



# JP Realty, Inc.

PRICE DEVELOPMENT COMPANY,  
LIMITED PARTNERSHIP  
35 CENTURY PARK-WAY • SALT LAKE CITY, UTAH 84115

NYSE: JPR

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August 13, 1999

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

VIA FEDERAL EXPRESS

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 extremely concerned that any action by the FCC regarding access to private property by large numbers of communications companies will adversely affect the conduct of our business and needlessly raise additional legal issues. We believe that forced building access is an unconstitutional taking of property. The Commission's public notice also raises a number of other issues that concern us.

### Background

JP Realty, Inc., a New York Stock Exchange listed REIT is primarily engaged in the business of owning, leasing, managing, operating, developing, redeveloping and acquiring malls, community centers and other commercial properties and retail properties in Utah, Idaho, Colorado, Arizona, Nevada, New Mexico and Wyoming as well as Oregon, Washington and California. The company holds a portfolio consisting of 50 properties including 17 regional malls, 25 community centers, two freestanding retail properties and six mixed use commercial business properties, with a total gross leasable area of over 14.35 million square feet.

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

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 and because we believe the free market and not the FCC should determine the issues at hand.

#### **1. FCC Action is Not Necessary**

- In our experience, we as building owners are able to use our bargaining power by bidding jobs out to an array of providers, to negotiate more favorable rates for all the tenants in the building. Without this ability to negotiate, all the tenants would pay increased rates.
- As owners of shopping centers, we are in constant competition with other owners for the same tenants and are forced by that competition to offer up-to-date buildings with all necessary telecommunications equipment.
- We have entered into agreements with competitive providers in the same building to give our tenants the most up-to-date facilities. In some situations, we have multiple suppliers on the same antennae on our buildings.
- In numerous situations, we allow, as part of the leased premises, for telecommunications equipment on the roofs of our buildings.

#### **2. There is No Such Thing as "Nondiscriminatory" Access**

- There is no such thing as nondiscriminatory access. There are dozens of providers, 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, creating a barrier to entry for small providers and future providers. Building owners want to enhance competition and be able to do business with all providers, not just the few giants of today.
- A building owner must have control over who enters the building, especially when there are multiple providers involved. A building owner faces liability for damage to building, leased premises, and facilities of other providers, and for personal injury to tenants and visitors. A building owner is also liable for safety code violations. Allowing forced access, even misleadingly couched as "nondiscriminatory" access, shifts the costs of correctly installing equipment in a way that will not harm the tenants or the physical premises to the building owner.

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- There is no such thing as discriminatory building access because the terms of building access must necessarily vary. For example, a new company without a track record poses greater risks than an established one, so indemnity, insurance, security deposit, remedies and other terms may differ. The value of building space and other terms also depend on many factors, such as location and available space.
- "Nondiscriminatory" access amounts to federal rent control. Building owners often have no control over terms of access for Bell companies and other incumbents: they were established in monopoly environment. The only fair solution is to let the new competitive market decide and allow owners to renegotiate terms of all contracts. A building owner must not be forced to apply old contracts with the Bell company as lowest common denominator because the building owner had no real choice in negotiating those contracts.

### **3. Scope of Easements**

- FCC cannot expand scope of the access rights held by every incumbent carrier (the Bell-type companies) to allow every competitor to use the same easement or right-of-way. Grants in many buildings are narrow and limited to facilities owned by the grantee.
- If owners had known government would allow other companies to piggyback on the incumbent, they would have negotiated different terms. Expanding rights now would be an unconstitutional taking.

### **4. Demarcation Point**

- The current demarcation point rules are working 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**

- We have several contracts that provide for exclusive use by one or another tenant for telecommunications equipment. There are certain leases that provide that if any other telecommunication equipment interferes with their use, that the "fix" will be a Landlord expense thus shifting costs properly borne by the provider to the Landlord.

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**6. Expansion of Satellite Dish Rules**

- 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.

In conclusion, we urge the FCC to consider carefully any action it may take, as we believe that the current proposals are unwarranted and unconstitutional. Thank you for your attention to our concerns.

Sincerely,

PRICE DEVELOPMENT COMPANY,  
LIMITED PARTNERSHIP  
a Maryland limited partnership

By: JP Realty, Inc., a Maryland  
corporation, its general partner

A handwritten signature in cursive script, appearing to read "John Price".

John Price  
Chairman of the Board  
Chief Executive Officer

JP/lmw