The Florida Senate

Interim Project Report 2006-106 *September 2005*

Committee on Communications and Public Utilities — Senator Lee Constantine, Chair

REVIEW OF ACCESS BY COMMUNICATIONS COMPANIES TO CUSTOMERS IN MULTITENANT ENVIRONMENTS

SUMMARY

The telecommunications law encourages competition and includes a legislative finding that competition is in the public interest. s. 364.01(3), F.S. A recurrent argument has been made that telecommunication service providers lack access to tenants in multi-tenant environments, which impedes competition.

Legislation has been filed on this issue in the past, typically seeking to intervene and mandate that the property owner or manager allow access to the multi-tenant property to promote telecommunication competition. Under case law, this cannot be done without providing sufficient compensation, compensation which the telecommunication companies currently are unwilling to pay. As such, it is recommended that no legislation be filed at this time. However, the issue can be addressed, to a large extent, by changes in business practices and by rulemaking at the Public Service Commission.

BACKGROUND

The telecommunications law encourages competition and includes a legislative finding that competition is in the public interest. s. 364.01(3), F.S. A recurrent argument has been made that telecommunication service providers lack access to tenants in multi-tenant environments which impedes competition.

There was proposed multi-tenant access legislation in 1998, legislation in 1998 directing the Public Service Commission (PSC or commission) to study the issue, the PSC report in 1999,[1] legislation in 1999, and legislation in 2005. Generally, the substantive legislation sought to intervene and mandate that the property owner or manager allow access to the multi-tenant property to promote telecommunication competition.

Staff of the Committee on Communications and Public Utilities was directed to review the issue of whether, in situations where a real property owner or property manager controls access to the real property and thereby to the communications infrastructure that is necessary for a competitive communications provider to gain access to multiple tenants on that real property, there are barriers to such access that thwart achieving telecommunications competition, and if so, what can and should be done?

METHODOLOGY

Staff reviewed the commission's report, prior legislation, legislation from other states, and relevant case law. Staff also met with interested parties and held a staff workshop on August 2, 2005, with participants representing Incumbent Local Exchange Carriers (ILEC), Competitive Local Exchange Carriers (CLEC), property owners and managers, and commission staff. Participants were also invited to file post-workshop comments.

FINDINGS

Property issues

Communication companies argued that access to tenants in multi-tenant environments (MTE), and therefore competition in telecommunications, is being impeded by:

- Property owners or managers who enter into an exclusive contract with one telecommunication service provider,
- Property owners/landlords who are unwilling to negotiate,
- Technical incompatibilities with communications infrastructure which was installed by a landlord or

[1] Florida Public Service Commission, *Access by Telecommunications Companies to Customers in Multitenant Environments* (February, 1999).

third-party and which the landlord requires all communications companies to use to access tenants,
- Access fees charged to a CLEC in situations where the ILEC has free access, which result in somewhat of a de facto exclusionary situation due to the competitive economic impact on the CLEC, and
- Delays in negotiation or in actually obtaining physical access after negotiation is final, which result in the loss of tenant clients.[2]

The PSC report, while not finding any impediment to competition in MTE, did contain some statements that could be used to support the providers' allegations. In its report, the commission questioned whether it is fair for an owner who has allowed free access to an incumbent to charge a competitor for access to the same space, finding that such a fee creates a barrier to access, is not in the public interest, and should not be allowed.[3] It also made a determination that mandatory access to MTE can be distinguished from a taking of property (discussed below) because most MTE already have property dedicated to public use for the purpose of providing telecommunications.[4]

Representatives of property owners and managers take the position that competition is providing MTE tenants access to the provider of their choice, that there are no consumer-related issues, that mandatory-access legislation is not necessary, and that it would be unconstitutional. They make the following arguments.

The real issue isn't whether a CLEC has access to MTE tenants, but whether an MTE tenant has access to its preferred provider.[5] In its 1999 study, the PSC found no evidence of access problems,[6] but simply said that an MTE "appears to be a situation where limitations to competition may exist."[7] The FCC also reviewed this issue in 1999 and also found insufficient evidence of an access problem to require any rule making.[8] The only thing that has changed since these studies is that there is more competition.[9] Subsequent reviews done in four other states show that there are very few, if any, consumer complaints.[10]

Representatives of two organizations, both of which have approximately 4,000 members and have members who are tenants, have heard of no complaints.[11] One stated that it has had a standing committee on forced access since 1998, and has not had a single retailer who has experienced a problem.[12] Also, there are two categories of tenants, those who want new providers and those who do not.[13]

The Florida Real Estate Alliance discussed surveys commissioned by the Real Access Alliance that showed:
- two-thirds of property owners and real estate professionals had never denied any carrier access,
- of the one-third who had denied a carrier access on at least one occasion, there were two common factors in the denials: the carriers had no tenants as customers and sought access on a speculative basis, and the carriers refused to pay a competitive rent,
- the vast majority of business tenants who chose an alternative provider were able to receive service from that provider, with only three respondents indicating that building management had ever denied a request for service from a provider not already in the building,
- a substantial number of business tenants would move at the end of their lease if their telecommunications needs could not be met at their current location, and
- the median lease term is three years.[14]

Property owners and managers have an incentive to allow tenant access to the provider of their choice.[15]

---

[2] Statements made by representatives of BellSouth Telecommunications, Inc., AT&T, and Time Warner at the meeting of interested parties August 2, 2005.
[3] Florida Public Service Commission, *Access by Telecommunications Companies to Customers in Multitenant Environments*, page 48 (February, 1999).
[4] *Id*., at 36.
[5] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, page 3.
[6] Statement of Florida Real Estate Alliance at the meeting of interested parties, August 2, 2005.
[7] Florida Public Service Commission, *Access by Telecommunications Companies to Customers in Multitenant Environments*, page 1 (February, 1999).
[8] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, page 12.
[9] Statement of Florida Real Estate Alliance at August 2, 2005 meeting and in post-workshop comments, Aug. 2, 2005, page 3.
[10] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, pages 7-9.
[11] Statements of representatives of the Community Associations Institute and the International Council of Shopping Centers at the August 2, 2005 meeting.
[12] Statement of representative of the International Council of Shopping Centers at the August 2, 2005 meeting.
[13] *Id.*
[14] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, pages 3-11.

They have spent large sums of money and enormous amounts of energy to create and maintain attractive rental property and do not want anything to harm the rental value of that property.[16] They make rational, market-based decisions and are not about to ignore the importance of telecommunications services to tenants,[17] who have a lot of market power.[18]

Property owners have no incentive to keep a tenant's preferred provider out of the building, so long as their concerns are met.[19] First, prior to the Telecommunications Act of 1996, there would only be access by one carrier to consider in planning and constructing a building.[20] Even if there is additional space for additional carriers, there would be substantial expense to adapt the facilities.[21] Second, carriers refuse to compensate owners for use of the space.[22] Third, mandatory access presents additional concerns about safety, security, and liability.[23] The property owner must be able to exercise his right to exclude selectively, and grant access to providers while ensuring the safety and security of the premises, particularly post-9/11.[24] Fourth, owners cannot ensure compliance with building and fire codes if they do not control the premises.[25] Building owners and managers cannot ensure compliance with code requirements if they cannot control who does what work in their building, or when, where, and how they do it.[26] For example, building and fire codes specify levels of fire resistance for different elements of a building, so penetrations of fire-resistant assemblies are a matter of great concern, with the concern magnified if building operators were forced to allow unlimited access to CLECS or were prohibited from restricting such access.[27] And the building owner is ultimately responsible for any code violations.[28] Fifth, there are concerns with effective coordination of occupants' needs and effective management of property.[29] Finally, there is the obligation to provide tenants with quiet enjoyment of the premises.[30] Having unaffiliated workers access the nerve center of any business building to install its communications network is a recipe for the loss of quiet enjoyment.[31]

Currently, without any legislation or regulation, a building owner and service provider are able to fashion a building access agreement that meets the specific circumstances of each building or community, including the issues of timing and service standards, which cannot be done in a single statute or directive to the PSC.[32] As to the allegations of delay in negotiations, the surveys indicate that CLEC contracts don't take substantially longer to negotiate than other contracts, but that CLECs are often unwilling to agree to the basic occupancy terms that property owners require of all their tenants, such as insurance, indemnification, and reimbursement for costs not covered by rent.[33]

Based on the above, they conclude that competition is working and that MTE tenants are getting access to their provider of choice.[34] Mandatory-access legislation is unnecessary.[35] Finally, if Florida puts laws in place that say that property owners don't have full control over their profit-making decisions, it will chill investment.[36]

Property representatives also argue that a mandatory-access proposal would be unconstitutional based on the federal constitution, as interpreted by the US Supreme

[15] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, page 13, and the Building Owners and Managers Association of Florida, post-workshop comments, answers to issue list, Aug. 10, 2005, page 1.
[16] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, page 14.
[17] *Id*.
[18] Statement of representative of the Florida Apartment Association at August 2, 2005 meeting.
[19] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, page 13, and the Building Owners and Managers Association of Florida, post-workshop comments, answers to issue list, Aug. 10, 2005, page 1.
[20] Building Owners and Managers Association of Florida, post-workshop comments, answers to issue list, Aug. 10, 2005, page 2.
[21] *Id*. at 3.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] *Id*.
[26] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, page 17.
[27] *Id*., at 18.
[28] *Id*., at 19.
[29] *Id*., at 20-21.
[30] *Id*., at 13.
[31] *Id*.
[32] *Id*., at 23.
[33] *Id*., at 10.
[34] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, page 16, and the Building Owners and Managers Association of Florida, post-workshop comments, answers to issue list, Aug. 10, 2005, page 5.
[35] *Id*.
[36] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, page 40.

Court in *Loretto* (discussed below), and the Florida constitution, which require fair market compensation for any government mandated taking.[37]

As noted above, both the ILECs and CLECs argue that they shouldn't have to pay compensation for access to an MTE. The ILEC argument is that historically ILECs haven't been charged for access and the 1996 telecommunications competition act was not enacted to give landlords the opportunity to extract monopoly rents from any carrier seeking to serve the tenants in an MTE.[38] The CLECs argue that they are at a competitive disadvantage if a CLEC has a fee for entry and the ILEC doesn't, and that all they want is nondiscriminatory access.[39]

Representatives of property owners and managers disagreed that ILECs receive free access, saying that there are numerous ways to value access, and payment of an access fee is not the only way to provide compensation to the building owner.[40] There is a different set of circumstances with each situation and each provider.[41] The first provider gives the property owner a necessary amenity,[42] and may have participated in design and installed its system before walls, roofs, and parking lots are finished, which reduces costs of access.[43] A second provider gives some additional benefit, as management can now offer tenants a choice, but this comes with additional potential costs and detriments, so the benefit is not as clear and must be decided case by case.[44] Another point is timing.[45] If you look at the leases in any given building, no two tenants will be paying the same rent or have the same lease.[46] Leases are signed at different times with different circumstances and, as such, have different terms.[47] Another point is that all rentals being made now are 10 years after the fact of deregulation.[48] Business tenants now know that they can get the technology they want by shopping buildings and landlords.[49]

The property representatives also disagree with the CLEC argument that a mandatory-access statue would not be a taking but would merely require non-discriminatory access.[50] The nondiscriminatory access argument is premised on the fiction that property owners freely and voluntarily opened their buildings to incumbents.[51] In many, if not most, cases, property owners had no real choice.[52] Prior to the Telecommunications Act of 1996, a building owner faced with the practical necessity of providing telecommunications services to its tenants had no option but to grant access to the incumbent.[53] Also, even if access had been granted voluntarily, the holder of a right to exclude is by definition entitled to exercise it selectively.[54]

As such, mandatory-access legislation is not only unnecessary, but unconstitutional.[55]

Staff reviewed the *Loretto* case cited by property interests and discussed by the PSC in its report. In this case, the United States Supreme Court held that a New York statute that required that a landlord permit a cable television company to install its cable facilities upon its property resulted in a physical occupation of the property and a taking requiring compensation, without regard to the public interests that it may serve.[56] The Court said that case law clearly establishes that

[37] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, pages 24-28, and the Building Owners and Managers Association of Florida, post-workshop comments, answers to issue list, Aug. 10, 2005, page 6.
[38] Sprint - Florida, post-workshop comments, Aug. 10, 2005, page 2.
[39] AT&T of the Southern States, Inc., post-workshop comments, Aug. 11, 2005, pages 2-3.
[40] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, pages 24-28.
[41] Statement of representative of the International Council of Shopping Centers at the August 2, 2005 meeting.
[42] Statement of representative of Florida Real Estate Alliance, at August 2, 2005 meeting.
[43] Statement of representative of the International Council of Shopping Centers at the August 2, 2005 meeting.
[44] Statement of representative of Florida Real Estate Alliance, at August 2, 2005 meeting.
[45] *Id*.
[46] *Id*.
[47] *Id*.
[48] *Id*.
[49] *Id*.
[50] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, pages 25-26.
[51] *Id*.
[52] *Id*.
[53] *Id*.
[54] *Id*.
[55] Florida Real Estate Alliance, post-workshop comments, answers to issue list, Aug. 2, 2005, pages 24-28, and the Building Owners and Managers Association of Florida, post-workshop comments, answers to issue list, Aug. 10, 2005, page 6.
[56] *Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S 419, page 426, 102 S.Ct. 3164, 73 L.Ed. 2d 868 (1982).

permanent occupations of land by installations such as telephone lines are takings "even if they occupy only relatively insubstantial amounts of space and do not seriously interfere with the landowner's use of the rest of his land."[57] The Court emphasized that "[t]he power to exclude has traditionally been considered one of the most treasured strands in an owner's bundle of property rights."[58]

The Florida Supreme Court has also addressed the taking issue in the context of a cable access statute.[59] In this case, a statute provided that no tenant with a lease of 1 year or greater could be unreasonably denied access to any available franchised or licensed cable service and that neither the tenant nor the cable provider could be required to pay any compensation to the property owner.[60] The Court said it found the reasoning of *Loretto* to be dispositive, and held the statute unconstitutional.[61]

In its report, the PSC determined that mandatory-access legislation could be distinguished from *Loretto* takings because most MTEs already have property dedicated to public use for the purpose of providing telecommunications service. The report states "[t]o the extent that any competitive carrier coming into an MTE requires no more space than that already dedicated to public use, there cannot be a taking."[62] Inherent in this determination is an assumption that once a property owner has invited, or waived the right to exclude, one person or entity, this constitutes a waiver of the right to exclude as to all potential entrants. This appears to ignore the United States Supreme Court's repeated emphasis that the right to exclude is one of the most important of the property rights, and is not supported by case law or logic.

The PSC also questioned whether it is fair for an owner who has allowed free access to an incumbent to charge a competitor for access to the same space, saying that a fee imposed solely for "the privilege of providing telecommunications service" creates a barrier to competitive entry and therefore is not in the public interest and should not be allowed.[63] It appears that in coming to this conclusion, the PSC focused only on the interests of those entities it regulates, the ILEC and CLEC. This is too narrow a focus. When the focus is expanded to include the interests of the property owner, such a charge is fair. A landlord has to have one telecommunication service provider to attract tenants. A second may provide additional benefit to the property owner, but after this, the potential benefit to the property owner of allowing access to other providers may be relatively small. Given this decrease in benefit, it is fair and reasonable that the property owner may not allow additional access without the addition of some other type of benefit, such as a higher fee for access or the providing, by a new competitor of a better service through innovation and technology. Under such a business cost-benefit analysis, it seems fair and reasonable to make a distinction in economic treatment of service providers, based purely on the benefit gained by the property owner. This is, in effect, the free market.

It is clear that mandatory-access legislation would result in a taking under the takings clause of both the federal and Florida constitutions and would require adequate compensation, which telecommunication service providers have indicated they are unwilling to pay. If the providers continue this position, any mandatory-access statute would either be unconstitutional or unused.

Carrier-of-last-resort

An issue identified by the PSC report and again at the workshop emerges from the situation where communications services are installed and provided by a competitor to MTEs to the exclusion of the ILEC provider. A tenant may request service from the incumbent provider who is obligated to provide the service but cannot gain physical access to rights-of-way or closets. The incumbent must then deny the customer service.

Carrier-of-last-resort (COLR) obligation requires the ILEC to provide basic local telecommunications services to anyone who asks for it within a reasonable time, at reasonable rates. Under s. 364.025(1), F.S., the ILEC, "until January 1, 2009, … shall be required to furnish basic local exchange telecommunications

---

[57] *Loretto*, page 426, citing *Lovett v. West Va. Central Gas Co*., 65 W.Va. 739, 65 S.E. 196 (1909); *Southwestern Bell Telephone Co. v. Webb*, 393 S.W.2d 117, 121 (Mo.App.1965). Cf. *Portsmouth Harbor Land & Hotel Co. v. United States*, 260 U.S. 327, 43 S.Ct. 135, 67 L.Ed. 287 (1922).

[58] *Loretto* page 435, citing *Kaiser Aetna v. United States*, 444 U.S. 164, at 179-180, 175, 100 S.Ct. 383, at 392-393, 62 L.Ed.2d 332 (1979).

[59] *Storer Cable T.V. of Florida, Inc. v. Summerwinds Apartment Associates, Ltd*., 493 So.2d 417 (Fla. 1986).

[60] Section 83.66, F.S. (Supp, 1984).

[61] *Storer*, at 419.

[62] Public Service Commission, supra, at 48.

[63] *Id*.

service within a reasonable time period to any person requesting such service within the company's service territory."

The PSC has adopted rules to implement this section. Rule 25-4.066, Florida Administrative Code, requires "requests for primary service . . . be satisfied in each exchange . . . within an interval of three working days after receipt of application when all tariff[64] requirements relating thereto have been complied with …." under certain conditions. PSC rule 25-4.090(2), F.A.C., provides a "[c]ompany shall have no responsibility under this part VI[65] unless rights-of-way and easements suitable to the utility are furnished by the applicant in reasonable time to meet service requirements and at no cost, cleared of trees, tree stumps, paving and other obstructions, staked to show property lines and final grade, and must be graded to within 6 inches of final grade by the applicant all at no charge to the utility. . . ."

Sprint states that the COLR obligation differentiates such providers from other telecommunications providers. Sprint states that the provider with the COLR obligation should be given equivalent access to the building and facilities as that given any other service provider already in the building. Finally, it states that if the COLR is not selected as the preferred provider, then it should be relieved of its COLR requirements with regard to provision of service to any tenants within that MTE.[66]

BellSouth's post-workshop comments describe various examples of "lockout" where it (as COLR) cannot provide requesting customers service because of lack of access, or where a developer does not allow BellSouth to install its facilities in a new development.[67] BellSouth advocates an approach taken in South Carolina.[68] Generally, this approach includes a prohibition of agreements that restrict or limit access to real property or offer or grant incentives or rewards to an owner contingent upon such restriction.[69] The law further provides under certain conditions that no communications service provider, including the COLR, shall be obligated to provide service to tenants of MTEs if the owner permits only one provider to install its communications facilities during construction of the property; accepts incentives or rewards contingent on the provision of service by that provider to the exclusion of others; collects from the occupants of the property charges for communications service, including through rent, fees, or dues; or enters into an agreement that violates the prohibitions of the first section. Finally, the law provides that if the COLR is relieved of the obligation to serve, the COLR may voluntarily choose to serve, and the PSC can not impose any requirements related to terms, rates or availability of service. Finally, BellSouth advocates additional requirements including requiring notice to tenants and the COLR and alternatives for the COLR to provide communications service.[70]

Staff requested and obtained copies of letters to the PSC's Bureau of Service Quality and Enforcement. From 2001 to April 2005, 14 letters were received advising the PSC that the COLR could not provide service to customers requesting service or that the ILEC was foreclosed from installing facilities to serve a development.[71] Where the company was foreclosed from installing facilities, a competitive provider had been engaged to install and provide communications services for the development. In addition, individual tenants were unable to secure service from that incumbent telecommunications service provider and the provider was giving notice to the PSC. These incidents only pertain to residential service.

At the federal level, an FCC rule provides: "No common carrier shall enter into any contract, written or oral, that would in any way restrict the right of any commercial multiunit premises owner, or any agent or representative thereof, to permit any other common carrier to access and serve commercial tenants on that

[64] The term "tariff" means public documents detailing services, equipment and pricing offered by the telephone company to all potential customers. *Newton's Telecom Dictionary*, Seventeenth Edition, CMP Books, February 2001.

[65] Part VI – Telephone Underground Extensions. Rule 25-4.088(1), F.A.C., (Applicability) provides: "Extensions of telephone distribution lines applied for after the effective date of these rules, and necessary to furnish permanent telephone service to all structures within a new residential subdivision, or to new multiple-occupancy buildings, shall be made underground; except that the utility may not be required to provide an underground distribution system in those instances where the applicant has elected to install an overhead electric distribution system.

[66] Sprint - Florida, post-workshop comments, Aug. 10, 2005, page 2.

[67] BellSouth Telecommunications, Inc., post-workshop comments, Aug. 10, 2005.

[68] HB 3840, Signed by Governor on June 7, 2005.

[69] BellSouth post-workshop comments, p. 7

[70] BellSouth post-workshop comments, p. 7 and 8.

[71] These letters are maintained in committee file.

premises."[72] This federal provision does not apply in residential situations.

BellSouth described in its post-workshop comments a situation where it initiated installation of facilities. At some point prior to completion, the developer asked BellSouth to stop, saying that its services were not required. BellSouth stated that they had an investment of time and hardware in the project.[73] The example described by BellSouth appears to be represented in the notice letters sent to the commission. The letter sent by the developer states that the initial service requested was temporary construction hookup and that there was no written contract between BellSouth and the developer to install facilities.[74] The developer did offer to reimburse BellSouth for its reasonable costs it incurred. It appears the parties are negotiating settlement.

Commission rules relating to COLR obligation were first written in 1968, amended in 1976, 1996, and recently in 2005**.** Its rights-of-way rule requirements were last amended in 1976. Telecommunications policy has made great changes in the last ten years beginning with telecommunications deregulation in 1995 in Florida and 1996 nationally.

The instances where an incumbent provider is precluded from providing telecommunications services in residential developments are the result of competitive providers meeting those needs. Moreover, the examples provided reflect that tenants who cannot get service from the COLR are not precluded from getting service, only precluded from an alternative. This situation is similar to when service was provided by the monopoly. The difference is that the landlord had a choice in providers that could best meet its needs to attract a certain type of tenant. Competitive providers are meeting the telecommunications needs in commercial or business developments as well. These results are contemplated by Florida's 1995 and the federal 1996 Telecommunications Act.[75]

The example where incumbents install facilities, only to be required to stop begs the question of the presence of a written contract, particularly in light of the FCC's *Order on Remand, Unbundled Access to Network Elements*[76] that encourages facilities-based competition. It appears that a change in business practices to require written contracts before costs are incurred is the simplest resolution to this problem. Negotiating such contracts may also put the purchaser on notice that there may be other options for communications services, that competition may be available; which furthers telecommunications policy.

With respect to COLR obligations when facilities are installed by a competitor, the first avenue of recourse is to explore a change in commission rules. The statutes contemplate changes to the expectation of universal service. Section 364.025(1), F.S., provides for an interim mechanism for maintaining universal service objectives[77] be established by the commission and for the Legislature to establish a permanent mechanism prior to January 1, 2009. The statutes further provide that:

> If any party, prior to January 1, 2009, believes that a circumstances have changed substantially to warrant a change in the interim mechanism, that party may petition the commission for a change, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances, ..."[78]

The changes in the telecommunications policy reflected in the statutes since 1995 and the telecommunications environment give the PSC and the companies sufficient authority and rationale to initiate rulemaking to address these issues on an interim basis. Staff is concerned at the limited number of examples and the lack of detail provided in the post-workshop comments which could illuminate the real scope of this problem. A rulemaking proceeding could collect these details. The COLR provision, along with universal service, is scheduled for repeal January 1, 2009,[79] in order for the Legislature to establish a permanent universal service

[72] 47 CFR 64.2500.
[73] BellSouth post-workshop comments, pp. 5-6.
[74] July 22, 2005, letter to Sharon R. Liebman, BellSouth Telecommunications, Inc., from Walter Steimel, Jr., Greenberg Traurig, LLP for Hyperion Development Group, Inc.
[75] Chapter 95-403, Laws of Florida; 47 U.S.C. 151, et seq.
[76] FCC Order No. 04-290, issued February 4, 2005).
[77] "the term 'universal service' means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas." s. 364.025(1), F.S.
[78] s. 364.025(3), F.S.
[79] Section 364.025.(1) F.S.

mechanism.[80] As discussed above, tenants have access to telecommunications services, however, no issue is raised as to whether the price is reasonable. Thus, the question becomes whether the goals of universal service are being met when competitive telecommunications companies are the sole providers of service. Due to the complexity and interrelationship between universal service and COLRs, a thorough evaluation addressing all issues should be conducted at that time.

Protection of customers

The recommendations to do nothing legislatively on the MTE issues do not leave customers without service or otherwise unprotected. Although the issues may appear to have broad application, there are a number of limitations on application, and what is actually at issue is a very small segment of the total customer population and those customers have protections.

The initial limitation is that this project only involves multi-tenant environments. It has no application to non-rental property or rental property that doesn't involve multiple tenants under one landlord.

Second, as a matter of competitive reality, what is at issue in the marketplace is the more lucrative multi-tenant environments, primarily business customers with high levels of use of communication technology and services and some residential customers in urban areas, not typical residential customers or business customers with low-to-average technology use. This is supported by statements made at the meeting of interested parties. Representatives of one company said that its primary concern is commercial tenants.[81] Another stated that it only provides service to business customers and therefore is only concerned about commercial multi-tenant buildings. [82] Finally, a third representative said that all previous legislation had included only commercial tenants and thought this project should be similarly limited.[83] Additionally, during the PSC study, one communication service provider filed comments noting that a large and disproportionate share of ILEC revenues come from a very small percentage of total customers served, the business customers and some residential customers, and for competition to develop, CLECs must have direct access to these customers.[84] Finally, it is supported by the market in which the CLECs currently focus their attention. The latest PSC competition report indicates that CLECs have 30 percent of the business-customer market and 10 percent of the residential market.

For all customers, including this small segment of customers at issue, current levels of service, including the carrier of last resort service, will continue; current levels of competition will, in general, continue; and customers will still receive such service in almost all situations.

Furthermore, where there actually is MTE competition and an alternative, competitive provider, it is very probable that the landlord will have chosen the competitive provider because of a perceived advantage in cost, type of service, or quality of service, an advantage to be used in the rental market and touted in marketing the rental premises. Tenants potentially receiving service from a competitive provider selected by a landlord should have notice, and if the provider makes a difference, can select another MTE or negotiate with the landlord for another provider, depending on the circumstances. The bottom line is that if telecommunication service is so important to the tenant, the ultimate power can be used; the tenant can move.

RECOMMENDATIONS

No legislation is necessary at this time. Mandatory-access legislation is not favored by any interest group and is most likely to be either unconstitutional or unused. Other issues can be addressed by changes in business practices and by rulemaking at the Public Service Commission.

[80] Section 364.025(4)(a), F.S.
[81] Statement of AT&T representative at August 2, 2005 meeting.
[82] Time Warner Telecom, written response
[83] Statement of Florida Cable representative at August 2, 2005 meeting.
[84] Public Service Commission, *Access by Telecommunications Companies to Customers in Multitenant Environments*, Volume Two, page 9, Comments of Time Warner Telecom (February 1999).