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August 20, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 - 12th 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:

I am sending the attached letter on behalf of BGK Properties, 330 Garfield Street, Santa Fe, New Mexico 87501. BGK Properties is an owner and landlord of over 200 commercial properties in the United States, including large commercial real estate properties located in the State of Florida. BGK is concerned about the FCC's Notice of Proposed Rulemaking released July 7, 1999, regarding forced access to buildings, and asks that you consider my letter as their own.

Very truly yours,

STROSS LAW FIRM



Howard C. Stross

HCS/epg

Enclosure

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August 10, 1999

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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:

This letter is in response to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings. Enclosed are six (6) copies of this letter, in addition to this original. As a landlord, and as an attorney that represents landlords and investors of commercial real estate, I am 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 these business and needlessly raise additional legal issues. The Commission's public notice also raises a number of other issues that concerns me.

Background

I am in the commercial and residential real estate business; and, I represent others that are also in the commercial real estate business. These properties include retail shopping plazas from 50,000 square feet to retail properties in excess of 100,000 square feet; and industrial property in excess of one million square feet. I also represent clients that are property managers for retail, industrial and office buildings that vary in size from 50,000 square feet to more than one million square feet. I am a residential landlord.

Issues Raised by the FCC's Notice

Categorically, I speak for myself and my clients to say that 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; exclusive contracts with specific providers currently in place and some have options to renew; and expansion of the existing satellite dish or "OTARD" rules to include nonvideo services.

1. FCC Action Is Not Necessary.

- We are acutely aware of the importance of telecommunications services to tenants, and would not jeopardize any rent revenue stream by actions that would displease tenants.
- We compete against many other buildings in our markets, and thus there is great incentive to keep all of the properties up-to-date, including an allowance for providers to gain access that is not in contradiction to existing contracts with current providers.
- The market is working and regulation is not needed.

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.
- The building owners must have control over space occupied by providers, especially when there are multiple providers involved.
- The building owners must have control over who enters their buildings as they are responsible to tenants for damage in common areas. The 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. The qualifications and reliability of providers are a real issue.
- What does "nondiscriminatory" mean? The terms of agreements with providers do vary because each property or building or its unique location is different. A new company to provide service that is without a record of accomplishment poses a greater risk than an established one. Examples include indemnity, insurance, security deposit, remedies and other terms that may differ.
- Concerns of owners of office, residential, and shopping center properties all differ: one size does not fit all, i.e. no agency should set a single set of rules to apply to all types of buildings in diverse locations.

- 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 competitive market decide and allow owners to renegotiate terms of all contracts. An owner cannot be forced to apply old contracts as the lowest common denominator when the 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.

- The FCC cannot expand the scope of 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 piggyback, they would have negotiated different terms. Expanding rights now would be a taking due compensation to the Owners.
- In many examples, the terms of easements, rights-of-way or leases, many of which have extended terms far in excess of ten years, with automatic rights of renewal, do grant access to providers; however, these instruments are limited to a specifically named providers.

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 the owner's business plan, the nature of the particular property, and the nature of the tenants in the building(s). Some building owners are prepared to be responsible for managing wiring and others are not.

5. Exclusive Contracts.

- Many types of telecommunications services are already the subjects of long-term contracts that were negotiated and executed without contemplating the proposed rule change.
- There are benefits of these exclusive contracts to tenants, such as the ability to aggregate demand and negotiate a better deal than they could get on their own. (This is especially true in residential properties.)

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Federal Communications Commission
August 10, 1999
Page4

6. Expansion of Satellite Dish Rules.

- We are opposed to the existing rules because we do not believe Congress meant to interfere with owners' ability to manage their respective 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.

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

Sincerely,

STROSS LAW FIRM



Howard C. Stross