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In Re: Undocketed Special Project:
Access by Telecommunications Companies
to Customers in Multi-Tenant Environments.

Undocketed Special Project No. 980000B-SP

Submitted by:

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SUMMARY OF POSITIONS

The Florida Apartment Association ("FAA") is comprised of owners and managers of multi-tenant residential properties. FAA members manage approximately 260,000 residential units in the state. The FAA believes mandatory direct access is unnecessary to promote competition.

Competition for telecommunications services exists today in the residential market on the community level. Existing communities offer many choices. Residents choose their preferred community based upon the services offered by the property owner. Renters select telecommunications services when they shop for an address. If a renter wants a particular phone provider, they are able to find a community that offers service through that provider in their preferred geographic area.

Property owners today have the ability to choose and change providers and will do so based on market demands. Thus, telecommunication providers compete for the ability to provide service to entire residential communities.

The issue presented is whether individual residential renters should be considered "customers" in multi-tenant environments. The Florida Apartment Association believes that the customer is the community and that residential competition already exists on the community level. Direct access to residential apartment customers is unwieldy, presents many logistic, safety and liability concerns, and might be an unconstitutional taking. The Florida Apartment Association believes that direct access should not include

residential communities where the resident does not have an ownership interest in the property. However, if the Public Service Commission determines providers must have direct access to individual renters, then it must take several issues into account.

Florida's residential properties are built with a variety of characteristics. Some are low income housing, some offer full amenities such as technology in each unit. Some communities are a single highrise building, some are campus style, and some are cinderblock construction. Some serve military personnel. Some serve students. These varying styles, price points, populations and locations do not lend themselves to a one-size-fits-all solution to the access issue. The length of tenancy is typically very short (less than one year in most cases) in a residential apartment setting, further complicating logistic issues.

Any access law must take into account the property rights held by the owner, as well as the right of a tenant to quiet enjoyment of their unit. An access law that allows constant wiring and re-wiring of properties based on any telecommunication provider's desire is not acceptable. Owners cannot tolerate destruction of their property or disruption in their communities on a regular and ongoing basis. Markets and the ability to enter into contracts must also be considered. Liability is a further concern.

DISCUSSION

I. In general, should telecommunications companies have direct access to customers in multi-tenant environments?

Direct access might be sensible in some settings. However, there are no public policy reasons to mandate direct access in the residential setting where the resident has no ownership interest in the property.

The only conceivable public policy reason for mandating direct access is to promote competition. If competition exists in certain markets, then direct access is not necessary in that market. The residential apartment market is distinct from the commercial or other residential markets. Competition already exists in the residential market.

In residential non-owner communities, the choice of telecommunications providers is market driven. In fact, the Federal Trade Commission exempts the acquisition of rental residential property from the Hart-Scott-Rodino premerger notification rules because these assets "are abundant and their holdings are generally unconcentrated." 61 Fed. Reg. 13669 (Mar. 28, 1996); 16 C.F.R. §802. The high level of fragmentation in the market means that no individual owner has any significant degree of market power. Because of the resulting competition, building operators must respond to the needs of tenants by accommodating requests for service.

Property owners carefully design communities to appeal to certain demographics. They vary their communities to attract

renters from a particular socio-economic strata, geographic area, or even design communities based on the length of stay, such as student housing. They use amenities to attract renters. Renters select amenities when they shop for their address.

Marketing an apartment community must be done very carefully. Apartments, unlike snack foods, can't be moved if the developer or owner "guessed" the market wrong. Thus, the market is closely examined. Owners profile renters. If renters in a particular market area prefer a particular telecommunications provider, owners will see that the desired service is provided.

Competition for residential units is fierce. An owner can fail to fill their units by making a simple mistake. For example, in certain areas renters will not move into a community if they cannot transfer their existing phone number or cannot obtain high speed internet.

Many apartment units in Florida are owned by publicly traded companies. These owners have a fiduciary duty to return value to shareholders. They will provide whatever services are economically feasible to ensure high occupancy rates. If more than one telecommunication provider is demanded by the market, owners will respond.

Many providers compete to service a community. Usually the property owner enters into an agreement with a provider to bring service to the entire property. The ability to guarantee the entire community to a service provider *helps new and smaller companies compete*. Without guaranteed volume, these smaller

competitors cannot justify the cost of competing for just a few customers. Direct access will be a barrier to competition for small companies.

Additionally, the competition for an entire community keeps prices low. Each provider offers its best deal to the owner. When all providers are guaranteed access to all units, the incentive to compete is gone. *Prices will go up.*

In short, no barrier to competition exists in the residential multi-tenant market. Rather, competition exists between providers who compete to serve entire properties. Thus, government does not need to create artificial rules.

II. A. How should "multi-tenant environment" be defined?

"Multi-tenant environment" should not include residential properties where the occupant has no ownership interest. It should not include tenancies shorter than 13 months.

Direct access in a non-ownership setting results in confusion for the entire property. Can tenants change providers monthly? Would buildings be violated and construction personnel be on site constantly?

The renter does not own the property and has no right to alter the unit. Direct access grants non-owners new rights that override the owner's rights. This holds true for short-term renters as well. These units experience 60 percent turnover per year. Choice in this setting is impossible to manage.

B. What services should be included in direct access?

FAA opposes direct access in the residential setting where residents have no ownership interest. However, if direct access is mandated, it should only include basic service.

Not all properties are in a market where other services are in demand. For example, some high-end student housing includes internet. In other communities, internet access is never demanded.

Until competition exists in the video market, it should not be considered. Property owners are anxious to give residents access to all types of video programming services, but property owners must retain full authority to control the location and manner of installation.

Our best example of experience with direct access comes from other countries. The Czech Republic has direct access for satellite services. Their skyline is littered with dishes. Citizens would oppose this, as evidenced by the dislike of wireless facilities.

C. 1. In promoting a competitive market, what restrictions to direct access should be considered?

Direct access cannot include destruction of property or disruption in communities.

Most apartment communities do not have a "phone room" or conduit. Service is provided through a box outside the buildings or inside a single unit. Inside wires run through the ceilings and attics. Access to facilities is through someone's apartment. No

renter will live in a building where workers are always fishing wires through the wall.

Many apartments are constructed with a mandatory fire wall between every two units. The fire wall cannot be breached. How will wiring be accomplished? The PSC is not in a position to develop and enforce comprehensive safety regulations. Those matters are appropriately governed by state and local building codes.

If the fire wall is breached and not repaired, the telecommunication provider who caused the damage must be liable for any resulting injuries. Property owners must be granted statutory immunity.

In many properties, the ground and parking lots must be dug up to bury wire. Holes and trenches scattered on a property are unacceptable. Even single routes are unacceptable if they are regularly dug up.

Aesthetic considerations undeniably affect property values. Wire nests outside buildings are unacceptable. Subsequent providers sometimes inadvertently interrupt current service. The property owner pays for this mess with high vacancy rates.

Just as telecommunication providers are not experts in property management, owners are not telecommunications experts. However, direct access might be acceptable if all service is provided through a single set of wires. In addition, providers would have to repair any and all damage or changes to the property, and all wiring must be underground. A bond guaranteeing payment

for property repair should be posted. Providers should bear legal liability for damage and personal injury. Providers should have to provide some sort of guarantee of service to owners and renters. No direct access should be allowed for tenancies of less than 13 months. Turnover rates in the non-owner residential market are simply too high to make direct access work without a 13-month threshold.

C. 2. In what instances would exclusionary contracts be appropriate and why?

Exclusive contracts for a zip code or area code are not appropriate. However, on the community level, exclusive contracts promote competition. They should be encouraged.

Exclusive contracts guarantee volume. New and smaller companies need guaranteed volume to justify the expense of entering the market. Only large companies can compete without guaranteed volume.

Exclusive contracts also result in lower prices to users. Providers compete on price to win the ability to serve communities. Property managers like to promote low cost service. Guaranteed direct access evaporates the incentive to offer lower prices. Providers don't have to bring an owner a "better deal" to win the community. In addition, a provider can serve a large number of customers at a lower cost per capita.

With 60 percent turnover rates, providers would face an administrative nightmare keeping track of customers. In any given

year, a provider may have to connect or disconnect the same unit a number of times. Exclusive contracts carry a guaranteed term of service. This lowers costs.

All current contracts should be honored. Owners should have the ability to renew existing contracts as well.

A property owner must have the right to enter into a contract with any person who has access to the buildings. This is the only rational way to manage the property and protect the persons and property of all involved.

D. Please address issues related to easements ... and other issues related to access.

Physical issues related to equipment, protection, maintenance, repairs, or liability are addressed above. The FAA can only accept direct access if no physical damage occurs.

Easements would cloud title and should not be legislatively mandated.

E. Are there instances in which compensation should be required?

Compensation in the non-owner residential setting is appropriate on a limited basis.

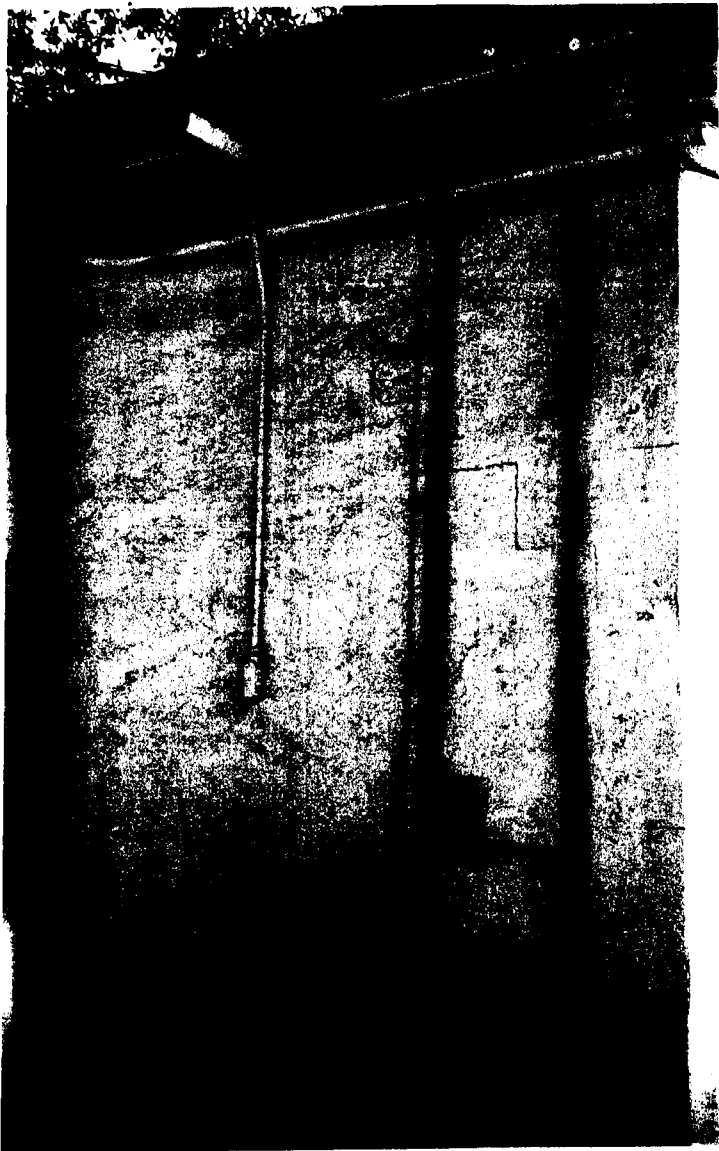
Some properties own the wiring on and inside their property. This asset is sometimes sold outright to a provider. Property owners should have the right to sell their property for fair market value, even if the property is wires.

Some owners charge a fee to lease space to telecommunications providers. This should be preserved.

Lastly, many property owners charge a fee to telecommunication companies to cover the cost of maintenance and repair, or to indemnify for damage. This, too, should be preserved. In the alternative, a bond should be required.

III. Conclusion

Direct access seeks to open competition for telephone service to residents of apartment communities. However, direct access is not necessary in the non-owner residential market because competition already exists in this market. It would create chaos on apartment properties as residents move in and out. It will lead to a deterioration in service and an increase in cost for residents. It will violate private property rights. The FAA opposes direct access in the non-owner residential setting.



bundled phone and
cable wires and
security wires -
electrical wires in
conduit



phone and cable
and security
wires - partial
conduit (left
side of door)



bundled phone, cable
and security wires -
note multiple wires
running through eaves



poor exterior cable
installation - draped
on outside of building
by installer