

SEP 28 1998



Florida House of Representatives

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Evelyn J. Lynn
State Representative
District 27
September 24, 1998

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Mr. William D. Talbott, Executive Director
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Mr. Talbott:

Enclosed is a letter from one of my constituents, David Meyers, Vice President of Thomas Group, Inc. Mr. Meyers and I have had previous contact on the issue of telecommunications access, and I asked him to outline his concerns which he has done in this letter. I want to make sure that his comments are included in the public record of the study group. Perhaps it would be possible to include Mr. Meyers in the notice hearings and provide him with a copy of the findings and executive summary.

Your assistance in this matter is appreciated.

Sincerely,

Evelyn J. Lynn
State Representative, District 27

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Committees: Family Law & Children, Chair • Business Regulation & Consumer Affair • Education Appropriation

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THOMAS GROUP, INC.

Property Managers • Developers • Realtors

August 6, 1998

The Honorable Evelyn J. Lynn
140 S. Atlantic Avenue, #202
Ormond Beach, Florida 32176

Dear Representative Lynn:

Thank you for your May 21, 1998 letter updating me on the Legislature's action regarding mandatory access to commercial buildings by the telecommunication companies. I understand that the Legislature passed House Bill 4785 which calls for the Public Service Commission to study this issue. I and my fellow Building Owners and Managers Association (BOMA) members, want to thank you for your consideration regarding this matter.

The Public Service Commission will find that telecommunication companies have adequate access to a majority, if not all, commercial building. This access has been granted because building tenants are requiring newer, faster, and more sophisticated telecommunications capabilities and building owners, in response to such demands, are looking for advanced systems and services to satisfy tenant needs and gain an edge in real estates highly competitive marketplace. The successful relationships forged by real estate professionals and competitive telecommunication providers, to meet tenant's expanding needs, merit recognition, not government action that will undermine this healthy trend.

However, if by some small chance the Public Service Commission should determine that mandatory access should be granted to telecommunications companies, several other aspects must be considered before granting such access. Mandatory access would allow an unlimited number of telecommunication providers to demand space within commercial properties for the installation of equipment and wiring, either for free or at low government established prices. This would be done without regard for space limitations, safety, security, the provider's reputation, economic impact on the property, or private property rights.

SPACE LIMITATIONS:

Commercial real estate investors develop properties with the intent of realizing a return on their investment through the leasing of space within a property. In order to realize their investment goals, while maintaining a market rental rate, non-leasable space (corridors, common area restrooms, janitorial closets, equipment rooms, storage areas, etc.) is minimized. Granting telecommunication companies unlimited mandatory access would create and untenable situation in a majority of buildings. Existing non-leasable space within most



The Honorable Evelyn J. Lynn
August 6, 1998, Page 2

Buildings would not be adequate to accommodate the space demands required by the numerous telecommunication companies. As such, leasable space would have to be converted to non-leasable space reducing, and possibly eliminating an owner's return on investment. Should a building be 100% leased, and there is no space available, how do building owners and managers provide telecommunication companies their required space?

In addition to the floor/room space required, additional horizontal and vertical chases would be required to handle the telecommunication wiring needs. Horizontal chases present problems as the space these chases would have to occupy also house such items as ductwork, variable air volume boxes (distribution devices for the heating, ventilation, and air conditioning equipment), electrical conduit, and water/sewer lines. At the same time space must be maintained so that each of these systems can be accessed. Vertical chases would require additional penetrations through the floors.

SAFETY:

As stated under Space Limitations, additional horizontal and vertical chases would be required. Both type chases would require the penetration of firewalls. If the telecommunication's representative does not properly seal these penetrations the integrity of the firewall has been violated negating the safety factor provided by the firewall. As for vertical chases, how many holes can be placed in a floor before the structural integrity of the floor has been violated possibly resulting in the collapse of said floor.

Another safety concern is the wiring itself. A majority of today's commercial buildings contain open plenums - open space between an office's ceiling and the floor above which acts as the heating, ventilation, and air conditioning return air duct. These open plenums require the use of plenum rated cabling. If the telecommunication companies install non-plenum rated cabling, every individual would be at risk in the event of a fire.

SECURITY:

By providing unlimited access to all telecommunication companies, and recognizing the fact that the individuals working for these companies may or may not be their employee, building management would not know which individuals were authorized access. In addition, building management would not know if these individuals were repairing or sabotaging equipment.

Not only could these individuals sabotage equipment belonging to others, they could cause damage to the building for whatever reason they desired. Finally, without knowing what individuals were in a building along with the fact that these individuals would have unlimited access to said building, building management would have a difficult time ensuring the safety of the building's tenants.

PROVIDER'S REPUTATION:

Unlimited access for all telecommunication companies would allow all companies, even those with poor reputations, access. Unlimited access would remove any control the owner has to restrict access to those companies who have demonstrated unfair practices, poor service, disregard for the building's and other's equipment, improper treatment of a building's tenants and/or customers.

ECONOMIC IMPACT:

First, as stated under Space Limitations, leasable space may have to be converted to equipment rooms to accommodate the needs of the various telecommunication companies. This space would have to be provided free or at low government established prices. The loss rent from the converted space comes right off the top thus reducing, or eliminating, the owner's return on his investment. Under this scenario it seems logical that commercial building owners would do one of the following:

1. Reduce services or maintenance to make up the loss rent due to the space provided to the telecommunication companies. However, reduced services and/or maintenance most likely would result in loss tenants and lead to a lower rental rate. In time the owner would most likely forfeit the building in foreclosure.
2. Defer maintenance taking money out of the project whereby the owner reduces this investment to zero. As in 1 above, this action would most likely result in a foreclosure.
3. If the market permits, increased rents to offset the loss rents associated with the space provided to the telecommunication companies. This action may allow the owner to retain his required return on investment.

In addition to the above economic impact, building management would most likely be forced to hire additional personnel to monitor the telecommunication company's employees. Even if the legislative law granting telecommunication companies mandatory access included provision making said telecommunication companies responsible for using the correct wiring, for violations of firewall penetrations, and all damages building management would not want to trust the safety and security of the building tenants to the telecommunication companies. The cost of this extra personnel would either have to be absorbed by the Owner thus further reducing his return on investment or would be passed on to the tenants as additional operating cost.

PRIVATE PROPERTY RIGHTS:

Mandatory access represents a "taking" by the government. Commercial buildings belong to their owners. As such the owners have the right to determine who occupies space within these buildings and governs the tenant's invitees. If it is determined that an individual, or group of individuals, are disruptive or cause damage to a building an owner can restrict access to the building. Granting unlimited access to the telecommunication companies erodes the owner's right to restrict access due to space limitations, safety, security, or the provider's reputation.

SUMMARY:

Mandatory access is, has been, and will always be a bad idea. Granting mandatory access represents a "taking", for commercial building owners would no longer be able to control who occupies their property. Mandatory access, in effect, forces commercial building owners to subsidize any telecommunication company demanding access to a building. If this precedent is established, other companies (overnight delivery companies, pay telephone vendors, newspapers, religious organizations, etc) will require the same mandatory access.

The Building Owners and Managers Association and I request your support in opposing mandatory access to commercial buildings by telecommunications companies. This country thrives on the free enterprise system which rewards companies that produces and/or provides good products and/or services and punishes companies that do not meet the consumer's standards. It would be a travesty if Florida's Legislature interfered with the free enterprise system by creating a law that would require one industry to subsidize another industry.

Sincerely,



David Meyers, CPM
Vice President

cc: Mr. John Brewerton, Esq.
Ms. Debra Mink, BOMA/Florida Legislative Chair
Ms. Karen Padgett, President BOMA/Central Florida
Ms. Betsy Reichert, President BOMA/Jacksonville
Mr. Arturo Fernandez, President BOMA/Miami
Mr. Daniel Caiello, President BOMA/South Florida
Mr. Chris Keena, President BOMA/Tallahassee
Mr. Charles Levin, President BOMA/Greater Tampa Bay