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**Via Airborne Express Delivery**

August 26, 1999

Ms. Magalie Roman Salas  
 Office of the Secretary  
 Federal Communications Commission  
 445 12<sup>th</sup> Street, S.W.  
 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; Comments of Cornerstone Real Estate Advisers, Inc.**

Dear Ms. Salas:

Please have the following comments entered into the record of the above captioned matter. These comments are in response to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings by telecommunications provider, (hereinafter, "NPRM"). Please find enclosed six (6) copies of this letter, in addition to this original.

**Summary**

Cornerstone Real Estate Advisers, Inc. ("Cornerstone") is deeply concerned about the consequences which would flow from the implementation of the concepts outlined in the NPRM. Allowing unfettered forced access to buildings could have a significant negative impact on many aspects of the real estate management business while opening up a "Pandora's Box" of potential legal issues.

Although our comments focus on a number of finite issues raised in the NPRM, these are by no means the only insurmountable difficulties which we believe would be created by implementing the NPRM. In preparing this comment, we have analyzed the issues in the NPRM with our asset managers and other field personnel, who have a significant expertise in negotiating multi-tenant property leases and managing large multi-tenant properties. Their observations are reflected in this comment.

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### ***Background***

Cornerstone is a real estate equities manager with approximately \$3 billion in assets under management, all of which is multi-tenant commercial property (including office buildings, apartment buildings, and hotels). We are headquartered in Hartford, Connecticut with regional offices in Atlanta, Chicago and Los Angeles. We manage all of the real estate equity holdings of Massachusetts Mutual Life Insurance Company, our parent company, plus real estate assets of several other entities including those of college endowments, private foundations and other institutions. In managing these properties we have acquired significant experience in addressing tenant requests for state of the art telecommunications services and negotiating contractual arrangements for providing those services with telecommunications providers.

### ***Market Forces are Generating Ample Competition***

We believe that FCC intervention into these uncharted waters is unnecessary and inappropriate because tenant satisfaction is a primary business objective in the real estate business. Market forces, in the form of tenant requests for more and different telecommunications providers, will facilitate the appropriate level of competition in this area. The real estate market is fiercely competitive and a tenant (or tenants) will quickly vacate a facility which does not meet its telecommunications needs and find another facility which does. Therefore, government intrusion into the landlord/tenant relationship, which carries significant negative consequences, is wholly unwarranted.

### ***General Diminishment in the Return on Equity***

All of our clients, including MassMutual (our parent company and largest client), harbor reasonable expectations for a return on the value of their assets based on past experience of the real estate market. The proposals in the NPRM would seriously jeopardize these real expectations for return on equity by changing the rules of the game through regulatory fiat. Allowing for unlimited access by any number of telecommunications providers (including some that may be untested or unfit) to a certain property could greatly impair its value, which otherwise would be determined by market forces. Among other things, additional strain on building infrastructure, the greater potential for safety and building code violations, and the loss of ability to freely negotiate telecommunications agreements would all serve to drive down the financial return on a given property. For these reasons, we believe that the NPRM amounts to a regulatory taking of property value, without any corresponding compensation.

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*Loss of Authority Reasonably Necessary to Manage a Property*

As a property manager we must constantly balance the focussed need of a tenant (or tenants) with our overall obligation for the safety and security of the building and all of its tenants. The NPRM, by essentially requiring access by an unlimited number of telecommunications providers, would greatly undermine our ability to maintain reasonable safety and order for the entire tenant community. In order to adequately observe our obligations, we must be able to say "no" to a provider (or providers) when the circumstances reasonably justify such a result. Because the building owners or managers will be liable for safety code violations, we need control over the qualifications and reliability of providers to ensure that unfit, unskilled providers do not place the building at risk. Inability to exercise that control would lead to expanded legal liability for building owners and a further diminishment of property value if a prospective buyer believes that it may be inheriting an unsafe situation.

Government intervention could also be highly undesirable from the perspective of building tenants if it forced the introduction of providers in whom both the building owner/manager and the tenants lack confidence. We have some pointed experience in this area. While recently negotiating the purchase of a multi-tenant property, the Seller insisted that we give exclusive rights to a particular telecommunications provider for at least one year after the closing. In conducting due diligence interviews, we quickly learned that most tenants were disenchanted with this provider and its high pressure sales tactics. According to some tenants, the provider had informed them that they might not receive any telephone service if they didn't sign up with this particular provider. In the end, we purchased this property without using this provider.

The proposed rule would prevent us from barring access to such troublesome providers in the future. Such a result would damage our relationship with our tenants and otherwise lessen the value of the property through tenant defections. Instead of fostering the interests of tenants, forced access would, in many instances, actually trample tenant concerns.

"Nondiscriminatory" access would also preclude a property manager from taking a provider's "track record" into account when considering access issues. The deal with a new or untested entity may take on a much different form than a deal with an established provider that has a strong history of

safe, knowledgeable and efficient operations. A building owner should rightfully be able to require different provisions in an agreement regarding indemnity, insurance, and security deposit when the provider either has no identifiable history or a history fraught with safety problems. The Commission should not tell property owners/managers that they cannot consider those crucial factors when negotiating access arrangements.

***Unlimited Access Could Cause Unnecessary Wear and Tear***

Unprecedented strain placed on building infrastructure by unlimited telecommunications providers would result in additional repair and maintenance costs that must ultimately be absorbed by either building owners or tenants. Excessive load and weight, in the form of antennas and other telecommunications equipment, would increase the frequency of building repairs and lessen the useful life of a building's roof. The numerous roof penetrations and constant foot traffic that would accompany forced access also would contribute dramatically to the shortening of a roof's "life span." Moreover, making simple roof repairs or repairs to rooftop HVAC would become a nightmare if service providers must work around an excessive clutter of dishes/antennas. Finally, the roof replacement that will likely be precipitated by forced access would be relatively more costly and time-consuming because of antenna and equipment relocation issues. Tenants would hardly be well served by a regulatory scheme that disregards their specific concerns and greatly increases the costs of building maintenance. This is an excessive cost to impose on the real estate industry and tenants in a misguided attempt to manufacture competition among telecommunications providers.

***Regional Variations in Building Structures***

A blanket, "one-size fits all" forced access rule cannot possibly take into account all the regional differences. As a result, the building owner/manager must be the final arbiter of who has access to the building because it will have the greatest level of particular knowledge about local safety and building codes and customs. For instance, we manage numerous properties in the southeastern United States where hurricanes and other forms of severe weather are quite common. If we are forced to allow an excessive number of providers with rooftop access for their equipment, we would likely be exposed to additional liability for personal injury or property damage if the equipment becomes loose or breaks apart. Because we would be constrained from making judgments about which providers are capable (and which are not), we would likely be subject to even greater liability.

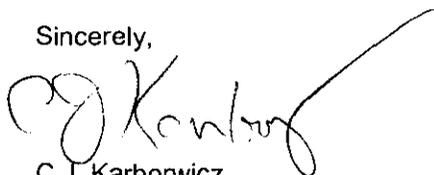
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We might be forced to obtain additional insurance (if even available) to cover for such contingencies, the cost of which must ultimately be borne by either the building owner or tenants.

***Conclusion***

Given the significant concerns raised by the NPRM, including safety concerns and diminution of property value, the market should be allowed to find the appropriate balance without unwarranted government intrusion. Cornerstone strongly urges the Commission to carefully consider the concerns raised herein in evaluating the Notice of Proposed Rulemaking. Thank you for your consideration of our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "C.J. Karborwicz", with a long, sweeping flourish extending upwards and to the right.

C.J. Karborwicz  
Vice President & Regional Counsel

cc: International Transcription Services, Inc.