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July 29, 1998

Ms. Blanco Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

via Hand Delivery

In Re: ISSUE IDENTIFICATION WORKSHOP FOR
UNDOCKETED SPECIAL PROJECT: 9800008-SP
ACCESS BY TELECOMMUNICATIONS
COMPANIES TO CUSTOMERS IN MULTI-TENANT
ENVIRONMENTS

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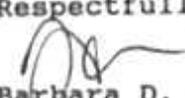
Dear Ms. Bayo:

Enclosed for filing please find an original, fifteen copies and a diskette of the Time Warner's. You will also find a copy of this letter enclosed. Please date-stamp this copy to indicate that the original was filed and return a copy to me.

If you have any questions regarding this matter, please feel free to contact me. Thank you for your assistance in processing this filing.

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Respectfully,

 Barbara D. Auger

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: ISSUE IDENTIFICATION WORKSHOP
FOR UNDOCKETED SPECIAL PROJECT:
ACCESS BY TELECOMMUNICATIONS
COMPANIES TO CUSTOMERS IN
MULTI-TENANT ENVIRONMENTS

DATE FILED: JULY 29, 1998

COMMENTS OF TIME WARNER TELECOM

- I. In general, should telecommunications companies have direct access to customers in multi-tenant environments? Please explain. (Please address what need there may be for access and include discussion of broad policy considerations.)

ANSWER: Yes. Incumbent local exchange carriers ("ILECs") have often pointed out that a large and disproportionate share of the revenues generated from providing local exchange telephone service is derived from a very small percentage of total customers served. These customers can generally be identified as business customers and some residential customers located in urban areas. A large number of these customers are located in a multi-tenant environment such as high rise buildings in highly populated business districts or residential communities. Most rent their spaces and purchase local exchange telecommunications services from the service area ILEC which made its original arrangements as a monopoly provider of these essential services.

In order for competition to develop, competing carriers must have direct access to the customers which comprise these most lucrative markets. Access must be on a nondiscriminatory and competitively neutral basis as compared to the ILEC so that new competitors are not unfairly disadvantaged in their efforts to win market share. In many instances, alternative local exchange carriers ("ALECs") have been denied free access to multi-tenant facilities by property owners who have no particular motivation to accommodate the ALEC's request since tenants are already receiving required services. Of course, in many cases, the ALEC is offered an opportunity to purchase such access; however, these arrangements make it difficult, if not impossible, for the ALEC to compete for new business when it incurs costs not charged to its ILEC competitor. In the current environment, property owners are not in a position to demand similar fees from the incumbent provider at the risk of losing its service. The policy issue for consideration in this circumstance becomes abundantly clear. The solution to this issue will require a balancing of the legislative commitment to promote competition in the telecommunications markets and the private

property owners right to use their property without undue government restriction or interference. Potentially, there are a number of alternative solutions which could be designed through the legislative and/or regulatory process. It would seem that at least two alternatives exist:

- (1) to require all providers to pay reasonable compensation to property owners for the use of the asset necessary to support the telecommunications operations; any successful resolution, however, must ensure that its impact is nondiscriminatory and competitively neutral to all providers; or
- (2) to not require payment from any carrier providing competitive, alternative and new services to the tenant end users because these services increase the value of the property.

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

ANSWER: As discussed in the preceding answer, it is imperative to survival that ALECs be permitted access. Equal access to the market place is the most fundamental concept of competition. The decision of whether to permit access must be answered affirmatively. Only the rules for permitting such access should be the subject of debate in this proceeding. Considerations for the formulation of these rules should include, without limitation the following:

- (1) the demand by providers for building space and the availability of space,
- (2) tenant demands for telecommunications services and the availability of services,
- (3) the number of providers willing and capable of providing services,
- (4) costs and operational concerns associated with providing building access to multiple providers; and
- (5) calculation of fair and reasonable compensation to be paid property owners, if appropriate.

A. How should "multi-tenant environment" be defined? That is, should it include residential, commercial, transient, call aggregators, condominiums, office buildings, new facilities, existing facilities, shared tenant services, other?

ANSWER: If the desired end result is a truly competitive market, competing carriers should not be restricted or prohibited from offering any service at any location, or to any end-users. For this reason, "multi-tenant environment" should be defined broadly so as to include any and all building facilities occupied or to be occupied by two or more tenants which require and purchase or will require and purchase telecommunications services from an

authorized telecommunications service provider.

- B. What telecommunications services should be included in "direct access", i.e., basic local service (Section 364.02(2), F.S.), internet access, video, data, satellite, other?**

ANSWER: As the ability to combine and package services becomes more critical to marketing strategies and a provider's ability to compete, customers will become less conscious of the components of their telecommunications package which are necessary to service their particular business operations or personal needs. In order to compete, therefore, it will be necessary for providers to be capable of packaging a wide variety of services. For this reason, all telecommunications services under the jurisdiction of the Florida Public Service Commission should be included.

- C. In promoting a competitive market, what, if any, restrictions to direct access to customers in multi-tenant environments should be considered? In what instances, if any, would exclusionary contracts be appropriate and why?**

ANSWER: As the number of competing providers and demand for building access increases, there are certain logistical, operational, technical and safety issues which will inevitably require consideration. In a vast majority of instances, property owners and their vendors resolve these issues by way of oral or written agreements, and by complying with local municipal ordinances and building rules, outside of legislative or regulatory arenas. It would logically follow, therefore, that many of these issues could be resolved by agreement. Access to the regulatory process should be reserved as a vehicle for dispute resolution in a similar manner as provided for interconnection agreements. Reasonable restrictions will not adversely impact the development of competition so long as all such restrictions are applied to all providers in a nondiscriminatory and competitively neutral manner.

Exclusionary contracts would be appropriate only if all the following circumstances existed.

- (1) two or more providers are willing to provide services to the facility;
- (2) the exclusive contract is subject to a bid process;
- (3) all providers are afforded an equal opportunity to bid;
- (4) the term of the contract is limited to two years; and
- (5) all tenants of the building, at the time the contract is opened for bids, consent to the exclusive arrangement.

- D. How should "demarcation point" be defined, i.e., current PSC definition (Rule 25-4.0345, F.A.C.) Or federal Minimum Point of Entry (MPOE)?**

ANSWER: The demarcation point should be consistent with the federal Minimum Point of Entry ("MPOE") definition, as defined in the FCC's Report and Order in CC Docket No. 88-57 RM 5643. While the Florida Rule does mandate a minimum point of entry, it does not mandate access to building wiring nor does it provide the logistical details of building access as do the orders in the federal proceeding.

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

- 1) landlords, owners, building managers, condominium associations
- 2) tenants, customers, end users
- 3) telecommunications companies

In answering the questions in Issue II.E., please address issues related to easements, cable in a building, cable to a building, space, equipment, lightning protection, service quality, maintenance, repair, liability, personnel, (price) discrimination, and other issues related to access.

ANSWER: Time Warner incorporates by reference its answers to the previous questions and in addition, offers the following:

Rights:

Private Property Owners have the right to own and enjoy the use of their property without unreasonable or unduly burdensome governmental interference or restriction.

Tenants, Customers and End-Users have the right to access state-of-the-art telecommunications services which will become necessary to their business and personal endeavors, at a quality and at a price offered by a competitive market.

Telecommunications Companies have a right to provide the full array of telecommunications services for which authority has been granted to them by the State and to compete with other providers on a fair and equal basis.

Obligations:

Private Property Owners are obligated to comply with all federal and state laws as enforced by rules of the regulatory agencies in order to promote the general welfare of the citizens of the state.

Tenants, Customers and End-Users have the obligation to negotiate their contracts in good faith and comply with building regulations, contract terms and all applicable laws.

Telecommunications Companies have the obligation to comply with all laws, rules and regulations and provide quality services competently and responsibly.

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

ANSWER: The issue of compensation will undoubtedly become the most contentious issue in this proceeding. Historically, local exchange telephone service, a service critical to the property owner's ability to lease space, was offered by only one provider. The issue of compensation for use of building space or facilities was never considered. The difficulty for regulators is balancing the rights of the property owners with the intent of the state and federal statutes to promote competition in the local exchange market. If compensation is to be paid, the dispute will most likely arise in the calculation of "just and reasonable" compensation. Telecommunications service providers will contend that the rate of compensation should be based on the loss incurred by the property as a result of allowing the physical access. Since these providers will usually occupy a small number of square feet in any particular building, generally less than five hundred square feet, the telecommunications service providers will argue that the compensation should be minimal. Property owners will submit that the use of their space by telecommunications service providers is unique and should be treated as a licensing arrangement. Many owners will contend that these licensing fees should be calculated based upon a percentage of gross receipts. This proposal is tantamount to a tax and is inappropriate under Florida law.

Under the basic principles applied to the calculation of compensation in eminent domain cases, property owners would only be entitled to any actual loss incurred as a result of the fair market value of the property taken for use by the condemning authority. Given this, Time Warner urges the adoption of the following broad policies in calculating compensation.

- (1) Affirm the Commission's jurisdiction over the matter of building access and affirm its role as adjudicator/arbitrator/mediator of disputes between providers and building owners over the terms and conditions under which access will be provided.
- (2) Define the term "building access" to mean access to an entire building or commercial complex under common ownership, so that whatever terms and conditions apply to a providers' placement of facilities will also operate to allow it to serve all tenants on the property. (This definition would ensure that only one agreement need be negotiated per property, so that the expense and delay inherent to the process will not be incurred again just to serve tenants on additional floors in the same facility.)
- (3) Declare that reasonable compensation for the use of equipment space in the common areas of a building (e.g., the basement/utility and rooftop area) and for the installation

of conduit and wiring in the raceways and ceiling space in a building shall be presumed to be diminus unless property owner offers evidence to rebut the presumption with respect to the individual properties.

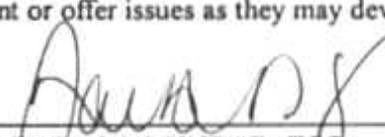
- (4) Further, prohibit the imposition of any fee for the use of raceways and ceiling space. And, permit building owners and carriers to offer evidence to rebut the presumptions stated in (3) with respect to any individual property.
- (5) Prohibit building owners from requiring competitive service providers to pay for building access unless the incumbent is immediately subject to the same compensation terms for both existing facilities and new facilities in the building.
- (6) Establish a dispute resolution process under which both carriers and property owners may seek expeditious arbitration or mediation of disputes regarding compensation and other terms and conditions under which the building access is granted.

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

ANSWER: The ALECs in Florida are already required to provide 911 and E911 services for their end user customers. Allowing access to additional customers in multi-tenant buildings will not change that requirement.

III. Other issues not covered in I and II.

ANSWER: Time Warner has not identified any additional issues at this time, but respectfully requests the right to comment or offer issues as they may develop in this project.



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