John M. Stone Management Corporation

28 July 1999

My email address is:
jmstone@johnmstone.com

My fax address is:
214/265-8100

Via U.S.P.S. Certified Mail
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#P-410-319-279

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

Re: Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, C.C. Docket No. 96-98

Dear Ms. Salas:

In response to the FCC's Notice of Proposed Rulemaking released 7 July 1999 regarding forced access to buildings, I am enclosing six (6) copies of this letter in addition to this original copy.

As a Certified Property Manager, a Certified Commercial Investment Member and a Certified International Property Specialist of the National Association of Realtors, as well as a commercial-investment real estate investor, broker, property manager, consultant and developer, I am concerned that any action by the FCC regarding access to private property by large numbers of communications companies may inadvertantly and unnecessarily adversely affect the conduct of my business, the value of my properties and my clients' properties, and needlessly raise legal issues, such as increasing liability for the property owner and property manager. The Commission's public notice also raises a number of other issues which concern me.

Background

In my career, our management company has managed close to 1,000 units of apartments and more than 1,000,000 Sq.Ft. of office, retail and industrial space. As an investor, I own apartments, office, retail and industrial space, in addition to other forms of commercial-investment real estate. As a broker, I represent clients who have acquired more than $900-million U.S.D. commercial-investment real estate. I have served as an officer and/or committee chair at the local, state and national levels of the Institute of Real Estate Management, Commercial Investment Real Estate Institute (where I was national president in 1991), the Realtors Land Institute and the North Texas Commercial Association of Realtors, the Texas Association of Realtors and the National Association of Realtors. In fact, your agency was a tenant in the 2020 M Street Building in Washington, D.C., when I sold the underlying ground lease on that property a few years ago. That was before you consolidated your offices in May 1999 in your 12th Street location.

Issues Raised by the FCC's Notice

First and foremost, FCC does not need to act in this field because we are doing everything we can to satisfy our tenants' demands for telecommunications access.

Additionally, the FCC's request for comments raises the following issues of particular concern: (1) "nondiscriminatory" access to private property (a property owner should be able to control the qualifications, standards and specifications of vendors serving its property); (2) expansion of the scope of existing easements (a proliferation of utility companies will lead to inevitable legal conflicts over the handling and activities which can occur within utility easements, perhaps even leading to "blanket easements" over an entire property with no control on where wiring is placed and/or maintained and/or serviced; (3) the location of the demarcation point of utilities services will inevitably be varied from one utility company to another, resulting in a constant scene of on-going construction and/or repairs and impeding access into the property on an on-going basis; (4) exclusive contracts for which appropriate consideration was paid in times past will be inevitably abrogated; and (5) there will be an expansion of the existing satellite dish or "OTARD" rules to include nonvideo services.

The net result will also be a quite unattractive "festooning" of the property with a host of satellite dishes and other forms of apprati which detract from the property's appeal and appearance, which act as "defacto" lightning rods and which create indeterminable liability situations for property owners and landlords because of the "live" nature of all manner of attached and/or dangling equipment.

Which leads me to a screaming question: Whose property is it anyway?

Has anyone forgotten that? I think so.

Are property owners just there for the convenience of bureacrats and the latest scheme of some trial lawyer?

Is the potential safety of tenants to be sacrificed on the alter of "choices" in every facet of our daily existence?

Why can't the marketplace decide this and other issues? Why does the government always have to be ramming unwelcome objects down our throats just for the sake of looking busy?

Let's depart from this discussion for a moment and take a close look at reality!

1. FCC Action Is Not Necessary.

   - I know telecommunications services are important to my tenants and am unwilling to jeopardize my rental income stream by actions displeasing tenants.

1. FCC Action Is Not Necessary, Continued/

- I compete daily against other properties in each market where I own and/or operate commercial-investment real estate and already have ample incentives in this area to keep my properties as updated as possible.

- We already give competitive service providers access to our properties whenever it is practical anyway.

- We have experienced many instances where we have found ways to be accomodative to tenants where we were not required to do so by law, especially with regard to certain handicapped or physically-challenged tenants.

- The market is working well, and regulation is not needed. We are concerned foremost with the safety of our tenants, and this proposed set of rules and regulations would compromise that concern forcibly and without due process and/or compensation to the tenants who are allowed quiet enjoyment of their premises free of hassles and distraction or to the landlord who should be allowed to enforce practical rules and regulations designed to maintain the health and safety of an entire community.

2. "Nondiscriminatory" Access.

- There is no such thing as "nondiscriminatory" access. There are dozens of providers but only limited space in buildings, meaning that only a handful of providers can install facilities in buildings. "Nondiscriminatory" access discriminates in favor of the first few entrants into an already crowded field. What,then, happens to those who come later? Aren't they going to be suing me for "nondiscriminatory" access and fomenting disension amongst my tenants to clamor for their admittance into the field of service providors on any single particular property?

- A building owner must have control over space occupied by service providers, especially when there are multiple service providers involved.

- How is sabotage on the part of one service provider towards another's equipment prevented? Must the property owner post guards to prohibit that possibility? Who pays that added cost?

- Building owners must have control over who enters a building: an owner faces liability for damage to the building, the leased premises and facilities of other providers, and for personal and/or property damages resulting to tenants and their visitors and to the owners' or management company's employees or invitees or agents. The owner is also liable for safety code violations, building code violations, fire code violations, etc. The qualifications and reliability of providers is a real issue to an owner/manager.

2. "Nondiscriminatory" Access, Continued/

- What does "nondiscriminatory" mean in a legal context and how would it be defined in a rule or regulation that would carry the imprimature of law?

  Deal terms vary because each deal is different. A new company without a track record, without a significant net worth, without meaningful bondability....poses greater risks to both the tenant and the landlord and also the property manager than an established company, as an example; thus, indemnity, insurance, security deposit, remedies and other terms may differ significantly. The value of space and other issues also depend on other factors.

- This raises concerns of owners of office, residential (apartments) and retail properties since all these property types are so different in their character and use that it's very difficult to establish a common set of rules governing all of them.

- Building owners often have no control over the terms of access for Bell companies or GTE companies, since their access terms were established in a monopolistic environment. The only fair solution is to let the new competitive market decide, allowing owners to renegotiate the terms of all contracts -- after all, it is the owners' property. Owners should not be forced to apply old contracts as the lowest common denominator in negotiating with new service providers when the owner had no real choice in the previous monopolistic environment.

- If carriers can discriminate by choosing which buildings and tenants to serve (and they can), then building owners should be allowed to do the same.

3. Scope of Easements.

- The FCC cannot expand the scope of the access rights held by every incumbent service provider to allow every competitor to use the same easement or right-of-way for utilities. Grants in some buildings may be broad enough to allow other providers in, but others are narrow and limited to facilities owned by the grantee.

- If owners had known governments would allow other companies to "piggy-back" on existing easements, then they would have negotiated different terms. Expanding the rights of utilities to obtain easements now would be tantamount to a governmental "taking" of the use or rights of ownership without fair compension, which will inevitably spur litigation against the federal government agency allowing such a unilateral expansion of rights of third-parties to use properties owned by others. That will, in turn, create an administrative boondoggle in the FCC.

3. Scope of Easements, Continued/

° Currently, we normally have not more than one electricity providor, one telephone cable providor and one television cable providor per property. Opening this up will create a very cumbersome administrative nightmare in keeping track of all the necessary easements, the necessary initial construction of facilities and the on-going repairs and maintenance of facilities, as well as the on-going monitoring of insurance certificates of all these third-party service providors. We do not have facilities designed for this. Who is going to bear the cost of contructing the necessary additional facilities to house this equipment? It's not my responsibility as a landlord or a property manager to do that. Do you think the tenant will? Do you think the service provider will? Even if the service providor does, is your agency equipped to monitor these service providors to insure they perform their installations correctly? What new jurisdictional conflicts will then be created between local, county, state and federal government?

4. Demarcation Point.

° The Demarcation Point is that point at which the cable subscriber may control the internal home wiring or demised premises wiring if she/he owns it, currently set at twelve inches outside where the wire enters a subscriber's demised premises or dwelling unit. These current demarcation point rules work well because they provide flexibility -- there is no need to change them.

° Each building is a different case, depending on the owner's business plan, the nature of the property and the nature of the tenants in the building. Some building owners are prepared to be responsible for managing wiring, while others are not.

5. Exclusive Contracts.

° We usually choose to have exclusive contracts with service providors, based upon the issuance of Requests for Proposals setting forth landlord-defined specifications which adhere to existing local, county and state (in some cases federal) codes, statutes, rules and regulations. It is more practical than a moving caravan "Tower of Babel" implicit in a cacophony of choices which provide no rigid standard. That way, both the landlord and tenant get better and more efficient service. In many cases, service providers themselves insist on exclusive contracts in order to avoid confusion and to draw clear lines of authority and responsibility.

° Exclusive contracts not only allow our tenants more clarity of the appropriately responsible party for repairs and maintenance, as well as providing more economic efficiency...but, it also usually provides quicker responsiveness on service calls than a plethora of service providors would.

6. Expansion of Satellite Dish Rules.

- Existing rules on satellite dishes need to be revoked. I cannot believe the intent of Congress was to interfere with our ability to manage our clients' property or our own property.

- The FCC should not expand these rules to include data and other services, because the law only applies to antennas used to receive video programming.

- Tenants are notorious for installing antennas and satellite dishes outside their own demised premises, in many cases endangering other tenants and/or jeopardizing the structural integrity of the property and creating situations of liability or imminent danger to others or creating the situations where property damage is more likely to occur.

On a personal note, it came out today that the Clinton Administration is also considering implementing a national "snooping mission" on all computers on the internet, keying at first on "strategic activities" of trade and commerce. This may also be within your agency's purview. I also must join with other civil liberties advocates in opposing the imposition of such Orwellian intrusions into our first amendment rights and rights to privacy. This policy, should it be implemented, is just one short step further towards the police state that the stealing of more than 900 FBI files has started us on. We don't need that, either. The "double-speak" in selling such a scheme is particularly appalling to any normal person's intelligence.

In conclusion, I urge the FCC to consider carefully any action it might take. Your decision in these matters has far reaching civil liberties and private property rights implications.

Sincerely,

JOHN M. STONE MANAGEMENT CORPORATION

John M. Stone, CCIM, CPM, CIPS, President

JMS:ms

cc: Katherine Broemmel, IREM Legislative Analyst
Kristin Harrelson, CIREI Legislative Analyst
Belinda Carter, Executive Vice President-Realtors Land Institute
Dallas Chapter No. 14 of IREM Legislative Committee and Executive Council
North Texas Association of Realtors
Gary R. Rice, Esq.
Lee Verstandig, Vice President-Governmental Affairs, NAR
Bill Stinson, Vice President-Governmental Affairs, TAR