

August 9, 1999

Ms. Magalie Roman Salas
Secretary
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, CC Docket No. 96-98

Dear Ms. Salas:

I am writing 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

The Gipson Company is in the commercial/retail development real estate business. We currently own or manage over one-million square feet of retail space in several States.

THE GIPSON CO.

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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 non-video services. In response to these issues, I submit the following:

1. FCC Action Is Not Necessary.

- We are aware of the importance of telecommunications services to our tenants, and would not jeopardize the rent revenue stream by actions that would displease tenants.
- We compete against many other shopping centers in our market, and have an incentive to keep the properties up-to-date.
- We respond to any tenant's specific request for service.

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 vary because each deal is different. New company without a 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.
- 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.

- If owners had known governments would allow other companies to piggy-back, they would have negotiated different terms. Expanding rights now would be a taking.
- Give examples of terms of current easements, rights-of-way or leases granting access to providers: point would be to show that they are limited to that provider.

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 are not.

5. Exclusive Contracts.

- At this time we do not have any exclusive contracts in-place.

6. 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.
- Antennas improperly installed on rooftops have voided roof warranties and created maintenance problems.

In conclusion, we urge the FCC to consider carefully any action it may take. Thank you for your attention to our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Colin E. Barker". The signature is written in a cursive style with a large, sweeping initial "C".

Colin E. Barker,

Vice President