
6 issues of -- we would think that issues of  
7 indemnification would be in a reasonable negotiation.

8 MS. BEDELL: Right. We would expect to see them  
9 in contracts, and we would certainly include them in  
10 any rule-making.

11 CHAIRMAN GARCIA: Okay.

12 MS. BEDELL: Mr. Halley's comment that they  
13 would like to see a broad general statement that  
14 mandates that a landlord shall offer access on  
15 nondiscriminatory reasonably -- on nondiscriminatory  
16 reasonable and technologically-neutral terms is  
17 something that we didn't think was necessary to put  
18 in there as an overlay.

19 It is -- it is very strong, and we would not  
20 want people to be tempted to read more into it than  
21 what we have put in here for the conditions for  
22 access to start with.

23 We want to encourage access, and we want folks  
24 to make every effort to have nondiscriminatory  
25 reasonable and technologically-neutral terms in

1 access; and we would like for them to negotiate them  
2 and not bring them all here to the Commission. But I  
3 don't know that it's necessary to have a blanket  
4 statement that a landlord shall offer access on those  
5 terms.

6 CHAIRMAN GARCIA: Okay.

7 MS. BEDELL: So we did not, and we don't  
8 recommend changing that.

9 I totally agree with Mr. Wahlen's suggestion  
10 that on line one, what is numbered page three,  
11 paragraph (a), that we add every reasonable effort as  
12 a standard. And I also would agree with the other  
13 comment that we had, that we -- that we include the  
14 terms and conditions after the word negotiate, so  
15 that we would recommend changing paragraph (a) to  
16 read, tenants, landlords and telecommunications  
17 providers shall make every reasonable effort to  
18 negotiate terms and conditions of access to a tenant  
19 requesting service.

20 CHAIRMAN GARCIA: Okay. If there is no  
21 objection, we will adopt that.

22 Okay. Go on.

23 MS. BEDELL: We also agree with the comment that  
24 what we have for resolving disputes related to access  
25 the following standards should apply, which is the



1 beginning of paragraph five, at the very bottom of  
2 the first page of the legislation, which is numbered  
3 page two, perhaps should read that the following  
4 standards for access -- or the following are  
5 standards for access.

6 CHAIRMAN GARCIA: Okay.

7 MS. BEDELL: And then add a paragraph at the end  
8 of the proposed legislation that would require the  
9 Commission to apply those standards in any dispute,  
10 so that it would read --

11 CHAIRMAN GARCIA: This is an adoption of Mr.  
12 Wahlen's comments?

13 MS. BEDELL: Yes.

14 CHAIRMAN GARCIA: And it would read --

15 MS. BEDELL: The Commission shall apply the  
16 standards for access.

17 COMMISSIONER CLARK: Let me ask you this way.  
18 It strikes me that the first thing out of the box on  
19 the statute would be telecommunications companies are  
20 entitled to reasonable and nondiscriminatory access  
21 to the multitenant facilities. And then, secondly,  
22 in the event that access is denied, the recourse is  
23 to the Commission. I guess that addressed Mr.  
24 Halley's comment that, really what you want to do is  
25 state the standard right out; and then say the steps,

1 you know, that you have to negotiate and where they  
2 don't reply to a oral request. And then you have a  
3 written, where they don't apply to the written,  
4 whatever you have; and then say, applying the  
5 standards and any enforcement action the standard is  
6 whether or not the ALEC was denied access at  
7 reasonable, nondiscriminatory and technically-neutral  
8 terms. I think it's just a restructuring of your  
9 legislation.

10 CHAIRMAN GARCIA: Did you get that?

11 MS. BEDELL: I understand what she's saying. I  
12 mean, that was not exactly where I was going. But we  
13 could certainly do that.

14 COMMISSIONER CLARK: Okay.

15 MS. BEDELL: But you were suggesting different  
16 language than Mr. Halley's.

17 COMMISSIONER CLARK: I am sorry. I thought I  
18 wrote it down. right.

19 MS. BEDELL: For access on --

20 CHAIRMAN GARCIA: She was sort of talking the  
21 structure of the overall --

22 COMMISSIONER CLARK: Yes. The structure about  
23 the statute.

24 Thank you.

25 CHAIRMAN GARCIA: Why don't you restate it. I

1 don't think we have got an objection up here. I just  
2 want you to restate what you're going to do.

3 MS. BEDELL: What we would do would be to  
4 restructure this, so that we announce the standards  
5 first.

6 COMMISSIONER CLARK: Yes. Right.

7 MS. BEDELL: Then what would be done in  
8 enforcement actions, what the threshold would be.  
9 And then the Commission would then rely on those  
10 standards, that have been enunciated for enforcement.

11 COMMISSIONER CLARK: Okay.

12 CHAIRMAN GARCIA: I don't think we have an  
13 objection, so we accept that.

14 MS. BEDELL: Mr. Hoffman's draft includes a  
15 purpose statement. We did not include it, because we  
16 were going for substantive language. You all can  
17 tell us whether you want it or not.

18 CHAIRMAN GARCIA: I think the Legislature can  
19 decide if they want a purpose or not.

20 MS. BEDELL: Right. We thought so. Let's see,  
21 5(c) was Mr. Hoffman's -- oh, there seems to be some  
22 confusion by folks about all necessary easements. We  
23 drafted this so that it would be similar to -- I hate  
24 to say this -- the STS rule, and -- because we  
25 already have a scheme where tenants are responsible

1 for getting the easements. And we don't really  
2 see -- I mean, it works now. We don't really see any  
3 reason for changing it.

4 And, you know, we would be glad to explain that  
5 to you all, if you would like, or that is also  
6 something that could be dealt with in the rules if it  
7 needed to be clarified further, because it's -- it's  
8 in the STS rules. And, you know, it would be  
9 something that we could do.

10 But we -- and it's in the LEC rules. So this is  
11 consistent with what we do for easements. And we  
12 don't recommend making any changes to that.

13 COMMISSIONER DEASON: Do you agree with the  
14 concept of Mr. Hoffman -- I think it was Mr. Hoffman  
15 described, that he was talking about easements of --  
16 to cross premises of other tenants?

17 MS. BEDELL: His is much more narrower than what  
18 we were contemplating. We would agree that that  
19 would be included in it. But we think that that  
20 narrows it significantly from what we had -- what we  
21 were proposing.

22 We -- Mr. -- what Mr. Hoffman was addressing was  
23 Ms. Chase's comments a couple weeks ago that the  
24 landlords may have a problem having to string, you  
25 know, some sort of cable across the middle of some

1 tenant's apartment in the building, you know, it just  
2 wasn't very accessible. That is included in this, in  
3 terms of it being the tenant's responsibility to  
4 obtain easements if they are necessary.

5 It is sort of our practice. So we don't -- we  
6 don't see any reason to narrow it for this instance,  
7 where it is otherwise broader in other services.

8 There was language -- there was language related  
9 to our line 10 on page three, part of paragraph (f)  
10 on where the installation would harm the aesthetics.

11 COMMISSIONER CLARK: Let me ask one thing on the  
12 easement. There would be nothing to preclude the  
13 ALEC from assisting the tenant in getting those  
14 easements. Presumably, they're probably going to be  
15 the ones who contact the other tenants and say, we  
16 want to provide the service that requires us to go  
17 through here, and we're here to secure some sort of  
18 easement.

19 MS. BEDELL: That's correct.

20 But we are not going to make it the  
21 responsibility of the LEC -- of the ALEC.

22 CHAIRMAN GARCIA: This wouldn't be things that  
23 the landlord had control of. These are only things  
24 that infringe on other tenants, is that what you're  
25 specifi --

1 MS. BEDELL: There may be some -- this is any  
2 kind of easements for whoever's property it may be  
3 that a line has to cross.

4 It may be across the parking lot. It may be  
5 some other part of the building. It may be some  
6 common property in the building, or it may be another  
7 tenant's --

8 CHAIRMAN GARCIA: Wouldn't that have been part  
9 of the negotiations and the terms and conditions to  
10 get into the structure? And if I leave that all to  
11 the tenant --

12 MS. BEDELL: All we are saying is, if it gets  
13 down to his obligations it is to do it, we are just  
14 giving some direction that it is the tenant's --  
15 because that has been our practice. And it does not  
16 preclude --

17 CHAIRMAN GARCIA: But that would be part of the  
18 discussion on the terms and conditions?

19 MS. BEDELL: Yes.

20 CHAIRMAN GARCIA: In other words, if they came  
21 in here and weren't able, we wouldn't have to start  
22 all over. In other words, let's say Ms. Chase's  
23 clients will not let Teligent into the building.  
24 They have a huge discussion between them and the  
25 tenant, and we finally agree to some terms and

1 conditions about how that's going to work out.

2 And then the tenant has got to begin the process  
3 of getting easement down the hall, through the  
4 elevator shaft, and out, or that would all be  
5 comprehended if it came before us? Yes.

6 MS. BEDELL: Yes.

7 CHAIRMAN GARCIA: Yes. All right.

8 I just didn't -- it just strikes me that the  
9 tenant doing this is difficult. But as you assume  
10 it's -- the tenant is working in conjunction with the  
11 ALEC who wants to get into the building.

12 MS. BEDELL: And you have to think -- I mean,  
13 there is a difference between some -- some tenants  
14 are major corporations, and some tenants are not.

15 The unreasonably interfere with aesthetics as  
16 opposed to harming the aesthetics in the building,  
17 staff is indifferent. If --

18 COMMISSIONER CLARK: I thought it was adversely  
19 affect the aesthetics.

20 MS. BEDELL: Mr. Hoffman's language was  
21 unreasonably interfere.

22 CHAIRMAN GARCIA: I like the reasonable  
23 standard, because to just harm aesthetics, it just  
24 seems to me like everything harms aesthetics. I  
25 mean, to hear an architect to tell, if you move the

1 little tree planted in front of the building, the  
2 whole building has to be blown up. So a reasonable  
3 standard may be a better thing to deal with for us.

4 MS. BEDELL: Right. And Mr. Brewerton's  
5 language was the adverse impact on aesthetics. But I  
6 think --

7 CHAIRMAN GARCIA: Just a reasonable standard, I  
8 think --

9 MS. BEDELL: Unreasonable.

10 CHAIRMAN GARCIA: That would be fine. Well, I  
11 am sorry.

12 COMMISSIONER CLARK: I think that's right.

13 CHAIRMAN GARCIA: If there is no objection, we  
14 can add that.

15 MS. BEDELL: Okay.

16 CHAIRMAN GARCIA: That's done.

17 COMMISSIONER JACOBS: One quick point, if  
18 you'll --

19 CHAIRMAN GARCIA: She's still got a way to go.

20 MS. BEDELL: I was just trying -- I am afraid  
21 that I have a note here from some part of what Mr.  
22 Hoffman raised that I may need to get back to. And  
23 we also didn't discuss the difference in the  
24 definition of condominiums, but we don't support  
25 carving out pieces of the --



1 talking about space being sufficient to accommodate  
2 the facilities needed for additional access, you  
3 know, access --

4 CHAIRMAN GARCIA: Access is access.

5 MS. BEDELL: Access is access, you know. And I  
6 also -- I hesitate to say these magic words. But,  
7 you know, it would sort of have to be like first  
8 come, first serve, you know. But those are also  
9 things we can set in the rules.

10 CHAIRMAN GARCIA: Okay.

11 MS. BEDELL: If that becomes necessary.

12 On the access fee part, on (g), at line 13, I  
13 believe that it would be clear and perhaps more  
14 palatable, Mr. Burn, if we were just to say that a  
1 landlord shall not charge an access fee for the  
1' privilege of -- for the privilege of doing business  
in a multi-- that should probably be  
13 telecommunications. For the privilege of providing  
19 telecommunications service in a multitenant  
20 environment.

1 COMMISSIONER CLARK: I think that sounds right.

22 CHAIRMAN GARCIA: What problem do we have there?  
23 Doesn't that -- then he can charge other fees for  
24 other things?

25 MS. BEDELL: He can charge other fees for other

1 things, and we don't have to get into the discussion  
2 about the word license.

3 If we -- if a license is something broader than  
4 what we intended here, we don't have to cross that.

5 COMMISSIONER CLARK: For everything he wants to  
6 charge, he will have to show it's not just merely to  
7 have -- to be able to do business in that building.

8 CHAIRMAN GARCIA: And that is so we are fair and  
9 reasonable and nondiscriminatory.

10 COMMISSIONER CLARK: Right.

11 CHAIRMAN GARCIA: All right.

12 COMMISSIONER CLARK: Yes.

13 MS. BEDELL: And except for suggesting that we  
14 were a little short on the residential side, I  
15 believe Mr. Self's comments were covered.

16 CHAIRMAN GARCIA: Yes. Okay. Mr. Brewerton, if  
17 I let you go, we get on that slippery slope. I am  
18 not going there.

19 That is it.

20 Commissioners, if you don't have any discussion,  
21 any -- if have you some questions, that's fine. If  
22 you do not, I would entertain a motion.

23 COMMISSIONER DEASON: I have one question, okay?

24 CHAIRMAN GARCIA: Okay.

25 COMMISSIONER DEASON: Staff may have addressed

1 it. If you have, I apologize for bringing it up  
2 again. But I thought Mr. Hoffman made the point  
3 concerning that access would not be denied if the  
4 only thing that was still pending was the charge or  
5 the price. What is staff's position on that?

6 MS. BEDELL: Staff did not contemplate that when  
7 they first drafted the statute. It is sort of  
8 attractive, if you have people that want to do  
9 business, including the landlord, who want to do  
10 business; and all they have not determined is the  
11 cost, you know, a set of particular costs. It -- you  
12 know, I think that would be -- that would probably be  
13 beneficial to the business.

14 CHAIRMAN GARCIA: How would we determine that?  
15 I understand what the points drawn. But Mr.  
16 Brewerton made a very good argument that it sort  
17 of -- sort of like an eminent domain right, we're  
18 going to get in.

19 Who would say, okay. Go ahead and get in.  
20 Would it be based on the pleadings before us, that if  
21 the only issue left outstanding was dollars, then you  
22 get in?

23 MS. BEDELL: I tell you how I was thinking of  
24 Mr. Hoffman's recommendation as being a little bit  
25 like some of the interconnection agreements, where

1 you agree to do certain things, and you agree on some  
2 of the costs, but you can't get them quite all nailed  
3 down.

4 CHAIRMAN GARCIA: All right. Just so I know,  
5 it's a question of what the pleadings would be. In  
6 other words, two parties come before us. The only  
7 thing they haven't agreed on is the money issue.

8 MS. BEDELL: On the other hand, there is nothing  
9 in the statute that would preclude them from going  
10 ahead and providing the service if the landlord  
11 agreed. I don't know that it's absolutely necessary  
12 in the statute to have it in there. There's nothing  
13 that says that, if you all agree on all these things,  
14 and what you don't agree on is the costs, that you  
15 can't go ahead and provide the connection and the  
16 installation, and come to us with the rest of the  
17 complaints.

18 CHAIRMAN GARCIA: Commissioners, I think we may  
19 be encumbering and creating a situation.

20 If we add the language, I can see, then,  
21 landlords coming in and saying, well, I haven't  
22 agreed to everything, and pulling back certain  
23 provisions. Let's leave it as broad as possible to  
24 hope that they come to some type of agreement. And I  
25 think it serves you better that way. It serves us

1 better that way.

2 COMMISSIONER DEASON: What about the position  
3 that we need to define exclusinary contracts and  
4 define marketing agreements?

5 MS. BEDELL: Yes. We would define exclusionary  
6 contracts and marketing agreements, and we also will  
7 amend paragraph (d) on the call aggregator.

8 COMMISSIONER CLARK: With those -- with the  
9 understanding that those are the modifications, I can  
10 move the proposed legislation.

11 COMMISSIONER JOHNSON: I have got -- one  
12 second.

13 COMMISSIONER CLARK: And it goes back to  
14 something that was discussed today stated -- or Cathy  
15 stated you didn't think it was necessary, some  
16 concern. I wanted you to explain how it's protected  
17 in the rest of the language. And that went to, I  
18 think, page two, subsection (b). The language that  
19 was suggested that the landlord shall offer access on  
20 reasonable and undiscriminatory and technologically-  
21 neutral terms and conditions. It was something  
22 similar to that.

23 And my concern went mainly to the  
24 technologically-neutral language. I know we cite and  
25 support that in the report. And I just want to make

1           sure that that's covered in the legislation.

2           If I understood the argument in the testimony,  
3           it was that, to the extent -- the concern was that a  
4           landlord might, if there is some new technology, not  
5           allow it based on the fact that it was that new  
6           technology, but argue it's not discriminatory,  
7           because if you were doing what's traditionally been  
8           done, the technology that's traditionally been used,  
9           you're okay. Since this is different, we can treat  
10          it differently. And that's --

11          CHAIRMAN GARCIA: Do you have any good arguments  
12          against that?

13          MS. BEDELL: Against having technologically-  
14          neutral in there?

15          CHAIRMAN GARCIA: Yes.

16          MS. BEDELL: Not really. I hate to draw  
17          attention to it, but, no.

18          CHAIRMAN GARCIA: Okay. Well, that's part --

19          COMMISSIONER CLARK: And I would suggest you put  
20          it in there, but I would also suggest that we move  
21          approval of those proposed language as we have  
22          discussed and modified today, but that it be brought  
23          back -- that we look at it one more time.

24          CHAIRMAN GARCIA: Very good. What we will do  
25          is, we will look at it one more time Wednesday at

1 12:00. There will be no discussion, except with  
2 Commissioners and staff, if that's all right by the  
3 rest of the Commissioners. And we will just  
4 simply -- it's just to refine the language that we  
5 had an interest in here.

6 That being the case, there is a motion. Is  
7 there a second?

8 COMMISSIONER JOHNSON: Second.

9 CHAIRMAN GARCIA: All those in favor, signify by  
10 saying aye.

11 (Chorus of ayes.)

12 CHAIRMAN GARCIA: All opposed, say nay.

13 It's approved unanimously.

14 We will meet, then, at 12 o'clock on Thursday,  
15 when you will have the final draft of the language.  
16 And, clearly, we will already -- we already have the  
17 final of the reports stuff, so we won't take it up.  
18 We'll just take the statutory language that has been  
19 approved, and it's only for small discussion.

20 Thank you very much for your patience and for  
21 participating today. We really appreciate it.

22 COMMISSIONER CLARK: Are we not going to go  
23 through the next?

24 CHAIRMAN GARCIA: We are now going to take a  
25 five-minute, and then we are going to go to the

1 Universal Service.

2 So will the appropriate parties move forward, we  
3 will take five minutes.

4 (Hearing concluded at 3:32 p.m.)  
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2 STATE OF FLORIDA )

3 COUNTY OF LEON )

4 I, DEBRA R. KRICK, Court Reporter, hereby  
5 certify that the foregoing transcript was taken down as  
6 stated in the caption, and the questions and answers  
7 thereto were reduced to typewriting under my direction;8 That the foregoing pages 1 through 141 represent  
9 a true, correct, and complete transcript of the evidence  
10 given upon said hearing;11 And I further certify that I am not of kin or  
12 counsel to the parties in the case; am not in the regular  
13 employ of counsel for any of said parties; nor am I in  
14 anywise interested in the result of said case.

15 Dated this 27th day of January, 1999.

16  
17 

18 DEBRA R. KRICK

19 Court Reporter and Notary Public

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25

SPECIAL INTERNAL AFFAIRS 1/26/99 IN RE: MULTITENANT ENVIRONMENTS

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