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Blanca S. Bayo
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RE: Undocketed Special Project No. 980000B-SP

Dear Ms. Bayo:

Pursuant to the Public Service Commission's request, the Community Associations Institute (CAI) has enclosed a copy of its testimony presented at the September 15 hearing on paper and on diskette.

Should you have any questions, please do not hesitate to contact me by phone at 703-548-8600, by fax at 703-684-1581, or by e-mail at lhowley@caionline.org.

Sincerely,

Lara E. Howley, Esq.
Issues Manager
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CAI Testimony Before the Florida Public Service Commission September 15, 1998

The Community Associations Institute (CAI) appreciates the opportunity to testify before the Commission and respond to the arguments raised by many of the participants in this proceeding. CAI reiterates its support for the growth of a competitive telecommunications marketplace. However, forced entry requirements will not promote the growth of this marketplace, as they will stifle negotiations between telecommunications service providers and community associations while taking community association property. The Commission should reject these proposals, and permit the marketplace to continue unfettered growth.

CAI and the other real estate organizations that have testified in the proceeding have clearly articulated the constitutional, legal, and practical problems inherent in forced entry policies. The telecommunications providers that assert that forced entry policies do not constitute a taking misread *Loretto*, for forced entry permits telecommunications providers to install their equipment on property they do not own. Community associations cannot be deprived of the fundamental right to use their own common property merely because a telecommunications provider wishes to increase its profit margins. It is irrelevant that one provider may or may not already be offering service in an association; community associations still have the fundamental property right to exclude providers from their own property because they are responsible for the safety and security of association residents and property.

Some telecommunications providers assert that the parties in the proceeding support forced entry proposals. These providers have mischaracterized CAI's and other organizations' Comments. CAI has always supported a free and open marketplace, which increases the availability of competitive telecommunications service options for association residents. But CAI has never supported forced entry proposals, because they pose the constitutional, legal, and practical problems articulated in CAI's Comments and impede the growth of a competitive telecommunications marketplace.

Other telecommunications providers assert that forced entry policies do not hinder negotiations between providers and community associations. This position is untenable. With forced entry, telecommunications service providers can install equipment in any association. They do not have to negotiate for access to association property, so they do not have to provide such incentives as high quality programming, flexibility in programming choices, and reasonable and



protect their residents from noncompetitive providers or those that do not fulfill their contractual obligations. Forced entry requirements would eviscerate the negotiation process, as providers would have access to association property regardless of the services offered.

Regarding the scenarios proposed by the Commission, CAI would like to express the following:

- A. The demarcation issue is extremely important to community associations and other property owners and telecommunications service providers. However, this issue has been overshadowed by the forced entry proposals. It deserves detailed discussion outside of this proceeding. However, in this proceeding, CAI would like to note that community associations should determine the demarcation point in their own associations. While, as a general rule, the demarcation point should be consistent with the federal demarcation point, associations need the flexibility to determine the correct demarcation point to meet their particular building style and other circumstances. Telecommunications service providers and community associations should negotiate the issues of ownership, control, and maintenance of the inside wiring. Community associations should not be obligated to own and maintain inside wiring unless they choose to do so.
- B. Community association boards of directors, representing the interests of the community association residents who elected them, choose the telecommunications service providers that will serve the association. Currently, negotiations between community associations and telecommunications service providers are providing solutions that combine elements of both scenarios, since providers are negotiating between themselves as promoted by the Telecommunications Act of 1996. They are also negotiating with community associations to offer facilities-based competition. The Commission should refrain from supporting either scenario to the exclusion of the other, since that action would preclude these market-based solutions.
- C. None of these scenarios is appropriate to community associations, for they would constitute takings and would cause innumerable practical problems. Community associations must retain the right to negotiate with telecommunications service providers for access to common property. If a certain provider does not offer the association competitive services or sufficient assurances that association property will not be damaged by installation, the association must have the right (inherent to all property owners) to exclude them from the association's property.
- D. Circuit courts should have jurisdiction to adjudicate disputes between community associations and telecommunications service providers. The issues involved in these disputes would be issues of property law, not telecommunications law. The Commission should not seek the authority to regulate property owners such as community associations or to adjudicate property law disputes. Circuit courts would be the only available option for adjudicating these disputes.

CAI respectfully urges the Commission to reject forced entry policies. The telecommunications marketplace will grow more quickly and competitively without Commission intervention. Forced entry policies are anticompetitive and bad public

policy, since they retard the growth of this marketplace by undermining negotiations between telecommunications service providers and community associations. Forced entry policies bar associations from negotiating effective contracts, depriving community association residents of high quality, competitive service. Since the open marketplace promotes access, the Commission should support the growth of that marketplace, not impair it by supporting forced entry policies.

CAI thanks the Commission for the opportunity to present its testimony.