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BEFORE THE

Florida Public Service Commission

Tallahassee, Florida

In the Matter of	)	
	)	
Access by Telecommunications Companies to Customers in Multi-Tenant Environments	)	Special Project No. 980000B-SP

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COMMENTS OF TELIGENT, INC.

Teligent, Inc. ("Teligent")[1] hereby submits its Comments in the above-captioned proceeding.[2]

I. INTRODUCTION

The Florida Public Service Commission ("Commission") will be one of the first State public service commissions to consider the issue of telecommunications carrier access to tenants in multi-tenant environments ("MTEs"). Its analysis and recommendations concerning the issues below will be pivotal not only for the Florida Legislature, but also for other States, and perhaps the Federal Communications Commission. As an initial matter, Teligent firmly believes that the Commission has authority to fashion rules that provide for tenant access in the absence of

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1 Teligent is a fixed wireless competitive local exchange carrier holding a Certificate of Authority to provide alternative local exchange services in the State of Florida.

2 Access by Telecommunications Companies to Customers in Multi-Tenant Environments, Special Project No. 980000B-SP, *Issues to be Considered* (issued July 14, 1998) ("Issues List").

legislation specific to the issue.[3] Further, in addition to rules drafted by the Commission alone, Teligent urges the Commission to recommend to the Florida Legislature that tenants in MTEs be guaranteed access to their telecommunications carrier of choice on reasonable and nondiscriminatory terms.

II. DIRECT ACCESS TO TENANTS IN MULTI-TENANT ENVIRONMENTS IS IMPORTANT TO A COMPETITIVE TELECOMMUNICATIONS MARKET IN FLORIDA.

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.)

Yes, telecommunications companies should have direct access to customers in MTEs. Telecommunications competition brings choices in carriers, lower prices, and innovative services to consumers.[4] Yet, one sector of the population is sometimes denied these benefits: those individuals and companies located in MTEs. Florida's pro-competitive telecommunications statutes and the federal 1996 Telecommunications Act are largely invisible to some of these tenants.

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[3] See F.S. § 364.01(4)(a)("The commission shall exercise its exclusive jurisdiction in order to protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.")(emphasis added).

[4] See Fl. St. § 364.01(3)("The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure.").

Traditionally, control over the "last mile" was held by the incumbent local exchange carrier ("ILEC"). The Commission implemented rules designed to provide competitive carriers with access to this last mile so that consumers could benefit from telecommunications competition.[5] In one model -- that of single tenant buildings or homes -- the tenant or owner of the building or home is also the recipient of telecommunications service. Under this scenario, the decision of whether to offer a competitive carrier access to the facility is a function of whether the individual or corporate tenant/owner wishes to avail itself of competitive alternatives.

However, when a third party blocks the telecommunications consumer's access to its desired carrier, it thwarts Florida's efforts to promote competition. When that third party is the ILEC, the Commission's unbundling and interconnection rules may offer a remedy. However, when that third party is the owner or manager of an MTE, the remedy is less apparent and the traditional problem of lack of access to competitive carriers persists.

The alternative local exchange carrier ("ALEC") and the telecommunications consumer may be unable to reach each other because the MTE owner retains monopolistic control over the sole means of access to the consumer -- the "last hundred yards" of the network. Absent remedial access measures that apply to MTEs,

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[5] See Fl. St. § 364.16 (providing for interconnection); Fl. St. § 364.161 (providing for unbundling and resale).

control of even this small portion of the telecommunications network has the potential to eviscerate the pro-competitive goals of the Florida Legislature and the Commission.

There is no question that, ultimately, the most effective competitive entry strategy will wrest control from the local monopoly and offer a true alternative to the existing local network. Facilities-based competition achieves this result. Entry strategies reliant upon resale or unbundled network elements ("UNEs") offer improvements for consumers over the local monopoly environment. They may even represent important steps for competitors toward making facilities-based competition possible. However, these strategies, to varying degrees, rely on the ILEC network, its costs, and its level of efficiency or inefficiency.

By contrast, an alternative facilities-based network places far less reliance on the ILEC's network. Its independence permits it to compete from the fundamental level of network costs and efficiencies to offer enhanced quality, innovative services and features, and lower prices to customers.[6] Notwithstanding

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[6] The Commission promoted the goal of decreasing ALEC reliance on the ILEC network by minimizing that portion of the ILEC's network that an ALEC would have to purchase. By ordering GTE Florida to unbundle loop distribution, loop concentrator/multiplexer, and loop feeder, it allowed ALECs to deploy some portions of loop facilities themselves -- with their own facilities -- rather than relying on the ILEC's entire loop. See Petitions by AT&T Communications of the Southern States et al., Docket Nos. 960847-TP and 960980-TP, *Final Order on Arbitration*, Order No. PSC-97-0064-FOF-TP (FPSC May 21, 1997); see also AT&T Communications of the Southern States, Docket Nos. 960833-TP, 960846-TP and 960916-TP, *Final Order on Arbitration*, Order No. PSC-96-1579-FOF-TP (FPSC Dec. 31, 1996)(requiring

the benefits of resale and UNE strategies, telecommunications competition policy requires that facilities-based competition be achieved as quickly as possible in order to bring the greatest benefit to consumers. Without true facilities-based entry, competitors and regulators will continue to battle the anticompetitive incentives of an entity with monopoly control over the foundations of the telephone network.

The true facilities-based competitor needs nondiscriminatory and reasonable access to tenants in MTEs to provide these tenants competitive options and to offer them the best rates. By contrast, a non-facilities-based competitor usually does not require independent access to its customer in an MTE because it uses the ILEC's facilities. Because tenant access is not an issue for these carriers, the issue may not have been raised as often or as loudly as the need for interconnection, unbundling, or wholesale discounts. But as facilities-based competition grows, the issue of tenant access will affect all new, facilities-based competitors -- and increasingly ILECs -- whether they deliver service with copper, fiber, or microwaves.

The Florida Legislature and the Commission have accomplished much in their efforts to bring competition to local telephone markets by affording carriers the right to interconnect, lease UNEs, and purchase services for resale at wholesale discounts.

BellSouth to unbundle loop distribution at the feeder distribution interface).

Nevertheless, competitors face daunting installation and access costs that incumbents do not face. This disparity, compounded by the difficulty for competitors to obtain the requisite access to some MTEs, needlessly impairs facilities-based competition to the detriment of Florida's consumers, and threatens to diminish considerably the effectiveness of the Commission's other local competition efforts.

III. THE INTERESTS OF TENANTS MUST REMAIN THE PARAMOUNT CONSIDERATION IN THE ANALYSIS OF TENANT ACCESS TO TELECOMMUNICATIONS CARRIERS.

The Commission Staff is to be commended for raising many important, specific, and diverse points for consideration in the Issues List. Teligent submits that the overriding principle that must govern consideration of specific sub-issues must be the interests of tenants in MTEs. Of course, telecommunications carriers and owners/managers of MTEs also possess interests properly considered in this proceeding. Yet, the Commission's public interest mandate[7] requires it to place great emphasis on the interests of telecommunications consumers -- in this context, the tenants in MTEs. Indeed, Teligent was pleased to observe at the Commission's first workshop that, notwithstanding the varied positions of the parties, agreement on this particular principle was nearly unanimous.

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[7] F.S. § 364.01(4)(a).

A. The Definition of Multi-Tenant Environment Should Consider the Interests of Affected Tenants and Should Include Both Commercial and Residential Environments.

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?

In defining "multi-tenant environment," the interests of the affected tenants in each environment should be the principal focus.[8] Relevant features governing the evaluation include: (1) the duration of a typical tenancy; (2) the importance of telecommunications to tenants in that particular environment; and, (3) the expectations of the tenant. For example, a small business in a long-term office building lease has a much greater interest in the quality, availability, and pricing of telecommunications services than a weekend guest in a Miami hotel.[9]

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[8] Teligent believes that the inquiry properly considers the premises rather than the type of provider offering telecommunications services on the premises. Therefore, it does not address shared tenant services.

[9] The duration of the former tenancy is long (likely without effective renegotiation opportunities), telecommunications is likely to be important to the small business, and its expectations are probably that it should have the ability to maximize its interests with respect to telecommunications. By contrast, the weekend hotel guest's tenancy is of short duration, telecommunications is probably somewhat incidental to the tenancy, and the expectations of the tenant probably lie more with comfort and convenience than with the cost and innovative features of available telecommunications services. These are generalizations and, of course, the degree of interests will vary. However, they do provide some measure of principled direction.

Teligent's initial marketing efforts will focus on small- and medium-sized businesses. Therefore, access to tenants in commercial environments such as office buildings -- new and existing -- is most relevant to Teligent's initial business plans and therefore its primary immediate interest. These facilities should be included within the definition of "multi-tenant environment." A principled approach consistent with the focus on tenant interests suggests that tenants in multi-tenant residential environments such as apartment buildings/complexes and condominiums -- new and existing -- should also enjoy the benefits of telecommunications competition. For this reason, Teligent supports inclusion of such facilities within the definition of "multi-tenant environment."

B. Tenants Should Enjoy Direct Access To All Telecommunications Services.

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?

All telecommunications services should be included in "direct access." The variety of technologies used to offer telecommunications services such as copper, fiber, microwave, and satellite are not limited to providing a particular type of service. Put simply, telecommunications services are largely independent of the technology used to provide them. For example, Teligent plans to provide basic local service, long distance service, high-speed data, Internet services, and video conferencing capabilities using its point-to-multipoint microwave facilities. The convergence phenomenon would render

identification of provisioned services an unnecessarily difficult process. Teligent encourages the Commission to avoid recommending this complicated endeavor.[10] Instead, tenants themselves should be permitted to choose which services they will use. Moreover, consistent with the basic principle of nondiscrimination, owners and managers of MTEs should accommodate the technology that a tenant determines is best suited to deliver the desired services. For example, Teligent's microwave facilities can provide fiber optic speeds to buildings where actual fiber installations would be uneconomical -- all without digging up any streets.

C. Given That Facility Overcrowding Is A Theoretical Problem Not Likely To Be Realized, The Commission Should Prohibit Direct Access Restrictions That Limit A Tenant's Choice Of Telecommunications Carriers.

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?

At the Commission's first workshop, some participants raised concerns about space limitations and overcrowding of telecommunications facilities in MTEs. The space quandary is largely theoretical. The costs attending the installation of telecommunications facilities within an MTE dictate that the

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[10] Moreover, a determination of services for inclusion in "direct access" is needless. The service inclusion inquiry in the context of universal service is necessitated by the limits of public funding. By contrast, no public funding mechanisms are involved in the context of access to MTEs. Consequently, the process of limiting services to be included in "direct access" is not necessary.

endeavor will not be undertaken if consumer demand within the MTE is insufficient to recoup those costs. Logically, the number of carriers seeking to install facilities within a building will be limited by the number of services to which potential tenant customers will subscribe.[11] Nevertheless, in the unlikely event that space limitations become a problem, they should be addressed on a case-by-case basis in a nondiscriminatory manner. Available remedies include limits on the time that carriers may reserve unused space within a building, and requirements that carriers share certain facilities.

In no circumstance should the Commission tolerate exclusive telecommunications carrier access to an MTE. MTE owners and managers should not be placed in the position of dictating to customers which service providers they can or cannot use. An MTE owner's control of that decision would undermine the forces of competition within an MTE in stark opposition to the policy goals of this Commission, the Florida Legislature, and the federal 1996 Telecommunications Act.

The Commission addressed a similar scenario in the context of shared tenant services.[12] All STS providers must allow LECs direct access to tenants who want local service from the LEC. In

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11 Moreover, the telecommunications facilities that will be installed within and on top of MTEs typically will not occupy much space.

12 See Proposed Amendment of Rule 25-24.575, F.A.C., Shared Tenant Service Operations, and Proposed Adoption of Rule 25-24.840, F.A.C., Service Standards, Docket No. 961425-TP; *Order No. PSC-97-0437-FOF-TP*, 97 FPSC 325 (Fla. PSC Apr. 17, 1997).

the event that the STS provider and the building owner are not the same entity, the Commission's Order requires that the STS provider guarantee and obtain the permission of the building owner for the requisite LEC access. In this fashion, tenant choice is preserved. The operative principle invalidates exclusivity arrangements as well.[13]

D. The Commission Should Define The Demarcation Point As The Minimum Point Of Entry In All Business And Residential Multi-Tenant Environments.

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)?

The Commission should designate the minimum point of entry (MPOE) in all business and residential MTEs as the demarcation point separating MTE owner-controlled inside wire from the ILEC network. In the alternative, the Commission should expressly require ILEC unbundling of MTE riser and house wiring[14] from the MPOE to the existing demarcation point, determine cost-based rates for such risers, and, critically, permit competing carriers to access such unbundled risers without the discriminatory delays

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[13] If all tenants in an MTE happen to choose the same telecommunications carrier, that telecommunications carrier enjoys practical exclusivity. Of course, so long as all tenants retain the ability to choose an alternative provider, practical exclusivity -- as distinct from exclusivity as a matter of law or contract with the MTE owner -- does not threaten availability of competitive benefits for MTE tenants and is therefore consistent with Commission policy.

[14] Herein the term "risers" shall refer to both vertical and horizontal telephone wires that connect, for example, wiring blocks in the basement of an MTE at the MPOE with individual tenant premises.

and costs imposed by dispatching and coordinating with ILEC personnel.

The risers connecting individual tenants to ILEC facilities at the MPOE represent the "last hundred feet" to a customer in an MTE. Although this last hundred feet is only a portion of the loop's "last mile," it represents a disproportionately large competitive barrier to serving such customers. The cost and complexity of rewiring existing buildings -- some stretching many stories high, such as the NationsBank Tower in Miami -- can add thousands of dollars to the cost of serving just one customer in a building. Unlike an ILEC that performs such installations during building construction for every floor and traditionally has been given free access to such wiring thereafter, competitors must often deal with myriad hurdles, both in time and money, in drilling through floors and cabling elevator shafts during and after business hours. Just like that portion of a loop connecting an ILEC switch to a building, existing risers give incumbents a decided advantage in cost and time-to-service.

Ironically, as a result of the existing demarcation rules in Florida, carriers relying on resale or unbundled loops -- who, through such reliance, are limited in the innovative services they can offer customers -- are able to avoid the costs of rewiring buildings, while facilities-based carriers like Teligent -- who are able to offer customers new and innovative services and thus the greatest benefits of competition -- must incur these costs. Compare, for example, the $17 loop rate per month available from BellSouth to the thousands of dollars of

construction required just for the in-building portion of a duplicate loop facility. The existing Commission rules strongly discourage facilities-based competition, which offers the greatest benefit to consumers, in favor of the more limited benefits of resale and unbundled loop-based competition.

In ordering the unbundling of subloop elements, the Commission has taken the first step in eliminating the disincentives to those facilities-based competitors that are able to build out past the ILEC central office to the feeder-distribution interface. Given the presence of competitors who are now able to bring facilities all the way to a customer's building, and the concomitant benefits that go along with that ability, the next logical step is to eliminate disincentives for these fully facilities-based competitors.

Clearly the most effective way to eliminate these disincentives is to designate the MPOE as the inside wire demarcation point for all MTEs. Assuming MTE owners and managers are precluded from discriminating against competitors (the subject of the rest of these comments), if the demarcation point is moved to the MPOE, all competitors will have equal access to building risers. The severe disparity in costs and access between incumbents and new entrants would be greatly reduced. This designation would also forward the goals underlying the Federal Communications Commission's efforts to deregulate inside wiring and create competitive pressures similar to those now operating on customer premises equipment.

The technical and practical feasibility of such a designation is not in question. States such as Illinois and California have long designated the MPOE as the inside wire demarcation point, and, with building owner permission, competitors access risers to offer customers a variety of competing services. Rather than either rewiring a building or having to depend on the competing incumbent for access to existing risers, in these states competitors are placed on equal footing so long as building owners do not discriminate among them.

The alternative solution -- providing unbundled access to incumbent-controlled risers -- eliminates discrimination only if the costs of such access (in time and money) approximate those of the incumbents.[15] Unfortunately, even assuming reasonably cost-based charges for use of the risers themselves, the delays and costs of coordinating with the ILEC, particularly with regard to dispatching ILEC personnel, competitively disadvantages new entrants to such an extent that rewiring, with all its problems, is often more attractive. Thus, if the Commission were to pursue unbundled access to risers instead of moving the demarcation point, the Commission would have to provide for competitor access

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[15] As an example, the New York Public Service Commission has ordered such access. It decided against moving the demarcation point to the MPOE because New York Telephone could not determine, on a building-by-building basis, whether the existing demarcation point was in fact at the MPOE or at the customer premises. See AT&T Communications of New York, et al. v. New York Telephone Co., Case 95-C-0657; 94-C-0095; 91-C-1174, *Opinion and Order in Phase II*, 1997 N.Y. PUC LEXIS 709 (NYPSC Dec. 22, 1997).

to the wiring blocks at the MPOE of an MTE without the necessity of ILEC personnel being present.[16] Such unescorted access already occurs in states where the demarcation point is at the MPOE, and any concerns over competitor access to ILEC network components could be addressed contractually through the imposition of industry-accepted technical standards or certification. The only difference between the two scenarios is that the ILEC would receive payment for use of the risers and would hold competing carriers liable should any problems arise with ILEC facilities or customers as a result of the access.

Building risers are every bit as much a bottleneck facility as loops or local transport facilities. Given that other States have already acted to provide access to risers in a nondiscriminatory manner, the Commission should take immediate action under its existing jurisdiction, as well as make a recommendation to the legislature to remedy the situation.

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[16] Of course, ILEC personnel would have to be involved if there are no cross-connect facilities at the MPOE.

E. The Interests Of Tenants And The Principle Of Nondiscrimination Must Control The Rights And Responsibilities Of The Parties.

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.

In furtherance of a competitive market -- and in the related interests of maximizing tenant choice -- direct access rules must adhere to the principle of nondiscrimination. Telecommunications carriers should compete on the basis of service quality and rates and should not succeed or fail in the market because of discrimination. The terms, conditions, and compensation for the installation of telecommunications facilities in MTEs must not disadvantage a new entrant qua new entrant. Discriminatory rules or recommendations that would disadvantage a particular carrier or type of carrier will, by necessity, reduce the choices available to MTE tenants. Therefore, for purposes of telecommunications competition and maximum tenant choice, the Commission should design rules or recommendations that adhere to and promote the principle of nondiscrimination.

As a function of nondiscrimination, any tenant access rules, recommendations, or conditions should be technologically neutral. As noted above, services are and will continue to be offered

using a variety of technologies. The spectrum of transmission technologies should be accommodated and encouraged in providing for access to MTEs.

As a fixed wireless ALEC, Teligent's method of delivering service to consumers using spectrum and modern technologies avoids many inefficiencies and unnecessary costs of traditional wireline distribution without sacrificing the benefits. Teligent does not need to dig up streets to run wires and conduits. Rather, Teligent uses fixed, digital microwave radio applications to transport communications, and intends to deploy a point-to-multipoint architecture. Conceptually, the airwaves replace the LEC's wires as the transmission medium. Small rooftop antennas receive and transmit radio signals from location to location.[17] The signals reach customers in the building through telephone inside wire or special connections to the customer's office. The antennas will permit variances in network transmission capacity so that the bandwidth used by customers will increase or decrease in accordance with the needs of a particular application. This technology avoids waste and maximizes efficient spectrum utilization.

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[17] Teligent's rooftop facilities are specific to serving the tenants within that building. Teligent's small antenna (approximately 12 inches in diameter) is mounted on the side of a building or on a small pole or tripod on the rooftop above the height of a person and at sufficient elevation to allow line-of-sight communications with other Teligent antennas. Because its antennas are building-specific, Teligent does not place towers or other facilities in the public rights-of-way, nor does it construct the large towers associated with mobile wireless services.

To provide facilities-based service to a tenant in an office building, Teligent must first obtain rooftop access for the placement of its small antenna. The antenna allows Teligent to receive and transmit radio signals which are converted to or from wireline frequencies for customer communication inside the building. Most of the Teligent antennas are very small -- smaller than a DBS home receiver. When viewed on a rooftop, they are dwarfed in size by satellite dishes and broadcast television antennas. Hence, rooftop access for Teligent's antenna is unobtrusive (particularly in relation to existing rooftop structures) and would not interfere with other uses of the rooftop.

Teligent generally cannot serve a tenant requesting service with its point-to-multipoint architecture unless Teligent can place its antenna on the rooftop of that tenant's building. The antenna must be located on the building being served because a coaxial cable runs from the Teligent antenna through a modulator and to the building's or customer's inside wire demarcation point where connection with the customer's telephone system is accomplished. Hence, rooftop access is critical.

As discussed in Section III.D., access to riser cables -- and conduit space generally -- is necessary to carry the signal, for example, over wires from the rooftop antenna through the building to a basement wiring closet, where risers connecting to individual tenant telephone lines are accessible. Thus, Teligent requires access to the telephone inside wire from the demarcation point to the tenant's premises. Any tenant access rules or

recommendations should ensure that the foregoing facilities are available and/or accommodated.

Owners, landlords, and managers of MTEs (as well as condominium associations) must abide by the fundamental obligation of not restricting or burdening a tenant's right to access that tenant's telecommunications provider of choice on reasonable terms. Teligent does not dispute the need to honor the property rights that owners of MTEs possess. However, the right of tenants to enjoy telephone service is sometimes subsumed by the heated -- and, in this case, needless -- debate over property rights. The Florida Legislature has made it clear that individual property rights and the right to enjoy telephone service are not mutually exclusive.[18] Indeed, the great importance that the Legislature places on telephone service for all Floridians is manifest in several separate statutory provisions.

- Upon ordering this inquiry, the Florida Legislature "determined that access to tenants by certificated telecommunications companies may be an important component in the promotion of competition in the delivery of telecommunications services in this state."[19]

- Telecommunications companies in Florida must serve all persons who request telecommunications service (and no

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[18] See, e.g., F.S. 704.01(2) (providing a statutory way of necessity for a tenant on "hemmed-in" lands over adjoining property for purposes of obtaining telephone service); see also Deseret Ranches of Florida v. Bowman, 349 So.2d 155 (1977)(affirming constitutionality of F.S. § 704.01). The interests in telephone service of a land-locked parcel are analogous to the interests in telephone service of a tenant in an MTE.

[19] Ch. 98-277, § 5, Florida General Statutes.

exception is made for tenants in MTEs).[20] An MTE owner's refusal to permit a carrier's access to a tenant is contrary to this policy of choice for all telecommunications consumers.

- Further, the Florida Legislature provided for the provision of telephone service by ALECs.[21] Surely, the Legislature did not intend its own laws and policy to be overridden by unilateral decisions of MTE owners to bar tenant access to competitive options.

- Finally, in recognition of the importance of telephone service, the Florida Legislature enacted laws to ensure the maintenance of universal service.[22] This policy underscores the essential importance assigned to the maintenance of telephone service for all Florida consumers.

Taken together, these laws exhibit a clear intention on the part of the Florida Legislature to ensure access to the telecommunications provider of choice for all Florida consumers -- and they make no exception for Florida consumers living or working in MTEs.[23] Owners and managers of MTEs have a

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20 F.S. § 364.03 ("Every telecommunications company shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto suitable and proper telecommunications facilities and connections for telecommunications services and furnish telecommunications service as demanded upon terms to be approved by the commission.").

21 F.S. § 364.337.

22 F.S. § 364.025.

23 In analyzing issues related to easements within an MTE for purposes of telecommunications carrier access, it is important to distinguish cases relying upon cable operator access to buildings. See, e.g., Cable Holdings of Georgia v. McNeil Real Estate, 953 F.2d 600, 605 (11th Cir. 1992), cert. denied, 506 U.S. 862 (1992); see also Media General Cable of Fairfax v. Sequoyah Condominium Council of Co-Owners, 911 F.2d 1169, 1174 (4th Cir. 1993). These cases involve the interpretation of a specific statutory provision applicable only to cable operators which requires that an

responsibility to see that these statutory goals are given effect.

In addition, owners and managers must accommodate a telecommunications carrier's need for 24-hour, seven day a week access to telecommunications facilities in the event of an emergency. Within the context of this requirement, the MTE owner or manager and the telecommunications carrier can fashion appropriate emergency access arrangements.

Telecommunications carriers retain their service quality responsibilities within MTEs, including lightning protection and the requirement to provide E911. Moreover, telecommunications carriers must maintain responsibility for the maintenance and repair of their facilities, as well as for the repair of any damage that may be done to an MTE in the course of facility installation. To that end, Teligent believes it is eminently fair to assign liability to telecommunications carriers for damages they cause through the installation or placement of their facilities within an MTE. Finally, in accomplishing their maintenance, repair, and service obligations, telecommunications carriers should take all reasonable steps to minimize disruption to the tenants and owners of MTEs.

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in-building easement be dedicated for general utility purposes. See 47 U.S.C. § 621(a)(2). These cases are inapposite to the issue at hand: by its terms, Section 621(a)(2) of the federal Communications Act is limited to cable operators and to their use of public rights-of-way and dedicated easements.

F. Compensation For Tenant Access Must Be Reasonable And Applied In A Nondiscriminatory Manner.

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?

Teligent supports equal and nondiscriminatory access to tenants in MTEs for all telecommunications carriers. Ideally, telecommunications carrier access to tenants in MTEs should be granted for free or subject to a nominal fee inasmuch as the ILEC is rarely charged. Of course, MTE owners are entitled to reasonable and nondiscriminatory compensation for making facilities available to telecommunications carriers. This means that all telecommunications carriers should be treated on a similar basis. If an MTE owner requires reasonable compensation from the incumbent LEC, that MTE owner is entitled to reasonable compensation from new competitors like Teligent. If the MTE owner continues to allow the incumbent LEC free access, ALECs like Teligent should also be afforded free access. Reasonable rates may vary depending upon the level of access required and the amount of space that will be occupied.

The Commission need not establish rates or rate formulae for access. However, the Commission can describe rate structures that are presumed reasonable or unreasonable by adopting a set of presumptions. In this manner, the Commission eliminates a market failure -- the inequality of bargaining positions derived from the MTE owner's/manager's monopoly status. This method allows parties to negotiate specific rates within the reasonable parameters defined by the Commission. Of course, parties should

be free to negotiate mutually acceptable terms that vary from the model.

Examples of reasonable parameters include the following:

- The Commission should consider per se unreasonable an MTE owner's requirement that a telecommunications carrier share a percentage of the gross revenue it derives from the MTE as a condition or price of access. This arrangement does not approximate cost-based pricing and suggests the extraction of monopoly rents.[24] The surplus benefits of telecommunications competition are more appropriately directed to consumers.

- The Commission should require that rates be assessed on a nondiscriminatory basis. For example, if the incumbent LEC does not pay for access to an MTE, neither should other telecommunications carriers.

- Under no circumstances should an MTE owner or manager be permitted to penalize or charge a tenant for requesting or receiving access to the service of that tenant's telecommunications carrier of choice.

- Access rates must be related to the cost of access and must not be inflated by the MTE owner so as to render competitive service within an MTE an uneconomic enterprise for more than one carrier.

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[24] The Texas Public Utility Commission's building access Enforcement Policy Paper notes that "[c]ompensation mechanisms that are based on the number of tenants or revenues are not reasonable because these arrangements have the potential to hamper market entry and discriminate against more efficient telecommunications utilities. By equating the cost of access to the number of tenants served or the revenues generated by the utility in serving the building's tenants, the property owner effectively discriminates against the telecommunications utility with more customers or greater revenue by causing the utility to pay more than a less efficient provider for the same amount of space." Informal Dispute Resolution: Rights of Telecommunications Utilities and Property Owners Under PURA Building Access Provisions, Project No. 18000, *Enforcement Policy Memorandum from Ann M. Coffin and Bill Magness, Office of Customer Protection, to Chairman Wood and Commissioners Walsh and Curran* at 6 (Oct. 29, 1997).

G. To Preserve and Ensure The Availability Of Access To Emergency Services, The Commission Should Restrict Tenant Access To Carriers With E911 Obligations.

What is necessary to preserve the integrity of E911?

Teligent shares Florida's commitment to the availability of effective E911 capabilities. Tenant access to E911 capabilities is of paramount importance. For this reason, tenant access should be restricted to those telecommunications carriers legally obligated to satisfy the Commission's E911 standards, i.e., carriers certificated by the Commission. Compliance will continue to be the responsibility of each carrier as a function of its state certification.

IV. THE LOCK-IN EFFECT HINDERS NATURAL MARKET ADJUSTMENT.

In many instances, the market resolves the access issue: the owner or manager of the MTE is responsive to tenant needs and recognizes that the value of the premises is enhanced by the presence of alternative telecommunications carriers. These owners or managers permit telecommunications carrier access to the MTE without imposing unreasonable fees. Indeed, this market-based approach is Teligent's preferred method of obtaining access to tenants within MTEs.

However, the market often cannot be relied upon to secure competitive telecommunications options for tenants in MTEs. For example, the manager of one Florida property has demanded from Teligent a rooftop access fee of $1,000 per month and a $100 per month fee for each hook up in the building. Teligent estimates that this fee structure would cost Teligent well over $100,000 per year -- just to service one building. Yet another management

company for a Florida building demands that Teligent pay the management company $700 per customer for access to the building, in addition to a sizable deposit, a separate monthly rooftop fee, and a substantial monthly riser fee that, when taken together, precludes Teligent from providing tenants in that building a choice of telecommunications carriers. Still, other buildings demand revenue sharing arrangements. A large number of building owners and managers in Florida do not want a second telecommunications carrier in the building; indeed, one building management company told Teligent not to solicit its tenants. In such instances, regulatory intervention is not only appropriate, but imperative.

The argument that all a tenant need do is move to another location misapprehends the economic realities of commercial tenancy. Natural market adjustment will be slowed substantially due to the lock-in effect of long-term leases. This phenomenon was noted by the Building Owners and Managers Association ("BOMA") in its effort to argue that building owners should not have to bear the maintenance costs of riser cable in multi-unit buildings. As a Federal Communications Commission Order notes, BOMA has asserted that "many tenants have long term leases that will prevent building owners from passing on [the] additional costs [of riser maintenance] to their tenants."[25]

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[25] Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, CC Docket No. 88-57, *Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 97-209 at ¶ 25 (rel. June 17, 1997)(emphasis added).

The lock-in effect, a concept well-grounded in legal and economic precedent, was addressed by the U.S. Supreme Court in its 1992 Kodak decision.[26] Kodak was charged with seeking to impose high service costs on purchasers of its copier equipment who were locked into long-term service agreements. The Court noted consumers' lack of information about better deals, and stated that "even if consumers were capable of acquiring and processing the complex body of information, they may choose not to do so. Acquiring the information is expensive."[27] Although some sophisticated customers may be able and willing to assume the costs of the requisite information gathering and processing, the Court noted that

> [t]here are reasons . . . to doubt that sophisticated purchasers will ensure that competitive prices are charged to unsophisticated purchasers, too . . . . [I]f a company is able to price discriminate between sophisticated and unsophisticated consumers, the sophisticated will be unable to prevent the exploitation of the uninformed.[28]

Even those customers with sufficient information may suffer uneconomic exploitation from the lock-in effects. As the Court observed,

> [i]f the cost of switching is high, consumers who already have purchased the equipment, and are thus "locked in," will tolerate some

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26 Eastman Kodak Co. v. Image Technical Services, 504 U.S. 451 (1992).

27 Id. at 474.

28 Id. at 475.

> level of service-price increases before changing equipment brands.[29]

The economic concept of "lock-in" effects is well established and also was part of the explanation for the Department of Justice's recent insistence on a phase-out period for the 1956 IBM consent decree; the Department sought, among other things, to ensure that any mainframe users who wanted to switch computer platforms due to termination of the decree could do so over time since their enormous software investment would leave them "locked-in" for years to IBM.

The situation described by the Supreme Court in Kodak is closely analogous to that of small to mid-size commercial tenants in long-term leases who wish to take local telephone service from a competitor. Many tenants entered into existing leases before true competitive choices in telecommunications were a viable option and had no way of knowing that these choices would become available. Therefore, such tenants could not and would not have negotiated for the competitive carrier access in their leases necessary to allow them competitive local exchange service.

Moreover, the cost of breaking a commercial lease and moving is prohibitively expensive (and, nonetheless, should not be a precondition to enjoying the benefits of local telephone competition). Although it is possible that a few sophisticated customers may have negotiated or renegotiated lease terms to provide for competitive carrier building access, many smaller

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[29] Id. at 476.

businesses and individuals almost certainly have not realized the benefits of the renegotiated leases of a few sophisticated customers, particularly due to the MTE owner's ability to discriminate among tenants with respect to lease terms and conditions. Therefore, many tenants find themselves locked-in to arrangements that preclude affordable access to competitive options in local exchange service. In light of this market failure, Commission intervention is warranted to ensure that tenants in MTEs are given the freedom to choose their telecommunications carrier.

V. CONCLUSION

In conclusion, Teligent urges the Commission to promote the availability of competitive benefits for tenants in MTEs by recommending action to the Legislature (or adopting rules unilaterally pursuant to rulemaking) consistent with the proposals made herein.

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CERTIFICATE OF SERVICE

I, Gunnar D. Halley, attorney for Teligent, Inc., certify that a copy of this document was served on all parties of record in this proceeding on July 29, 1998, by hand delivery, except where indicated, to the following individuals:

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