

ORIGINAL

RECEIVED-FPSC

90 JUL 29 PM 4:11

RECORDS AND REPORTING

LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE: (850) 222-0720
TELECOPIERS: (850) 224-4359; (850) 425-1942

July 29, 1998

BY HAND DELIVERY

Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 980000B-SP

Dear Ms. Bayo:

Enclosed for filing in the captioned docket are an original and fifteen copies of the Comments and Responses of OpTel (Florida) Telecom, Inc. Also enclosed is a 3 1/2" diskette with the document on it in WordPerfect 6.0/6.1 format.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

RECEIVED & FILED

Sincerely,

[Signature]
FPSC-BUREAU OF RECORDS

[Signature]
Norman H. Horton, Jr.

- ACK _____
- AFA 5
- APP _____
- CAF _____
- CMU 5
- CTR _____
- LAG _____
- EG 2
- IN _____
- PC _____
- CH 2
- EC 1
- AS _____
- TH _____

NHH/amb
Enclosures

cc: Michael E. Katzenstein, Esq.
Florida House Committee on Utilities and Communications

DOCUMENT NUMBER-DATE

~~XXXXXXXXXX~~ JUL 29 98
FPSC-RECORDS/REPORTING

ORIGINAL

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

**COMMENTS AND RESPONSES OF
OPTEL (FLORIDA) TELECOM, INC.**

July 29, 1998

DOCUMENT NUMBER-DATE

07969 JUL 29 88

FILED-REGISTRY/REPORTING

INTRODUCTION

This proceeding was initiated to comply with the requirements of Section 5 of Chapter 98-277 Laws of Florida requiring the PSC to “study issues associated with telecommunications companies serving customers in multi-tenant environments . . .” The Commission is to submit its report by February 15, 1999. The responses and comments which follow were prepared to provide information and assistance to the Commission in this project.

BACKGROUND

OpTel (Florida) Telecom, Inc., itself and through affiliates (“OpTel”) is a leading network based provider of integrated communication services, including local and long distance telephone and cable television services to residents of multiple dwelling units (“MDUs”). In each of its markets OpTel seeks to provide facilities based competition to the incumbent local exchange carrier (“ILEC”) and the incumbent franchised cable television operator by offering services at competitive prices. Substantially all of the MDUs OpTel serves are campus style, or garden style complexes. OpTel enters into service agreements with MDU property owners and ownership associations to provide services to the residents of the MDU. As part of its agreements OpTel often upgrades and maintains all telecommunications architecture on the line side of the demarcation point, including premises wiring and campus distribution. OpTel has substantial experience with the concepts and issues being considered by the Florida Public Service Commission both through its dealings with BellSouth on the issue and its activities in the markets of other ILECs.

COMMENTS AND RESPONSES

Issue I. 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.)

RESPONSE: It is essential that certificated telecommunications companies have direct access to residents in multi-tenant environments, whether high rise, campus style or other building architecture, if a competitive telecommunications market to end users is to be promoted. The Legislature has found the competitive provision of telecommunications services to be in the public interest and that it will provide customers with choices, encourage introduction of new service and technological innovation (§364.01, Fla. Stats). To reach this objective, the Commission must insure not only that competitive providers have open, nondiscriminatory access to end users but that ILECs not be allowed to thwart the development of competition through delay, unnecessary requirements and by hiding behind network configuration established by the ILECs themselves with the effect, and possibly intent, of thwarting facilities based competition.

In order to advance the objective of competition the Commission should support efforts that will insure open, nondiscriminatory access to multi-tenant unit facilities. Competitive providers must have the ability to access multi-tenant unit facilities at a single point on the property, proximate to the property boundary line and ILECs must be required to provide the means of connection at this single demarcation point timely and without delay. Currently alternative local exchange

companies (“ALECs”) are at the mercy of ILECs for necessary elements and are constantly blocked by ILEC delays in provisioning. Virtually all of the current building facilities were installed by ILECs or in a configuration designated by them and substantially all the network remains controlled by the ILEC. The inability of ALECs to utilize these facilities all but stops any facilities based competitive effort. BellSouth has acknowledged informally to OpTel that it designs property network so that it can control the customer at the BellSouth switch, obviating the need for a trunk roll, and also effectively foreclosing access by a competitor that does not wish to collocate at the BellSouth switch. BellSouth’s position accordingly is that the demarcation point for each unit in an MDU should be the first jack in the unit. Collocation is expensive and inefficient, requiring a competitor to buy loops from the ILEC, rather than to use its own facilities. If an ALEC does not have the ability to use existing cable and wire a duplicative system must be put in place. This is expensive, inefficient and not acceptable to property owners. It simply will not happen in the real world. Customers of the ILECs have paid for the wire and cable through regulated rates over the years and should now be able to enjoy the benefits of their investment through free choice, unfettered by ILEC anticompetitive behavior.

To properly accommodate competition in the MDU environment there should be a single point of demarcation, without regard to when facilities were installed and without reference to what operating practices the ILEC has followed to date. The single point of demarcation must be at a minimum point of entry (“MPOE”) into the MDU, which should be defined as the closest practical accessible point to where the

ILEC network wiring crosses the MDU property line. The ILEC must be required timely and without unreasonable expense to reconfigure network on the property to the demarcation point. This demarcation point should include a network interface device (“NID”) accessible to all certificated carriers which would be the single gateway between a customer and its selected carrier’s network. At a subscriber’s choice, carrier selection can then be accomplished by a simple and single cross-connect at the NID.

In Florida, OpTel has experienced resistance and, it believes, anti-competitive behavior, by BellSouth in connection with OpTel’s efforts to date to provide telecommunication services to MDUs. OpTel’s requests for trunking have been met with roadblocks and delays. Attempts to establish a single demarcation point for all competitive carriers on MDUs it wants to serve have similarly been resisted, under color of Florida Commission requirements. OpTel’s experience as well as that of other ALECs make it abundantly clear that competitors and the Commission cannot rely on the cooperation of the ILEC to facilitate competition. Commission action to clarify and simplify establishment of a single demarcation on each MDU property is justified and essential.

Issue II. What must be considered in determining whether telecommunications companies should have direct access to customers in multi-tenant environments?

Issue IIA. 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?

RESPONSE: In order to further the development of competition in the market, the PSC should adopt a broad definition which includes business and commercial complexes as well as residential facilities. A multi-tenant environment should include:

- a. Both new and existing facilities;
- b. Residential , business, or mixed residential and business tenant facilities, which would include any form of rental, transient, condominium, cooperative, mobile home community, or owner-occupied units; and
- c. A complex of one or more buildings under common ownership, control or management.

Only by defining the environment broadly will there be increased opportunities for competition.

Issue IIB. What telecommunications services should be included in “direct access”, i.e., basic local service (Section 364.02.(2), Florida Statutes), Internet access, video, data, satellite, other?

RESPONSE: Direct access should be construed broadly but for purposes of this study should include only those services that require a certificate of public convenience and necessity from the Florida Public Service Commission.

Issue IIC. 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?

RESPONSE: In general, certificated telecommunications carriers should have no restrictions on their ability to have competitive access to all tenants in a multi-tenant environment. This access will be facilitated by the establishment of a single demarcation point for the entire facility, as is further discussed in Issue IID below.

All exclusionary contracts that predate the effective date of any statutory or rule change implementing these policies should be voidable upon bona fide request of a certificated telecommunications company for direct access to the customers of such facility. Other than direct agreements between an end user and a carrier, the Commission should not allow any carrier to enter into an exclusionary contract that prohibits a customer from being able to select a competitive alternative.

Issue IID. How should “demarcation point” be defined, i.e., current PSC definition (Rule 25-4.0345, F.A.C.) or federal MPOE?

RESPONSE: The establishment of a single demarcation point on any property is critical to the furtherance of competitive choice. A certificated telecommunications company should have direct access to residents in multi-tenant environments through equal and nondiscriminatory direct access to a property NID that is located at a single demarcation point at the MPOE and that serves all residents within the entire MDU property.

Upon a bona fide request of any certificated telecommunications providers to an incumbent carrier, the incumbent carrier should be required

to promptly and within prescribed time periods establish the single demarcation point. All facilities on the customer side of the NID, including interbuilding cabling and riser wire, should be customer premise equipment (“CPE”). For competitive access to customers, including any changes in carrier for services, there would be pin and jack coordination at the NID.

If the demarcation point is allowed to remain at the wall jack for single line customers in multi-customer buildings, which BellSouth has urged, alternative carriers will be required to build facilities throughout the property and to each units requiring duplicative, cost prohibitive, often infeasible and unacceptable overbuild of facilities. BellSouth would have each facilities based carriers, run plant and pairs into every unit that is seeks to serve, which could never happen as a matter of economics and reality. In any event such an overbuild would not in OpTel’s experience be suffered by property owners whose property would be required to be trenched and rewired.

A single demarcation point on each MDU property, as urged by OpTel, on the other hand, would be established in consultation with the property owner and could be done, in OpTel’s experience, at relatively low cost.

In addition, the definition of CPE in Rule 25-4.0345(1)(a) should be amended to include interbuilding wiring and riser cable in multi-tenant multi-

building situations. This is necessary to ensure and clarify that all network on the property is accessible by competitors.

For this report the Commission should define the “demarcation point” as the point of demarcation and/or interconnection between the telephone company communications facilities and the CPE, and it should include, in the multi-unit environment, a network interface device (“NID”) that interconnects the CPE with the telephone company network. The demarcation point in the multi-tenant unit environment should, without regard to when the facilities were installed or the telephone company’s standard operating practices, be the MPOE onto the premises, which, as noted above, should be defined as the closest practical and accessible point to where the telephone company’s wire crosses the property line. The NID should be accessible by all certificated carriers on a non-discriminating basis.

Buildings in which several NIDs have been installed and at which the telephone company maintains multiple demarcation points should be retrofitted, at the incumbents expense, upon a *bona fide* request by a competitive carrier seeking access to the premises and on a strict time frame, not to exceed 90 days from date of request. OpTel is willing to consider sharing a part of this cost, on a parity basis with all other competitive providers seeking to have access.

In the past, ILECs have used the establishment of the demarcation point to impede the growth and development of competition. By claiming

that each individual unit in a multi-unit building has a separate demarcation point, or by limiting access to the NID, ILECs have been able to make it cost prohibitive for a new entrant to provide service to residents to the building.

By establishing a single demarcation point at the MPOE and requiring that all certificated carriers must be given access to the NID such that a change in service providers by any resident in the building can be effectuated by a single cross-connect at the NID, the PSC will help to make facilities based competitive local exchange service a reality in the multi-tenant environment.

Issue IIE. 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 protections, service quality, maintenance, repair, liability, personnel, (price) discrimination, and other issues related to access.

RESPONSE: Tenants, customers, and end users should have the right to select a carrier to serve that customer, and for that carrier to not suffer any competitive disadvantage created by the incumbent carrier serving the property. The ILEC should not have the ability to impose any physical barriers to access by other companies nor should the ILEC

by able to advance any carrier of last resort (“COLR”) argument in order to insure access for itself or deny access to other carriers. The COLR requirement address situations where there is no competition and this issue in the MDU context is precisely to enable competition which BellSouth hopes to avoid.

Landlords, owners, building managers, and condominium associations or their agents should be able to impose reasonable and nondiscriminatory charges for the use of CPE (as defined above) by carriers. Such reasonable and nondiscriminatory charges for CPE may cover both the use and maintenance of such CPE.

Telecommunications carriers should be required to install all equipment based upon common standards. Such standards will ensure that the type of facilities at a location would not prejudice the ability of a customer to choose an alternative carrier.

Issue 2F. 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?

RESPONSE: Compensation would be permitted but not required for the situations described in Issue IIE above.

Issue 2G. What is necessary to preserve the integrity of E911?

RESPONSE: The consumer should in all cases have access to E911. This will require trunking, transfer of consumer information and coordination between

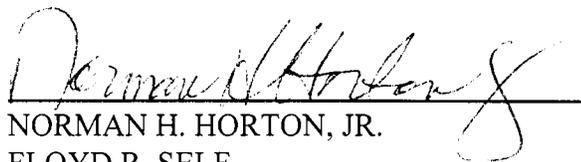
providers. The ILEC must provision E911 in the same time frames and on the same basis for others as it does for itself.

Issue III. Other issues not covered in I and II.

RESPONSE: OpTel does not have any additional comments or issues to discuss at this time.

Dated this 29th day of July, 1998.

Respectfully submitted,



NORMAN H. HORTON, JR.

FLOYD R. SELF

Messer, Caparello & Self, P.A.

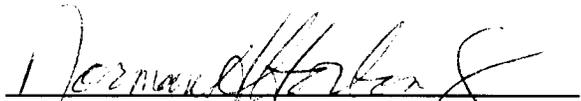
Post Office Box 1876

Tallahassee, FL 32302-1876

(850) 222-0720

ATTORNEYS FOR OPTEL (FLORIDA)

TELECOM, INC.



MICHAEL E. KATZENSTEIN

Vice President and General Counsel

OpTel (Florida) Telecom, Inc.

1111 W. Mockingbird Lane, Suite 1000

Dallas, TX 75247