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October 2, 1998

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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./TCG South Florida ("TCG") are the original and fifteen copies of TCG's Additional 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.

Sincerely,

*Kenneth A. Hoffman*  
Kenneth A. Hoffman

ACK \_\_\_\_\_  
AFA 1 \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
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FPSC-RECORDS/REPORTING

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 980000B-SP

Filed: October 2, 1998

**TELEPORT COMMUNICATIONS GROUP INC./  
 TCG SOUTH FLORIDA'S ADDITIONAL  
 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 submit TCG's Additional Reply Comments in this proceeding. TCG submitted Comments on July 29, 1998; joined in the Joint Reply Comments submitted on August 26, 1998 by e.Spire™ Communications, TCG, Teligent, Inc., and Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications; and filed Supplemental Reply Comments on August 26, 1998. In addition to these previously submitted comments and in response to scenarios and issues raised at the workshop on September 15, 1998, TCG provides the following additional reply comments:

A. On the issue of the definition of "demarcation point," TCG has advocated amending Rule 25-4.035, F.A.C. to adopt the Minimum Point of Entry ("MPOE") standard of FCC Rule 68.3(1) as the default demarcation point, and to encourage negotiated agreements between carriers and building owners and managers concerning access issues. TCG's comments have emphasized the necessity of legislation requiring building owners and managers to provide equal and nondiscriminatory access to the wiring, conduits and other facilities between the MPOE and the customer's premises.

DOCUMENT NUMBER-DATE

10865 OCT-28

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B. The issue of resale is not particularly germane to this special project and the report to be provided by the Commission to the Legislature. ALECs that have Commission-approved interconnection agreements with ILECs can use ILEC facilities today to provide service in multi-tenant environments. However, both the Florida Legislature and Congress have placed a strong emphasis on the development of facilities-based competition. The promotion of such facilities-based competition should be at the focal point of the Commission's report to the Legislature on access to multi-tenant environments.

C. At the September 15 workshop, staff presented alternative scenarios for guidelines/criteria for facilities-based access to multi-tenant environments. Of the three alternatives presented, TCG supports alternative two providing that:

Customers shall be entitled to access to telecommunications service from any certificated telecommunications company; and landlord and telecommunications companies must reach reasonable accommodation for access.

TCG emphasizes that its support for the principles outlined in Alternative two are conditioned on the addition of language confirming that the access referenced under Alternative two shall be non-discriminatory. Alternative three - - "Landlord shall fully control access to any facilities based carriers other than COLR" - - is not acceptable as it is nothing more than the maintenance of the status quo situation where tenants in multi-tenant environments and ALECs seeking to serve them have been and will continue to be denied access by the landlord. Alternative one is also unacceptable because it places the burden on the provision of non-discriminatory access on the tenant. Practically speaking, tenants seeking service from ALECs because of competitive pricing and/or distinguishing services do not have sufficient motivation and resources to overcome obstacles

imposed by landlords and building owners to competitive access.

D. At the workshop on September 15, 1998, a jurisdictional question was raised as to whether disputes involving access issues should be resolved by the Commission or by the circuit courts. As TCG and others have noted in their comments, resolution by the Commission is preferable because it will be less time-consuming and expensive to the litigants than resolution by the circuit courts, and will result in a more uniform body of decisions and procedures.

Where disputes involving access issues require the determination of compensation issues, resolution by the Commission subject to judicial review is appropriate and constitutionally sound. In Gulf Power v. U.S., 998 F.Supp. 1386 (N.D. Fla. 1998), the court upheld the constitutionality of legislation authorizing the Federal Communications Commission to determine, subject to judicial review, "just and reasonable" rates that utility companies may charge cable television systems for access to utility poles, within a range of reasonableness using the marginal cost of pole attachments as the minimum rate. As stated in Gulf Power:

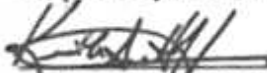
"[T]he court now finds that an FCC determination subject to judicial review is not only constitutionally sound, but is the more practical approach to a just compensation decision made pursuant to the Pole Attachment Act. The valuation of usable and unusable space on a utility's poles, conduits, and ducts involves multiple geographic, technical, and safety considerations which constantly change according to a variety of elements. See REPORT AND ORDER OF THE FCC, *Implementation of Section 703(e) of the Telecommunications Act of 1996*, FCC 98-20 (adopted Feb. 6, 1998). Maximizing resources and always cognizant to the concerns of judicial economy, the Court realizes that these multifactor inquiries are best left to the entities that confront them on a daily basis. The FCC is far more capable than the courts to make such determinations in an efficient and knowledgeable manner.

Gulf Power, supra at 1397-98.

TCG agrees with the comments of BellSouth and Teligent at the workshop on September 15, 1998 that the Commission's guidelines for negotiations over access issues should establish criteria and default standards, and that a "good faith" standard alone, without objective criteria, would be less effective in promoting the resolution of disputes through voluntary negotiations. TCG also notes that a sound starting point for principles and criteria for the resolution of disputes by the Commission can be found in the rules promulgated by the State of Connecticut Department of Public Utility Control in 1995<sup>1</sup> implementing the Connecticut statute.<sup>2</sup>

Finally, in response to Staff's request, TCG has attached documentation reflecting specific buildings in Florida where TCG has been denied access.

Respectfully submitted,



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and

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<sup>1</sup>§16-247c-6, *et. seq.*, Regulations of Connecticut State Agencies.

<sup>2</sup>Connecticut Public Act No. 94-106.

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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 2nd day of October, 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  
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Tallahassee, FL 32399-0850

By:   
KENNETH HOFFMAN, ESQ.

HB 3775  
TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group has attempted to negotiate an access or lease arrangement for the following buildings with no success. The reasons: the building owner has an exclusive contract with BellSouth, demands excessive, unequal compensation or simply won't respond to TCG:

<u>Building Name</u>	<u>Address</u>
Blue Lakes Office Park	100 Yamato Road, Boca Raton, FL
Trammell Crow Company	4901 NW 17 <sup>th</sup> Way, Fort Lauderdale, FL
First Union Financial Center	200 S. Biscayne Blvd., Miami, FL
NationsBank Tower	One International Plaza, Miami, FL
One Biscayne Tower	2 S. Biscayne Blvd., Miami, FL
Bayshore Executive Plaza	10800 Bayshore Dr., Miami, FL
Trade Center South	100 W. Cypress Ck. Rd., Ft. Lauderdale, FL
NationsBank Tower	1 Financial Plaza, Ft. Lauderdale, FL
New River Center	200 E. Las Olas Blvd., Ft. Lauderdale, FL
First Union Financial Center	200 E. Broward Blvd., Ft. Lauderdale, FL
Uptown Corporate Park	500 W. Cypress Ck. Rd., Ft. Lauderdale, FL
Gulf Atlantic Center	1901 W. Cypress Ck. Rd., Ft. Lauderdale, FL