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April 8, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

Re: Ex Parte Presentation in CC Docket No. 96-98, CS Docket No. 96-83, CS Docket No. 97-151, and CC Docket No. 98-147

Dear Ms. Salas:

During the course of a meeting yesterday with Thomas Sugrue, James Schlichting, and Jeffrey Steinberg of the Wireless Telecommunications Bureau, Timothy Graham, Joseph Sandri, Jr., and Russell Merbeth of WinStar Communications, Inc. and Philip Verveer and myself, on behalf of WinStar Communications, Inc., discussed issues relating to telecommunications carrier access to multi-tenant buildings. WinStar's representatives reiterated the positions taken in their filed pleadings in the above-referenced dockets and emphasized the critical need for prompt action on building access matters. WinStar provided the WTB participants with copies of all WinStar's substantive filings with the FCC in various dockets relating to the access issue, as well as other documents mentioned below. I am filing this notice of ex parte presentation in those dockets that remain open through which WinStar has suggested a resolution of this issue might be achieved.

In accordance with the FCC's rules, for each above-mentioned docketed proceeding, I hereby submit to the Secretary of the Commission two copies of this notice of WinStar's ex parte presentation as well as copies of a summary of the Commission's jurisdiction to accomplish building access and a diagram of WinStar's intra-building network.

Respectfully submitted,

Gunnar D. Halley

Counsel for
WINSTAR COMMUNICATIONS, INC.

Enclosures

cc: Thomas Sugrue (without enclosures)
James Schlichting (without enclosures)
Jeffrey Steinberg (without enclosures)

Washington, DC
New York
Paris
London

THE FCC'S JURISDICTION TO ACCOMPLISH TELECOMMUNICATIONS CARRIER ACCESS TO TENANTS IN MULTI-TENANT BUILDINGS

- The telecommunications transmission path located within a multi-tenant building is an essential component of the transmission of interstate wire and radio communications. Consequently, the FCC retains jurisdiction over efforts to exert control over that portion of the telecommunications network.
- To the extent that building owners and managers exert control over telecommunications carrier access to the intra-building communications network, they become persons engaged in interstate wire communication (as that term is literally defined in § 3(51) of the Communications Act) and, consequently, bring themselves within the jurisdiction of the FCC.[1] The FCC can accomplish building access pursuant to its jurisdiction to regulate persons engaged in interstate wire communication under §§ 1 and 2(a) of the Communications Act.
- The sweeping language of Section 2(a) suggests a comprehensive jurisdictional mandate, one recently confirmed by the Supreme Court's decision in AT&T v. Iowa Utilities Board.[2] The encompassing definitions of "radio communication" and "wire communication"[3] in Section 3 to include items and services incidental to such communication further emphasize the comprehensive nature of the FCC's authority.
- The FCC's scope of authority is not limited to those matters expressly mentioned in the Communications Act,[4] so the absence of a statutory provision expressly considering the matter of access to building tenants is not a barrier to the exercise of FCC jurisdiction.
- The FCC should prohibit building owners as persons engaged in interstate wire communication from discriminating among telecommunications carriers or otherwise unreasonably restricting access by telecommunications carriers to the tenants in multi-tenant buildings.

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1 47 U.S.C. § 152(a) ("The provisions of this act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio . . . ")(emphasis added).

2 AT&T Corp. v. Iowa Utilities Bd., 119 S.Ct. 721 (1999).

3 47 U.S.C. § 153(33)("The term 'radio communication' or 'communication by radio' means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission")(emphasis added); see also 47 U.S.C. § 153(51) ("The term 'wire communication' or 'communication by wire' means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission")(emphasis added).

4 See, e.g., National Broadcasting Co. v. U.S., 319 U.S. 190, 219 (1943)("While Congress did not give the Commission unfettered discretion to regulate all phases of the radio industry, it did not frustrate the purposes for which the Communications Act of 1934 was brought into being by attempting an itemized catalogue of the specific manifestations of the general problems for the solution of which it was establishing a regulatory agency").

THE PROVISIONS OF THE COMMUNICATIONS ACT PROVIDING FCC JURISDICTION OVER BUILDING ACCESS

- ***Authority Over Interstate Wire and Radio Communications***: When viewed in combination, Sections 2(a) and the literal definitions of wire and radio communications in Sections 3(33) and 3(51) provide the FCC with broad jurisdiction over efforts to control that portion of the interstate communications transmission path that is located within a multi-tenant building.

- ***Section 224 Authority***: For those States not regulating pole attachments, the FCC must define rights-of-way to include all areas within and on top of buildings to which utilities, including incumbent LECs, have the right of access. As a result, telecommunications carriers must gain access to these areas pursuant to Section 224.

- ***Section 207 Authority***: By necessarily including fixed wireless carriers, who are using their systems to provide video and similar, who are using their systems to provide video and similar services, the FCC could prohibit building owners and managers from unreasonably restricting the placement of antennas on building rooftops to serve tenants within those buildings.

- ***Section 706 Authority***: Since many telecommunications carriers, including fixed wireless providers, offer advanced telecommunications services and capabilities, the FCC could adopt rules to promote building access pursuant to its wide-ranging Section 706 authority.

- ***Section 201(b) Authority***: Telecommunications carrier access to tenants in multi-tenant buildings is an important component of achieving the pro-competitive public interest goals of the 1996 Telecommunications Act and, more generally, of the Communications Act as a whole. The Supreme Court recently explained that Section 201(b) bestows broad authority upon the FCC for carrying out the provisions of the Act. This broad authority can and should be used to accomplish telecommunications carrier access to tenants in multi-tenant buildings.

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Customer Inside Wire

400 Pair Riser Cable

Customer Inside Wire

800 Pair Riser Cable

Customer Inside Wire

1200 Pair Riser Cable

RG8 Coaxial Feeder Cable Dish to Terminating Equipment

66 Blocks Terminating Feeder Cable

House Riser Cable Termination

38 GHz Indoor Terminating Equipment & Channel Banks

WinStar Communications, Inc.