



Smart Buildings Policy Project

Alcatel USA

Association for Local
Telecommunications Services

AT&T

Commercial Internet Exchange

Competition Policy Institute

Competitive Telecommunications
Association

Digital Microwave Corporation

Focal Communications Corporation

The Harris Corporation

Information Technology
Association of America

Lucent Technologies

NEXTLINK Communications Inc.

Nokia Inc.

International Communications Association

P-Com, Inc.

Siemens

Telecommunications Industry Association

Teligent

Time Warner Telecom

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VIA HAND DELIVERY

June 21, 2000

The Honorable William Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Promotion of Competitive Networks in Local
Telecommunications Markets, WT Docket No. 99-217
and CC Docket No. 96-98

Dear Chairman Kennard:

The Smart Buildings Policy Project (a growing coalition of telecommunications carriers, equipment manufacturers, and organizations that support nondiscriminatory telecommunications carrier access to tenants in multi-tenant environments) urges the Commission to adopt rules that allow telecommunications carriers to obtain reasonable and nondiscriminatory access to tenants in multi-tenant environments (“MTEs” or “buildings”). The absence of federal rules governing access to buildings permits building owners and managers to exert considerable control over the development of facilities-based competition. This is done by denying competitive carriers access to the space necessary for the equipment required to provision facilities-based telecommunications and broadband services or by charging such high access rates as to eliminate many of the benefits of competition. The Telecommunications Act of 1996 contemplates three forms of competitive entry: resale, unbundled network elements, and facilities-based entry. The building owners’ and managers’ unfettered control over access is impeding one of the goals of the Act — widespread facilities-based entry. Moreover, when unreasonably exerted, this unfettered control not only impedes the development of facilities-based telecommunications competition, but also frustrates the ability of carriers to deploy next generation fiber-based and other facilities necessary to provide high-speed Internet access and other advanced services.

Access to UNE loops has been described as access to the last mile. For companies providing service over their own facilities, access to the building is the last hundred feet. If competitive carriers are not allowed to access the tenants in buildings with their own facilities, facilities-based carriers will not be able to fully realize the intent of the Act and the intended results of the Commission's implementation efforts over the last four years. The effect of the building owners' and managers' market power over access to buildings is not limited to the buildings where landlords directly limit competition. All telecommunications consumers, including those not located in multi-tenant environments, are harmed if facilities-based carrier entry is prevented or slowed by restrictive or unreasonable access policies. As competitive carriers more efficiently utilize their networks, the cost savings predictably will be passed on to all customers as lower prices for service. Barriers to efficient network utilization — such as eliminating access to a portion of the potential market — will prevent consumers from realizing the full benefits of these efficiencies. Similarly, as competitive carriers obtain additional customers and deploy more equipment, equipment costs per unit should fall, resulting in lower costs and additional savings for all customers. Hence, access restrictions to buildings can reduce the benefits of telecommunications competition for *all* consumers.

There is no dispute that under the current regime, the only arguable constraint on the economic incentives for building owners and managers to restrict competitive carrier access to buildings is the willingness and ability of tenants to move to another building. A central question, therefore, in the policy discussion of nondiscriminatory access rules is whether tenant moves will prevent building owners and managers from exercising unreasonably their significant market power over telecommunications carrier access.

Many tenants have no choice: they simply cannot move because they are controlled by long-term leases with remaining terms. They cannot move without breaking their lease. Commercial leases tend to be offered in five year increments with five years typically constituting the *minimum* length of a commercial lease. Just over a year ago, a leading member of the Real Access Alliance testified before Congress that the average duration of a commercial lease is actually *ten* years. (See Eric Avidon, "REIT Group Backs Bill Requiring Periodic Rehab," *National Mortgage News* (March 22, 1999)(President of the National Association of Real Estate Investment Trusts stating that the average commercial lease duration is ten years)). The economic description of this phenomenon confronting many tenants is the "lock-in" effect,



and it impairs natural market adjustments. That this “lock-in” effect is a current reality is verified by the Building Owners and Managers Association itself. (See Review of Sections 68.104 and 68.213 of the Commission’s Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, CC Docket No. 88-57, *Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11897 at ¶ 25 (1997)).

The lock-in effect is deepened further by the increased costs to consumers of relocating in order to obtain competitive telecommunications options. We can address the empirical importance of tenant moves as a constraint on building owner and manager market power by assessing directly the costs incurred by tenants when moving. The direct costs and other barriers associated with moving are prohibitively large. These costs may include relocation expenses, lost productivity, and potentially the loss of existing customers. In the tight real estate markets that presently exist in many communities, tenants can expect to pay more for new space. In addition, commercial leases average five to ten years in duration and seriously limit tenant mobility. Although it is difficult to quantify relocation costs precisely, one estimate is that the total cost to relocate could equal a full year’s rent. Few tenants would find it economical to move in order to purchase a competitive carrier’s service given these costs.

A simple example can illustrate the problem. Suppose telecommunications expenditures are 20 percent of rent and that competitive facilities-based carrier service can save tenants 30 percent on their telecommunications bills. Under these conditions, it would take more than 16 years (ignoring discounting) for the savings on telecommunications services to pay for a move that cost one year’s rent. This is longer than the term of most leases and far too long for most businesses to cost justify the move. Put simply, virtually no tenant is going to move simply because that tenant is unable to choose its telecommunications provider. Consequently, the one potential constraint on building owner abuses is relatively ineffective in practice.

The record in the *Competitive Networks* rulemaking demonstrates that competitive carriers are not opposed to building owners’ and managers’ reasonable efforts to address safety, security, and liability issues associated with telecommunications carrier access. Nor are competitive carriers opposed to permitting landlords to receive compensation in exchange for access insofar as such compensation is reasonable and is assessed in a nondiscriminatory and technologically-neutral manner.



Proper and prompt resolution of the issues being considered in the Commission's *Competitive Networks* rulemaking is critical to the effective and widespread development of facilities-based telecommunications and broadband competition. The Smart Buildings Policy Project commends the Commission for the action it has taken thus far and encourages further effort to require that building owners and managers allow reasonable and nondiscriminatory telecommunications carrier access to tenants in their buildings.

Very truly yours,

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Association for Local Telecommunications Services
Advanced TelCom Group, Inc.
Broadslate Networks, Inc.
Commercial Internet Exchange
Competition Policy Institute
Competitive Telecommunications Association
CoreComm Limited
Covad Communications Company
Digital Microwave Corporation
Ensemble Communications Inc.
Focal Communications Corporation
The Harris Corporation
Information Technology Association of America
International Communications Association
ITC/DeltaCom
KMC Telecom, Inc.
Lucent Technologies
McLeodUSA Telecommunications
National Association of State Utility Consumer
Advocates

NewSouth Communications
NEXTLINK Communications Inc.
Nokia Inc.
Nortel Networks Corporation
NTS Communications, Inc.
P-Com, Inc.
Pac-West Telecomm, Inc.
Pathnet
Prism Communication Services, Inc.
RCN Telecom Services, Inc.
RMI.NET, Inc.
2nd Century Communications
Siemens
Telecommunications Industry Association
Teligent
Time Warner Telecom
TriVergent Communications, Inc.
U.S. TelePacific Corp.
Williams Communications
Winstar Communications, Inc.
Wireless Communications Association International
WorldCom

cc: Commissioner Ness
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