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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW- 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. I have enclosed six (6) copies of this letter, in addition to the original.

I believe that, if enacted, the actions proposed by the FCC will effect a taking of my property without just compensation. Such actions will not only interfere with my business operations and give my property to large and wealthy telecommunication firms, such actions will unnecessarily and unfairly hurt my business, place the residents at a competitive disadvantage from the purchase of telecommunications services, and needlessly raise additional legal problems as a result of this unprecedented government action.

My company is in the business of providing rental and multifamily homes in Birmingham, Ozark, and Daleville, Alabama. We own and manage properties totaling 700 units.

I am concerned and shocked by the proposed rule. It seeks to give a permanent easement to any telecommunications provider that has an interest in selling services to my tenants without my consent. It purports to do this in the name of consumer protection, hoping to provide less expensive services to tenants through a system you have called "Non-Discriminatory access." I believe this practice is misguided, is unnecessary, and will harm the residents in my properties.

First, let me assure you that my company is doing everything it can to meet our tenants' needs and demands for access to a wide range of telecommunications services. Ours is an extremely competitive industry. We compete with other multifamily properties in every community in which our properties are located. In addition to competing on unit size, location and lay-out, one of the primary areas of competition is the set of amenities we can provide to our tenants. One of the most important of these is telecommunications services.

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In each of my properties, in each market in which we are located, my company studies the market analyzes the best package of telecommunications services available, determines what our tenants want and negotiates vigorously with providers of these services. If tenants with month- to-month or one year tenancies are forced to negotiate directly with national or international telecommunications firms, they will be at a decided disadvantage. My company has the negotiating strength afforded one who represents hundreds of tenants. No individual can strike as good a deal as we can in this collective manner.

Futhermore, once a telecommunications firm has entered and wired one of our buildings, other providers may be less interested in incurring the cost to compete. Thus, it is likely that one or more of the large firms will obtain an effective monopoly on providing services to our tenants at what will be far from an arms-length, negotiated rate. We have all seen what has happened to cable TV rates where cable TV companies have acquired monopolies in communities across the country. Is it necessary to create such a system when we already have the incentive to negotiate for, and provide the most effective, extensive and competitive set of services in our competitive business?

I must note that the proposed rule raises the following additional concerns: It would expand the scope of existing easements; in some instances it will interfere with existing exclusive contracts; and it may expand the satellite dish rules to include non-video services.

### **Nondiscriminatory Access**

There is no such thing as "Non-discriminatory Access". There are dozens of providers out there, but limited space in buildings means that only a handful of providers can install facilities in a particular building. Nondiscriminatory access discriminates in favor of the first few entrants.

Building owners must have control over space occupied by telecommunications providers, especially when there are multiple providers involved. This is to protect the tenants and to protect the integrity of the building itself as well as its appearance.

Building owners must have control over who enters their buildings: owners face liability for damage to building, leased premises, and facilities of other providers ;' and for personal injury to tenants and visitors. Owners are 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. A new company without a tract record poses greater risks than an established one, for example, so indemnity, insurance, security deposit, remedies and other terms may differ. Value of space and other terms also depends on many factors.

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.

### **Scope of Easements**

The FCC cannot and should not expand the scope of easements already provided to existing telecommunications providers to allow every competitor to use the same easement or right-of-way. Grants in some building 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 of private property.

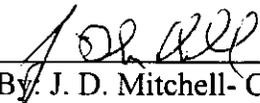
### **Expansion of Satellite Dish Rules**

I oppose the existing rule because do not believe that Congress meant to interfere with our ability to manage our property.

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

In summary, I am very much opposed to the proposed rule and urge the FCC to refrain from issuing it in final form. Thank you for you consideration of my views.

Sincerely,  
Mitchell Investments, L.L.P.

  
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By: J. D. Mitchell- Controller