

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

980000B

In re: Report to the Legislature regarding Access by
Telecommunications Companies to Customers in Multitenant
Environments

PROCEEDINGS:

SPECIAL INTERNAL AFFAIRS

BEFORE:

CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER E. LEON JACOBS, JR.

DATE:

Thursday, January 28, 1999

TIME:

Commenced at 12:25 p.m.

PLACE:

Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY:

JOY KELLY, CSR, RPR
Florida Public Service Commission
Chief, Bureau of Reporting

DOCUMENT NUMBER-DATE

01410 FEB-3 99

FPSC-RECORDS/REPORTING

1 APPEARANCES:

2 DR. MARY A. BANE, FPSC Deputy Executive Director,

3 Technical

4 CATHERINE BEDELL, FPSC Legal Division

5 WALTER D'HAESELEER, SALLY SIMMONS, ANNE MARSH,

6 DAVID DOWDS, FPSC Division of Communications

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

(Hearing commenced at 12:25 p.m.)

1
2
3 **CHAIRMAN GARCIA:** We're waiting to connect
4 with Commissioner Clark, and as soon as we do that
5 we'll get started. The first one we're going to go to
6 is multitenant, and if I recall correctly what we had
7 said before -- unless any Commissioners have any
8 questions, we're simply going to take up the statutory
9 language that's been proposed by Staff. And if the
10 Commissioners have questions of the company, that's
11 fine, but if not, we're going to try to vote that out
12 and quite order. So we'll convene as soon as we get
13 Commissioner Clark.

14 **CHAIRMAN GARCIA:** Do they have the language?

15 **MS. BEDELL:** We put the language out on the
16 table out in the hall.

17 **CHAIRMAN GARCIA:** I think David has the
18 language that I proposed for Universal Service? If
19 anybody wants a copy, I'm going to have some language
20 on Universal Service, a third category that I want to
21 discuss. And the "no-frills", do we have -- David
22 also has that language? Who has that? Anne Marsh has
23 the language for the "no-frills" basic service, so if
24 you want to get a copy of that so you know where I'll
25 be reading off of, Anne and Dave will be right there.

1 (Brief recess.)

2

- - - - -

3 CHAIRMAN GARCIA: Do we have Susan yet?

4 We'll convene this hearing. We'll start with

5 multitenant. Ms. Bedell.

6 MS. BEDELL: Thank you, Mr. Chairman.

7 Staff distributed to you two drafts, a Draft
8 A and a Draft B. Draft A includes, we hope, all of
9 the changes you all asked for last Tuesday, and
10 Draft B addresses a concern that was raised during
11 the -- a new issue that was raised during the internal
12 affairs on Tuesday --

13 CHAIRMAN GARCIA: Ms. Bedell, just for
14 Commissioner Clark's knowledge --

15 MS. BEDELL: She should have a copy.

16 COMMISSIONER CLARK: I do. I have both
17 copies. I have an A and a B.

18 MS. BEDELL: So I am going to run through
19 and show you all where the changes were made. And I
20 have just a couple of questions to clarify with you
21 all as well.

22 The first thing we did was to add the
23 definition of an exclusionary contract from
24 Paragraph 6. That is Line 3. On Paragraph 8 we added
25 the marketing agreements. That's on Line 6. Moving

1 down to Section 2 of the legislation, starting
2 Line 23, we moved the standards up and have called
3 them the standards for access by telecommunications
4 companies to tenants in multitenant environments. And
5 then we have listed those standards that we had in the
6 previous drafts. However, subparagraph A that is on
7 Line 25 was added and brought up to the front so that
8 as a preliminary standard you have "access shall be
9 granted on a reasonable, nondiscriminatory and
10 technologically neutral basis. "We have added the
11 word "reasonable" to Subparagraph B so that folks are
12 to make every reasonable effort to negotiate the
13 terms. We have added the words "reasonable and
14 nondiscriminatory" in front of the costs that are in
15 Subparagraph C.

16 In Subparagraph G on the next page, you all
17 will have to forgive us, I was not clear whether we
18 were supposed to change that or not. I went ahead and
19 changed it. We can certainly go back to the old
20 language. But it now reads concerning the aesthetics
21 where the installation would unreasonably interfere
22 with the aesthetics of the building. I know that was
23 language you all talked about and you need to let me
24 know if we need to go back to the language we have.

25 Subparagraph H, we took out the word

1 "license" and added "access" so that it now reads "A
2 landlord shall not charge an access fee for the
3 privilege."

4 **CHAIRMAN GARCIA:** I would assume if it came
5 here to the courts they would just interpret what the
6 particular fee that company might add, whether it was
7 an access fee or not.

8 **MS. BEDELL:** Correct. And we added
9 Paragraph I, "Nothing in this section shall abrogate
10 the obligations of the carrier of last resort
11 described in Section 364.025."

12 In Paragraph 2 that immediately follows,
13 there's a typographical error we're going to correct
14 before we send this out. There's an extra "S" on
15 second line of Paragraph 2 where it says "provision of
16 telecommunications services," it's a plural. It
17 should not be.

18 Paragraph 4 reads the same way that it did
19 last Tuesday, but I would recommend adding "access to
20 tenants "in that paragraph because that is what the
21 focus of this legislation is. And I don't want
22 anybody to interpret it to be broader than what we
23 have been talking about. And I would recommend that
24 it should read that "The Commission shall have
25 exclusive jurisdiction for the purpose of resolving

1 disputes arising between telecommunications companies'
2 tenants and landlords concerning access to tenants for
3 the provision of telecommunications services in
4 multimarkets environments."

5 **CHAIRMAN GARCIA:** I don't think anyone would
6 argue that.

7 **MS. BEDELL:** We added -- as we discussed in
8 Paragraph 3 following that, so that it is 4(A)(3), "If
9 the landlord fails to timely respond if access is
10 denied," then the language, "or if reasonable and
11 nondiscriminatory terms for access cannot be agreed
12 upon," is what we added to that.

13 In the next paragraph, Paragraph B, is
14 taking the rest of that cleanup of moving the
15 standards up to the front. This brings what the
16 Commission is supposed to do in so that we have "In
17 resolving disputes related to access, the Commission
18 shall apply the standards described in Paragraph 1 of
19 this section."

20 **CHAIRMAN GARCIA:** Great.

21 **MS. BEDELL:** And that's basically what we
22 have done in this draft. In Draft B --

23 **COMMISSIONER JOHNSON:** Let's talk about
24 Draft A for a second. You probably said this. I just
25 wasn't focussed. Where's the technologically neutral

1 language?

2 MS. BEDELL: It is on Line 25, it is 1(A),
3 "Access shall be granted on a reasonable,
4 nondiscriminatory and technologically neutral basis.

5 (Feedback over sound system.)

6 CHAIRMAN GARCIA: Susan? Susan? Susan? We
7 hope she's still there because I'm hearing feedback.
8 Maybe she just got up to get some water.

9 We're going to go now to Draft B.

10 MS. BEDELL: Draft B is identical to Draft A
11 except that beginning on Line 11 of the second page --
12 and I guess now would probably be a good time for me
13 to let anybody that, maybe -- in the audience who
14 picked up a copy that does not have "Draft A" and
15 "Draft B" on it, or who was faxed a copy who may be
16 listening, when the computer faxed the copy they added
17 a line, and so the lines are all one line off on the
18 faxed copy.

19 Anyway, on Line 11 on Draft B we have added
20 a paragraph that addresses some of the concerns that
21 were raised about landlords having some recourse
22 before the Commission. And this specifically
23 addresses instances where the -- where access has
24 already been given, but where another tenant may not
25 be given access to the company that has already gotten

1 into building. That language reads "Once access is
2 granted to a telecommunications company to provide
3 service in a multitenant environment, that
4 telecommunications company may not refuse any
5 reasonable request to serve another tenant."

6 **CHAIRMAN GARCIA:** This sort of addressed
7 Ms. Chase's point of giving them some sort of cause of
8 action, correct?

9 **MS. BEDELL:** Yes. It's probably more
10 limited than what she was asking for, but that is what
11 that is for.

12 **CHAIRMAN GARCIA:** Right. She wanted the
13 right to call them anywhere in the state, I think.
14 She went a little bit further.

15 **MS. BEDELL:** And in Paragraph 4 at the
16 bottom of the page is merely adding them into the
17 process of how you reach the threshold and get to the
18 Commission.

19 **CHAIRMAN GARCIA:** Okay.

20 **COMMISSIONER JACOBS:** It's clear both of
21 them must come --

22 **MS. BEDELL:** Excuse me?

23 **COMMISSIONER JACOBS:** -- the landlord and
24 tenant.

25 **MS. BEDELL:** Yes.

1 **CHAIRMAN GARCIA:** Commissioners, I guess we
2 could have a discussion on it.

3 **COMMISSIONER DEASON:** I have a preliminary
4 question. Were we specifically asked to draft
5 legislation?

6 **MS. BEDELL:** No, we were not.

7 **COMMISSIONER DEASON:** Why are we?

8 **MS. BEDELL:** It was -- it was suggested
9 that -- we were told to prepare language in case it
10 needed to go with the transmittal memo, and that is
11 why we drafted it.

12 **COMMISSIONER DEASON:** You were told by whom?

13 **COMMISSIONER JOHNSON:** I think it
14 occurred -- didn't we have a discussion at the last
15 meeting?

16 **DR. BANE:** At the first internal affairs,
17 yes. At the first internal affairs, I believe
18 Commissioner Clark brought it up and she said she
19 thought it would be very helpful to have some possible
20 language. And some other Commissioner -- no one said
21 that wasn't a good idea, so Staff took that as
22 suggested action. And I'm the one, I took notes of
23 what was requested during that first internal affairs,
24 and I'm the one that asked Staff to go ahead and draft
25 something. But no, the legislature did not ask that.

1 It was discussed in the first internal affairs on
2 January 4th. So it's at the Commission's discretion
3 what to do with it.

4 **COMMISSIONER DEASON:** Do we anticipate
5 drafting legislation then for the other reports we're
6 going to be providing?

7 **DR. BANE:** That was not suggested
8 yesterday -- I mean on Tuesday. I've fully
9 anticipated that the Commissioners would make a
10 similar request. Well, how would we -- once you get
11 to the point of having some recommendations for the
12 legislature, that you would have suggested language to
13 go forward with it. But we haven't gotten quite that
14 far in the discussion, I don't believe, on the other
15 two reports.

16 **COMMISSIONER DEASON:** I guess my concern is
17 that I'm not so concerned with providing suggested
18 language as long as that's all it is and is not
19 presented that this is legislation that we are
20 advocating before the legislature and over there
21 actively seeking its passage. I think that's a step
22 too far.

23 **CHAIRMAN GARCIA:** Let me just say I don't
24 think -- expected to go to try to sell this over to
25 the legislature. I think it's done simply as a guide

1 for them. It's a tendency -- I think it's a matter
2 that we can wrap our hands about much better. It's
3 much more specific in what we're asking. And we're
4 sort of saying if you do this, this is how it would
5 work. Because our recommendation is very specific
6 about what we're doing. So I think it's coached in
7 those terms.

8 DR. BANE: Could I interject, too, that when
9 I've spoken to the Staff, they are going to have a
10 shell bill, at least the Senate has one on their
11 meeting for next week. And they had indicated they
12 were planning to use the language that was drafted
13 last week.

14 I have explained to them this has been a
15 very quick process, and we usually spend a lot of time
16 talking about proposed legislation. I've also told
17 them consistent with the discussion at Tuesday's
18 meeting that it would be offered in that light. That
19 this is just a possible starting point. That it
20 certainly hasn't been through a lot of rigorous
21 discussion that typically would go on before
22 legislation was drafted, and I believe that's the way
23 they would view it. But I understood from Cathy that
24 the transmittal memo would clarify that it was just
25 suggested, that the Commission was in no way

1 supporting it as legislation.

2 COMMISSIONER CLARK: Mr Chairman, can you
3 hear me?

4 CHAIRMAN GARCIA: Yes.

5 COMMISSIONER CLARK: My thought was that
6 once again we would tell them we could not reach a
7 conclusion as to whether or not there was a problem
8 gaining access, and that predictably the landlord said
9 there was no problem, but the telecommunications
10 company said there were problems. But there seems to
11 be agreement that reasonable and nondiscriminatory
12 access to a multitenant environment should not be
13 denied. And, therefore, we set out in writing that
14 kind of standard should the legislature decide they
15 want to be proactive and enact something in that vein.
16 And that's the only reason we put the language
17 together is to memorialize the comments and direction
18 along that vein.

19 CHAIRMAN GARCIA: I think, Commissioner, I
20 don't see anyone not agreeing with that, so I guess
21 Staff can sort of adopt the wording that Commissioner
22 Clark just used.

23 That said, I guess, Commissioner Clark, you
24 were also engaged in debate of a sort of Draft B, and
25 I did. I like the language under Draft B. I don't

1 think it really hurts legislation. And because this
2 is something -- it's food for thought for the
3 legislature, I guess. It sort of tries to give some
4 equal weight to the landowners, and try to address
5 some of the landowner's concerns, or landlord's
6 concerns. It struck me it might not be a bad idea to
7 leave it in there just so that the legislature is
8 aware that we tried to be fair on this issue.

9 **COMMISSIONER CLARK:** I concur with you, Joe.
10 It is kind of consistent with what we filed in -- when
11 long distance competition was introduced. We said, if
12 you're in the area, you ought to provide it to
13 everybody in that EAEA. They ought to have equal
14 access to you. And I really think that's what this is
15 saying. Once you're in a building, you shouldn't be
16 allowed -- shouldn't be able to refuse any reasonable
17 request by another tenant. I agree with you, I don't
18 see -- it seems what is good for the goose is good for
19 the gander. I'd like to hear from the
20 telecommunications companies as to whether they are
21 concerned about it. But we weren't going to do that
22 at this agenda, right?

23 **CHAIRMAN GARCIA:** Exactly.

24 **COMMISSIONER CLARK:** I'm sorry.

25 **CHAIRMAN GARCIA:** And in particular, I don't

1 see any representative from BOMA or Ms. Chase, so I
2 think it would be kind of unfair to take up the
3 discussion.

4 **COMMISSIONER CLARK:** Okay. Well, and I
5 think we should probably and explicitly address in the
6 transmittal letter, or somewhere in explanation, the
7 logic for including that kind of two-way street.

8 **CHAIRMAN GARCIA:** Okay.

9 **COMMISSIONER CLARK:** If I can add one other
10 thing, the thing that says -- where does it say -- you
11 can't charge an access fee for the privilege of
12 providing, I would take out "access." I would just
13 say "you cannot charge a fee for the privilege of
14 providing." I think it should be any fee. And to
15 describe it as "access" may confuse it. What you're
16 talking about is the fee for that privilege. Does
17 that make sense?

18 **MS. BEDELL:** Yes. We were just trying to
19 make sure that it didn't go beyond the scope of this
20 legislation. We were trying to narrow it down so that
21 the fee would not be any greater than the -- I mean,
22 that there might be some other fees but -- you know,
23 we have drafted it without access --

24 **COMMISSIONER CLARK:** But what you're talking
25 about, there shouldn't be a fee simply for the

1 privilege of being in the building.

2 MS. BEDELL: Right.

3 COMMISSIONER CLARK: I think the privilege
4 is the key, and access might confuse it.

5 MS. BEDELL: And that is the way we had it
6 drafted before, I believe.

7 COMMISSIONER CLARK: I think you had
8 "license" and that's what was confusing.

9 MS. BEDELL: Yes.

10 COMMISSIONER JOHNSON: I'm prepared to move
11 it if you need to move it.

12 CHAIRMAN GARCIA: I would go ahead and move
13 this so that we finally vote this out.

14 MS. BEDELL: Okay. Draft B?

15 COMMISSIONER JOHNSON: Draft B.

16 CHAIRMAN GARCIA: Draft B.

17 COMMISSIONER JACOBS: Let me understand now.
18 Once we adopt this, what is the status? What does it
19 do?

20 MS. BEDELL: Once you adopt this statutory
21 language, you have already moved the report. We will
22 finish making the corrections that were discussed at
23 the last internal affairs. We will put this statute
24 together for transmittal with the final report, with a
25 transmittal letter, and it will happily go to the

1 legislature by the 15th of February.

2 COMMISSIONER JACOBS: So it will be an
3 appendix to the report.

4 MS. BEDELL: It will actually be an
5 attachment to the transmittal letter. We were not
6 going to make it an appendix to the report.

7 COMMISSIONER JACOBS: Okay.

8 MS. BEDELL: And as long as we're talking
9 about the transmittal memo and what's going to be
10 attached to it, it was brought to our attention that
11 there might be some fiscal impact to this legislation
12 if the legislature found it attractive. And it was
13 suggested that we include a statement in the letter
14 that if the legislature should find it appropriate to
15 give us legislation, to give us authority over access,
16 that we would develop a fiscal note at that time.
17 Just to give them a heads up.

18 CHAIRMAN GARCIA: That sounds great. Did I
19 get a motion?

20 COMMISSIONER JOHNSON: So moved that we
21 approve Draft B and that we attach it to the submittal
22 letter with a report that we're going to send over to
23 the legislature with the modifications made today.

24 CHAIRMAN GARCIA: Is there a second?

25 COMMISSIONER DEASON: Second.

1 **CHAIRMAN GARCIA:** If there's no opposition,
2 show it passed unanimously.

3 **COMMISSIONER CLARK:** Joe, are we going to
4 see a final copy before it goes over, though?

5 **CHAIRMAN GARCIA:** Sure.

6 **COMMISSIONER CLARK:** Good.

7 **CHAIRMAN GARCIA:** Okay. We'll circulate the
8 final copy individually to Commissioners. And if
9 there's any question, I guess we'll set some time
10 aside.

11 **COMMISSIONER DEASON:** Let me ask this: Is
12 it the intent to provide this on the 15th, or if it's
13 ready to go earlier provide it when it's ready?

14 **MS. BEDELL:** Ms. Daniel was showing me a
15 production schedule. We're talking about having all
16 of the copies printed next week.

17 **CHAIRMAN GARCIA:** And the legislative staff
18 over at the Senate apparently asked for a draft of our
19 legislation, correct?

20 **DR. BANE:** Well, they have been getting
21 copies of all of the filings.

22 Commissioner Deason and the other
23 Commissioners, we would like, as soon as it's
24 finalized and you've seen it, to go ahead and send it.

25 **COMMISSIONER DEASON:** I think it would be --

1 obviously if we have a final product, there's no need
2 to hold it. We can share it as quickly as it's
3 available.

4 DR. BANE: That would be my preference. We
5 would go ahead once it's final and send it over.

6 CHAIRMAN GARCIA: Thank you, Staff.

7 COMMISSIONER CLARK: Joe, I agree with that.
8 But will they at least give us a final copy and give
9 us a day to look at it before they send it over?

10 CHAIRMAN GARCIA: Of course. In fact,
11 Ms. Bedell promises that she'll probably have it by
12 tomorrow.

13 COMMISSIONER CLARK: Good. Thank you.

14 CHAIRMAN GARCIA: That was very nice of her
15 to promise through me.

16 Okay. I want to congratulate Staff. Great
17 job. I know it was difficult and the parties, in
18 particular, are a bit contentious on that issue, on
19 this issue in general. So job well done. Thank you,
20 Ms. Bedell and thank you.

21
22
23
24
25

1 STATE OF FLORIDA)
2 :
3 COUNTY OF LEON)

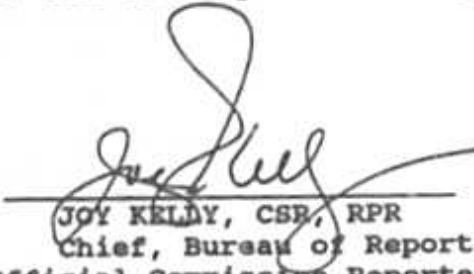
CERTIFICATE OF REPORTER

4 I, JOY KELLY, CSR, RPR, Chief, Bureau of
5 Reporting, Official Commission Reporter,

6 DO HEREBY CERTIFY that the Special Internal
7 Affairs were conducted by the Florida Public Service
8 Commission at the time and place herein stated; it is
9 further

10 CERTIFIED that I stenographically reported
11 the said proceedings; that the same has been
12 transcribed by me; and that this transcript,
13 consisting of 19 pages, constitutes a true
14 transcription of my notes of said proceedings.

15 DATED this 1st day of February, 1999.

16
17
18
19
20
21
22
23
24
25

JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
Official Commission Reporter
(850) 413-6732