



INVERNESS PROPERTIES, LLC DOCKET FILE COPY ORIGINAL

August 13, 1999

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**FCC MAIL ROOM**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
TW-A325  
Washington, DC 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, CC Docket No. 96-98

Dear Ms. Salas:

We write in response to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings. We enclose six (6) copies of this letter, in addition to this original.

We are concerned that any action by the FCC regarding access to private property by large numbers of communications companies may inadvertently and unnecessarily adversely affect the conduct of our business and needlessly raise additional legal issues. The Commission's public notice also raises a number of other issues that concern us.

### **Background**

Inverness Properties, LLC is in the commercial real estate business and represents approximately 13 buildings in the Denver area totaling approximately 1.5 million square feet of corporate facilities.

### **Issues Raised by the FCC's Notice:**

First and foremost, we do not believe the FCC needs to act in this field because we are doing everything we can to satisfy our tenants' demands for access to telecommunications. In addition, the FCC's request for comments raises the following issues of particular concern to us: "nondiscriminatory" access to private property; expansion of the scope of existing easements; location of the demarcation point; exclusive contracts; and expansion of the existing satellite dish or "OTARD" rules to include nonvideo services.



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1. FCC Action Is Not Necessary.

- In our estimation FCC action on this issue is neither necessary or desirable. Building owners and managers are acutely aware of the importance of telecommunications services to tenants, and would not jeopardize their current rent revenue stream by actions in this area that would displease tenants.
- We all compete against many other buildings in our market, and we have significant incentives to keep our properties up-to-date with telecommunications services from a wide spectrum of service providers. Throughout our 1,000 acre business park, all of the current services providers are duly represented in both the overall park infrastructure (conduits) and in the individual buildings, most of which have signed agreements with multiple providers (i.e. MCI, TCI, TCG, ATT, U.S. West, MFS and the like).

2. "Nondiscriminatory" Access.

- There is no such thing as nondiscriminatory access: There are dozens of providers out there, but limited space in buildings means that only a handful of providers can install facilities in buildings. "Nondiscriminatory" access discriminates in favor of the first few entrants.
- Building owner must have control over space occupied by providers, especially when there are multiple providers involved.
- Building owner must have control over who enters building: Owner faces liability for damage to building, leased premises, and facilities of other providers, and for personal injury to tenants and visitors. Owner also liable for safety code violations. Qualifications and reliability of providers are a real issue.
- What does "nondiscriminatory" mean? Deal terms may vary because each deal is different. New company without track record poses greater risks than established one, for example, so indemnity, insurance, security deposit, remedies and other terms may differ. Value of space and other terms also depend on many factors.



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- Concerns of owners of office, residential, and shopping center properties all differ: Can't set single set of rules.
- Building owners often have no control over terms of access for Bell companies and other incumbents: they were established in monopoly environment. Only fair solution is to let the new competitive market decide and allow owners to renegotiate terms of all contracts. Owner can't be forced to apply old contracts as lowest common denominator when owner had no real choice.
- If carriers can discriminate by choosing which buildings and tenants to serve, building owners should be allowed to do the same.

3. Scope of Easements:

- FCC cannot expand scope of the access rights held by every incumbent to allow every competitor to use the same easement or right-of-way. 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.

4. Demarcation Point:

- Current demarcation point rules work fine because they offer flexibility – there is no need to change them.
- Each building is a different case, depending on owner's business plan, nature of property and nature of tenants in the building. Some building owners are prepared to be responsible for managing wiring and others do not.

5. Expansion of Satellite Dish Rules:

- We are opposed to the existing rules because we do not believe Congress meant to interfere with our ability to manage our property.
- The FCC should not expand the rules to include data and other services, because the law only applies to antennas used to receive video programming.



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In conclusion, we urge the FCC to consider carefully any action it may take which could serve to disrupt the current market system (which is working very well for all parties) and could lead to some very undesirable consequences.

Without sufficient controls by the building owners, telecommunications paraphernalia would proliferate in an unsightly manner, due to the providers desire to minimize costs even at the expense of proper aesthetics. This would be a travesty given the investment we made in developing a aesthetically pleasing work place for corporate America. Thank you for your attention to our concerns.

Sincerely,

John F. O'Meara  
Principal

JOM/go