

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD

POST OFFICE BOX 551 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL
CHARLES F. DUCKE

GOVERNMENTAL CONSULTANTS
PATRICK R. MALOY
AMY J. YOUNG

August 26, 1998

ORIGINAL
RECEIVED - FPSC
RECORDS AND REPORTING
59 AUG 26 PM 4:42

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

Re: Docket No. 980000B-SP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Teleport Communications Group Inc. and TCG South Florida ("TCG") are the original and fifteen copies of TCG's Supplemental Reply Comments on Issues Concerning Access to Customers in Multi-Tenant Environments.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCH _____
- SEC _____
- WAS _____
- OTH _____

KAH/rl
Enclosures
cc- Parties of Record
Trib. 3

RECEIVED & FILED

¹⁴
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER - DATE

09298 AUG 26 98

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Undocketed Special Project:)
Access by Telecommunications)
Companies to Customers in)
Multi-Tenant Environments)
_____)

Docket No. 980000B-SP

Filed: August 26, 1998

**TELEPORT COMMUNICATIONS GROUP INC./
TCG SOUTH FLORIDA'S
SUPPLEMENTAL REPLY COMMENTS ON
ISSUES CONCERNING ACCESS TO CUSTOMERS
IN MULTI-TENANT ENVIRONMENTS**

Teleport Communications Group Inc. and its Florida affiliate, TCG South Florida (hereinafter referred to collectively as "TCG"), by and through their undersigned counsel, hereby submits TCG's Supplemental Reply Comments in the above-captioned proceeding. TCG has joined in the Joint Reply Comments submitted on this date by e.Spire™ Communications, TCG, Teligent, Inc., and Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications, with the exception noted at page 8, fn. 8 of the Joint Reply Comments. TCG's fundamental position is that legislation mandating non-discriminatory telecommunications company access to tenant end users in multi-tenant environments ("MTEs"), setting forth specific legislative intent, requirements, prohibitions, criteria and procedures for achieving such non-discriminatory access, and providing procedures and remedies concerning any disputes arising therefrom is necessary and consistent with the pro-competitive goals of Chapter 364, Florida Statutes and the Federal Telecommunications Act of 1996. In addition to the Joint Reply Comments, TCG provides the following supplement reply comments:

1. Building owner groups unabashedly call for "reasonable compensation" in the form of contracts requiring the payment of percentages of a competitor's gross revenues. Such terms are discriminatory when compared with the free access admittedly provided by the MTE owner/ landlord

DOCUMENT NUMBER-DATE

09298 AUG 26 98

FPSC RECORDS/REPORTING

to the incumbent provider and are predicated on the unfounded assumption that MTE owners and managers are somehow entitled to increased revenues as a result of local service competition. There is no indication in the federal or Florida law supporting such a notion.

2. Some of the building owner groups also endorse exclusive contracts based on the somewhat perverse view that an exclusive contract promotes competition. Exclusive contracts eliminate competition. Even where exclusive contracts may be subject to a bidding process, a matter not required under Florida law, exclusive contracts inevitably foreclose individual tenants from negotiating for service from competing providers who may be capable of providing specific enhanced or bundled services at extremely competitive rates or discounts to those tenants.

3. As addressed in the Joint Reply Comments, the Loretto decision¹ is inapposite to the typical factual scenario where a competing provider wishes to gain access to a tenant in a MTE. Loretto does not address the issue of whether a competing provider's use of space already allocated for telecommunications use would constitute a taking. The Yee decision² discussed in the Joint Reply Comments indicates that mandatory access legislation would not be construed as a compelled physical occupation of property (i.e., an unconstitutional taking) where the MTE owner/landlord has already granted access to and the use of the property to a telecommunications provider for the provision of telecommunications service. Such a de minimus use of a communications closet and previously installed conduit by an additional competing provider would not constitute a taking under Loretto. Moreover, even if a court were to conclude that such a scenario constitutes a taking, a

¹Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

²Yee v. City of Escondido, 503 U.S. 519 (1992).

statutory mechanism authorizing the Commission to establish compensation for this de minimus use of a landlord's property, subject to judicial review, overcomes the constitutional taking objection under the Gulf Power Company decision.³

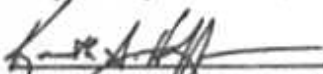
4. Building owner groups also contend that they should be able to maintain unbridged rights to control the use of their property. These comments overlook the fact that building owners do not exercise such rights today as they acquiesce to the tariffs of the incumbent LECs requiring them to allow the incumbent LEC to run their facilities into the building to provide local telecommunications service, without compensation paid by the incumbent LEC.

5. TCG joins the Joint Commentators with respect to their position on moving the demarcation point and all MTEs to the minimum point of entry; however, TCG also believes that the Commission's report to the Legislature should recommend legislation requiring the MTE owner to provide non-discriminatory access to the cabling and wire between the minimum point of entry and the customer's premises.

6. Finally, building owner groups raise concerns regarding building security, alleged increased costs to manage multiple carriers and other operational issues. TCG maintains that such operational issues are likely to be resolved by the parties (and, if necessary, by the Commission) once legislation is enacted mandating non-discriminatory access to MTEs.

³Gulf Power Co. v. United States, 998 F.Supp. 1386 (N.D. Fla. 1998).

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.

JOHN R. ELLIS, ESQ.

Rutledge, Ecenia, Underwood, Purnell & Hoffman, P.A.

P. O. Box 551

Tallahassee, FL 32302

(850) 681-6788 (telephone)

(850) 681-6515 (telecopier)

and

DAVID S. STEINBERG, ESQ.

Senior Attorney

Teleport Communications Group Inc.

Princeton Technology Center

429 Ridge Road

Dayton, New Jersey 08810

732-392-2915 (Telephone)

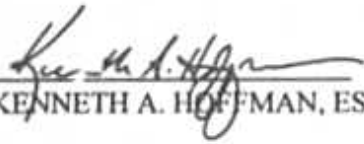
732-392-3475 (Telecopier)

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 26th day of August, 1998 to the following:

Catherine Bedell, Esq.
Senior Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 335-E-1, Gunter Building
Tallahassee, Florida 32399-0850

Dan Hoppe
Director of Research and Regulatory Review
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 390J-1, Gunter Building
Tallahassee, Fl 32399-0850

By: 
KENNETH A. HOFFMAN, ESQ.