

Smith, Bryan & Myers

An L.Garry Smith & Associates Company

August 26, 1998

ORIGINAL

Ms. Blanca S. Bayo
Division of Records and Reporting
Florida Public Service Commission
110 Betty Easely Conference Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: Special Project No. 980000B-SP

Dear Ms. Bayo:

Enclosed please find the International Council of Shopping Centers' response to PSC's request for rebuttal comments.

If you have any questions concerning the contents, please do not hesitate to contact me.

Sincerely,


Julie S. Myers

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RCH _____
SEC _____
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RECEIVED REPORTING

Before the
Florida Public Service Commission

Special Project No. 980000B-SP

In Re: Issue Identification Workshop
For Undocketed Special Project:
Access by Telecommunications Companies
To Customers In Multi-Tenant Environments

Rebuttal Comments of
International Council of Shopping Centers

ORIGINAL

These comments are filed on behalf of the Florida Chapter of the International Council of Shopping Centers.

PSC Request for Rebuttal and Comments

The Florida Public Service Commission has asked for rebuttal comments related to issues being studied in Undocketed Special Project, Access by Telecommunications Companies to Customers in Multi-Tenant Environments, and raised during two previous workshops. Regarding the following specific issues the International Council of Shopping Centers submits these comments:

1. The Florida Legislature directed the Public Service Commission in Section 5 of HB 4785 to:

"...study issues associated with telecommunications companies serving customers in multi-tenant environments and...report its conclusions, including policy recommendations..." and

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"consider the promotion of a competitive telecommunication market to end users, consistency with any applicable federal requirements, landlord property rights rights of tenants and other considerations developed through the workshop process and commission research." (emphasis added)

The International Council of Shopping Centers submits that the provisions of the above-referenced legislation require conclusions by the PSC regarding the current status of the law (statutory, regulatory and case law); landlord property rights vis-à-vis telecommunications companies; and recognition of the legal limitations that exist. ICSC registers its objection to the presumption offered by telecommunications companies that access by telecommunications companies to property without the consent of the property owner is legally supportable.

2. ICSC submits that "access" and the promotion of competition is increased significantly only when the PSC recommends and institutes regulatory changes addressing the relationship between incumbent service providers and alternative service providers. ICSC notes that no quantifiable or specific factual circumstances were presented evidencing property owners arbitrarily blocking entry to requesting providers. ICSC notes that no evidence of overreaching or unconscionable license agreements actually entered into between telecommunications companies and Florida property owners exists.

3. ICSC submits that for the PSC to "consider the promotion of a competitive telecommunications market to end users" in a multi-tenant environment a fiscal analysis of proposed statutory or regulatory changes impact on the market must be made part of the Commission's research and study. No evidence has been presented quantifying the costs of litigation or a process of regulated arbitration of issues between property owners and telecommunications companies. No measurable evidence has been presented supporting the statements that current regulatory conditions as they pertain to property owners are preventing or retarding competition.

4. ICSC registers its disagreement with conclusions contained within various presentations of telecommunications companies regarding: the status of the federal law, status of orders by the FCC, and the operation and ramification of the Texas and California experience. Further, ICSC registers its concurrence and agreement with the comments filed by the National Real Estate Coalition on today's date.

MEMORANDUM

August 26, 1998

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BEDELL) *CB/slh*

RE: DOCKET NO. 980000B-SP - UNDOCKETED SPECIAL PROJECT:
Access by Telecommunications Companies to Customers in
Multi-Tenant Environments.

Attached is a **LETTER AND DISKETTE FROM CENTRAL FLORIDA COMMERCIAL REAL ESTATE DATED AUGUST 23, 1998**, to be filed in the above-referenced docket.

CB/slh
Attachments

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CB



Central Florida Commercial Real Estate Society

621 E. Central Boulevard
P.O. Box 587
Orlando, FL 32802-0587
Tel: (407) 422-5143 • Fax: (407) 422-6879

August 23, 1998

Ms. Cathy Bedell
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Cathy:

Thank you for your correspondence of August 20 regarding the September 15th workshop.

With regards to rebuttal comments related to issues being studied and discussed at the August 12 workshop, the Central Florida Commercial Real Estate Society maintains their position as outlined in previous documentation and comments expressed, with one exception. During several presentations, comments were made regarding the "rights" of tenants to choose their telecommunications provider. It was stated that these "rights" should supercede those of the property owner. We do not agree. Under Florida statutory and case law, property owners/landlords owe certain minimum duties and obligations to the tenant. The law does not address tenants "rights" to choose a telecommunications company. It is our belief that property owners and telecommunications companies can find an amicable solution to this issue, but the to suggest they have a "right" to access a tenant is inappropriate.

Members of the Central Florida Commercial Society will attend the September 15th meeting and appreciate the opportunity to address the committee. Should you have any questions or need additional information, please do not hesitate to contact Frankie Callen, Vice President of Governmental Affairs, at 407.422.5143 x319.

Thank you for your attention in this matter.

Sincerely,

Matt Sullivan
President

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LEGAL DIVISION

Cc: Mr. Gene Adams, Vice President of Governmental Affairs, Florida Association of REALTORS®