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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Promotion of Competitive Networks in )  
Local Telecommunications Markets )  
)  
Wireless Communications Association )  
International, Inc. Petition for )  
Rulemaking to Amend Section 1.4000 of )  
the Commission's Rules to Preempt )  
Restrictions on Subscriber Premises )  
Reception or Transmission Antennas )  
Designed To Provide Fixed Wireless )  
Services )  
)  
Cellular Telecommunications Industry )  
Association Petition for Rule Making and )  
Amendment of the Commission's Rules )  
to Preempt State and Local Imposition of )  
Discriminatory And/Or Excessive Taxes )  
and Assessments )  
)  
Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )

WT Docket No. 99-217

CC Docket No. 96-98

COMMENTS OF  
SHARED COMMUNICATIONS SERVICES, INC.

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## SUMMARY

Shared Communications Services, Inc. is the parent company of a group of subsidiaries (collectively, “SCS”) that have provided shared tenant services (“STS”) in office buildings since the mid-1980s. Based on SCS’s experience, the market for building access is highly competitive and functioning well, except that incumbent local exchange carriers (“ILECs”) possess market power that may require corrective action.

If the Commission determines that ILECs are not subject to the same building access fees and constraints as are competitive providers, it would reflect the ILECs’ abuse of market power. The Commission has at least two means for correcting this market defect. First, as a condition to a grant of InterLATA authority, the Commission could require a showing by an incumbent Bell Company LEC that it is neither demanding nor receiving preferred treatment from building owners. Second, assuming it has jurisdiction, the Commission could impose on building owners a nondiscrimination requirement strictly tailored to correct abuses resulting from ILEC market power. As long as all providers are afforded nondiscriminatory access, the market will function effectively to determine the level of fees providers pay for access to any particular building.

Thus, in the absence of ILEC market power, the Commission should not restrict or ban exclusivity arrangements. Such arrangements are common in competitive markets and offer benefits to the consuming public.

Moreover, the Commission should adhere to its current definition of the demarcation point. Following the Commission’s deregulation of inside wiring in the mid-1980s, there has emerged a very competitive market of vendors that install, maintain, and/or manage inside wiring for building owners under a variety of arrangements. Among these various arrangements is a model in which the wire infrastructure within the building

is centrally managed with the manager installing and maintaining the common wiring for all providers. The market is functioning well, and there is no need for the Commission to intrude into this area.

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In the Matter of	)	
Promotion of Competitive Networks in Local Telecommunications Markets	)	WT Docket No. 99-217
Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed To Provide Fixed Wireless Services	)	
Cellular Telecommunications Industry Association Petition for Rule Making and Amendment of the Commission's Rules to Preempt State and Local Imposition of Discriminatory And/Or Excessive Taxes and Assessments	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

**COMMENTS OF  
SHARED COMMUNICATIONS SERVICES, INC.**

Shared Communications Services, Inc. hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

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<sup>1</sup> *Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-141 (rel. July 7, 1999)*(“ NPRM”).

## I. INTRODUCTION

Shared Communications Services, Inc. is the parent holding company of a group of operating subsidiaries that provide shared tenant services (“STS”)<sup>2</sup> in several office buildings in the Philadelphia metropolitan area. (Hereafter Shared Communications Services, Inc. and its operating subsidiaries are collectively referred to as “SCS.”) As relevant here, under agreements with the building owners, SCS owns and operates private branch exchanges (“PBXs”) located in the buildings and offers local exchange, long distance and a variety of other services to tenants that choose to subscribe to the services.<sup>3</sup> SCS, pursuant to the same agreements, also owns and/or manages part or the entire telecommunications infrastructure within those buildings.<sup>4</sup>

Since 1986, SCS has offered local exchange service on an STS basis in competition with incumbent local exchange carriers (“ILECs”). Despite strong opposition

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<sup>2</sup> STS providers emerged in the early 1980s in response to a variety of regulatory, market and technological developments. These developments included the introduction of competition in telecommunications services and equipment markets, advances in PBX technology and interest by building owners in offering telecommunications packages as an amenity to attract tenants to their buildings. The Commission addressed STS in a rulemaking proceeding initiated in 1986 and concluded in 1988. See *In the Matter of Policies Governing the Provision of Shared Telecommunications Services, Notice of Inquiry*, 102 F.C.C. 2<sup>nd</sup> 1421(1986)(“STS NOI”); and *Report and Order*, 3 FCC Rcd 6931 (1988) (“STS Order”) (declining to preempt regulations in certain states restricting the resale of local exchange services).

<sup>3</sup> Tenants that subscribe to SCS’s STS service lease telephone sets that are connected to SCS’s PBX in the building. SCS’s PBX is connected to the serving LEC’s central office by local PBX trunks. Subscribers’ calls are carried over those trunks on a shared basis. For example, if there were 100 subscriber telephone sets connected to the PBX, SCS may require only 20 trunks between the PBX and the serving LEC central office to handle satisfactorily calls from and to those 100 sets. Absent SCS’s PBX, each of those 100 telephone sets might have needed a dedicated business line. In large part, it was the efficiencies gained from the innovative use of shared trunking that made STS a viable business

<sup>4</sup> STS providers may provide a wide variety of services in a building, including data processing functions, provision of teleconference rooms, etc.

from the ILECs<sup>5</sup> at the state and federal level<sup>6</sup> and without the benefit of the pro-competitive provisions of the Telecommunications Act of 1996 (“TA 96), SCS and other STS providers established innovative telecommunications offerings for tenants of office buildings throughout the nation. In a 1986 opinion relating in part to STS and the scope of the decree in the Modified Final Judgment, Judge Harold E. Greene noted the following about the benefits of STS:

The shared tenant services market has developed substantially over the past few years [footnote omitted] for such services present several advantages to both developers and tenants. [footnote 32]

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n32 Among the benefits to tenants are the cost savings associated with the aggregated demand which, depending on the pricing policies of the services, may permit these tenants to acquire customer premise equipment, exchange services, and interexchange services at lower, volume-based prices. Tenants may also have a broader range of products and services than would be true otherwise.

*U.S. v. Western Electric Co.* 627 F. Supp. 1090, 1098, n. 32 (1986).

A wide variety of STS arrangements have evolved as the market developed. In some buildings, STS providers have exclusive arrangements for the provision of STS, while in other buildings such arrangements are non-exclusive. STS providers sometimes pay market rent to lease switchroom and administrative office space, while in other cases, the building owner provides such space rent free. Generally, STS providers are not affiliated with the building owner, but there are instances of owners that have provided STS in their

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<sup>5</sup> SCS has been involved in litigation with Bell Atlantic – Pennsylvania since 1990. In 1995, a Pennsylvania jury found that Bell Atlantic – Pennsylvania had conspired with Bell Atlantic Corporation to drive CSC out of business and supplant SCS with its own services and awarded SCS compensatory and punitive damages for \$3,000,000. *Shared Communications Services of 1800-80 JFK Blvd., Inc. v. Bell Atlantic Properties, et al.*, Court of Common Pleas, Philadelphia Co., Sept. 1990 Term, File No. 250. The award was affirmed all the way up to the Supreme Court of the State of Pennsylvania.

<sup>6</sup> See, e.g., STS Order, ¶¶ 16-20.

own buildings. Ownership, management and maintenance of building wiring, sometimes including conduit, vary from building to building, depending on arrangements that the parties negotiate. In sum, there is no “model” STS arrangement, but a mix of arrangements that reflect the demands of the marketplace.

Given its years of experience in working with building owners in a variety of arrangements to offer their tenants telecommunications alternatives, SCS has a unique perspective on the market for building access and the issues raised by the NPRM. In these comments, SCS’s focus is on what policy approach the Commission should take -- assuming it has jurisdiction -- on the issues of nondiscriminatory access and inside wiring.

## **II. THE COMMISSION’S INTRUSION INTO THE AREA OF BUILDING ACCESS SHOULD BE HELD TO THE MINIMUM.**

With one exception, SCS believes the market for building access is highly competitive, and is functioning well. The one exception that may justify Commission action relates to the market power incumbent LECs possess that could frustrate the functioning of the building access market.

### **A. The anecdotal evidence cited in the NPRM regarding demands for excessive fees for building access does not warrant a finding of market failure.**

In explaining why it initiated the NPRM, the Commission points to anecdotal examples provided by WinStar, Teligent and other competitive local exchange carriers (“CLECs”) of building owners assessing fees that CLECs consider unreasonable. NPRM, ¶ 31. The Commission acknowledges that in many instances CLECs have been able to negotiate building access arrangements, but then notes that “long term tenant leases and

high relocation costs may prevent the market from effectively conveying tenants' preferences to building owners." *Id.* SCS offers the following comments on these issues.

**1. CLECs are successfully gaining access to buildings.**

Notwithstanding their complaints, CLECs such as WinStar and Teligent appear successful in obtaining access to large numbers of buildings. WinStar, as of May 1999, had access rights to 4,800 buildings nationwide. *Id.* Teligent, according to an August 11, 1999 press release attached as an exhibit to its FORM 10-Q filed August 13, 1999 with the U.S. Securities and Exchange Commission, has raised its 1999 target for customer buildings to 6,000. The August 11, 1999 press release quotes Teligent's Chairman and Chief Executive Officer Alex Mandl as follows:

At the end of the second quarter, we had signed leases or options for 4,252 customer buildings. That's up 37 percent from the total at the end of our first quarter. Because of that excellent performance, we've raised our target for the number of buildings we expect to have under lease or option by the end of the year to 6,000.

Given this "excellent performance," the market appears to be functioning effectively. The market also displays flexibility in structuring alliances. In addition to obtaining building access through negotiations, CLECs have gained access by acquiring providers with existing access. As Intermedia Communications Inc. explained its 1998 acquisition of an STS provider, "[b]y acquiring Shared Technologies, the nation's leading provider of shared tenant telecommunications services, we immediately expand our addressable customer base through their franchises in over 450 Class A office buildings nationwide."<sup>7</sup> Similarly, NextLink Communications LLC acquired Start Technologies Corporation, an STS

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<sup>7</sup> Intermedia Communications press release, March 10, 1998.

provider primarily serving buildings in the Southwestern U.S.<sup>8</sup> In other cases, STS providers form partnering or other joint ventures. In sum, all the creative forces of the competitive market are making themselves felt in the building access arena.

**2. The market will discipline building owners who seek “excessive” fees.**

Real estate markets tend to be highly competitive and the discipline associated with such markets will prevent participants without market power from engaging in abusive behavior. Only when a participant possesses market power can that participant ignore actions and/or reactions that its competitors would have in a competitive market. Participants in a competitive market who do not possess market power risk the loss of business if they behave as if they did possess market power and, therefore, rational economic behavior will prevent them from doing so.<sup>9</sup>

There may be isolated cases of building owners that seek to extract excessive fees from CLECs or otherwise exclude CLECs that tenants desire, but that is no basis for intervening in a market that is functioning well overall. Moreover, if a CLEC cannot serve tenants in a building at what it considers its minimum profit margin because of the fees demanded by the building owner, the CLEC will choose not to serve that building.

Building owners who exclude CLECs through demands for excessive fees risk alienating tenants that want access to alternate providers, a risk prudent building owners generally would not be inclined to take, even with tenants that have long terms remaining

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<sup>8</sup> See NextLink’s Form S-1/A filed September 23, 1997 with the U.S. Securities and Exchange Commission, p. 26.

<sup>9</sup> For example, in the context of the real estate market, if a building owner chose to ignore the market and sought to charge rents of \$40 per square foot when the market was only \$20 per square foot, common sense tells us that his building would be unattractive to potential tenants because he does not possess the market power to restrict the alternatives available to potential tenants and extract supra-market rents.

on their leases. In this regard, SCS notes that the anecdotal evidence offered by the CLECs is notably skimpy on examples of CLECs being denied access to buildings where a tenant had specifically requested service from a particular CLEC.

The Commission's concern (NPRM, ¶ 31) that "long-term leases and high relocation costs" may have a "lock-in" effect that prevents the market from functioning effectively is misplaced. The Commission's concern regarding the purported "lock-in" effect appears based upon the assumption that once a tenant signs a lease, its mobility has come to an end pending the term of its lease. There is simply no evidence that this is true. This argument ignores, among other phenomena, the effect of the cyclical nature of real estate in urban areas.

For example, consider what happens in an over-built commercial market during a downturn. In such markets it is a common tactic for landlords with recently constructed buildings to offer to "buy-out" a potential tenant's existing lease in order to secure a prime, large space tenancy. Even absent such "buy-outs," the difference in rental levels is often enough to justify a tenant moving, assigning its existing space to a sub-tenant, and making up the difference with a portion of its savings.

In a "hot" market, similar processes take place. For some firms their current leaseholds become their primary assets, subject to "sale" to either a sub-lessee or even the landlord who can re-let the space at a higher rent. In fact, most services that report on the availability of commercial space in major urban markets specifically report on available sub-leases as a portion of the space available analysis.

Additionally, the Commission's view of the "lock-in" effect ignores the fact that an existing tenant has leverage by reason of the competition for the tenant's expanding need for growth space. For example, in one of the buildings where SCS offers its services,

the landlord has repeatedly had to negotiate with tenants renting small spaces in order to move them to accommodate larger tenants that required adjacent expansion space.

The simple fact is that a long-term lease is not, contrary to what some commenters might have the Commission believe, “forever.” Rather, a lease is a marriage of convenience, and often leases end prior to the term indicated for any number of reasons. The real estate market is not static, but rather is a fluid market that ebbs and flows with the needs of the parties.

Moreover, even assuming for purposes of argument that there were tenants with long term leases who were “locked-in,” owners still must be sensitive to the desires of prospective tenants and tenants whose leases may be about to expire.<sup>10</sup> Only where the owner’s building is fully leased, with no leases expiring in the near future, might the owner tend not to be influenced by the need to allow access to new telecommunications providers as a method of retaining existing tenants and attracting new ones. In the more likely scenario where the building owner currently has or anticipates soon having vacant space to lease, the owner will have an incentive to allow new telecommunications providers access to the building as a means to help retain tenants whose leases are about to expire or attract new tenants.

Indeed, SCS’s perception is that building owners are highly attuned to their tenants’ growing needs for a wide variety of telecommunication services. For example, building owners are retrofitting their buildings for high-speed Internet access, showing that

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<sup>10</sup> The telecommunications options available in a building are only one of many variables a prospective or renewing tenant considers in deciding whether to sign or renew a lease in that building. However, given tenants’ increasing reliance today on telecommunications, both in residential and business settings, those options presumably have increasing weight in the tenant’s choice of space to lease.

competition can drive owners with existing tenant bases to upgrade telecommunications capacity.

- B. To the extent building owners impose fees on CLECs but not ILECs, it reflects an exercise of market power by ILECs that would warrant Commission action.**

In the NPRM, the Commission recites an allegation by WinStar that building owners are assessing CLECs fees that are not imposed on ILECs. NPRM ¶ 31. If such allegations are substantiated and found to be widespread, the Commission should take corrective action to avoid this market distortion.

The competitive market will fail and have no disciplinary power if a participant suffers no economic consequences when behaving in a manner inconsistent with a competitive market. Because it is necessary for a provider of the service to have market power in order for market failure to occur, it is important to examine the market and its participants, seeking to identify where market power exists, or if it exists at all.

If a CLEC is required to pay fees to access a building that the ILEC accesses free of charge, the CLEC will be at an unfair cost disadvantage in competing for tenants' telecommunications services business. If such a circumstance exists, presumably it is not because the building owner has failed to seek fees from the ILEC, but because the ILEC has refused to pay the fees. If an ILEC can refuse to pay such fees and remain in the building, it reflects the ILEC's market power and a failure of the market. Moreover, by refusing to pay fees, the ILEC may compound the consequences of the market failure by placing the building owner in the position of seeking higher fees from CLECs than it otherwise would were it collecting fees from the ILEC.

The Commission has at least two alternative means of correcting this market defect. First, as a condition to a grant of interLATA authority, the Commission could require a showing by an incumbent Bell Company LEC that it is not demanding or receiving preferred treatment from building owners. This may be one of the showings required to be imposed on ILECs to demonstrate that sufficient competition exists to meet the requirement of Section 271(d)(3)(C) of the Communications Act of 1934, as amended (the "Act").

Although there would be a significant number of buildings for which a Bell Company in a populous state would have to make such a showing of non-preference, presumably that information would be readily available from the company's marketing department. In addition, CLECs participating in the applicable Section 271 proceeding could provide a check on the Bell Company's own due diligence efforts.

Alternatively, assuming it has jurisdiction, the Commission could impose on building owners a nondiscrimination requirement. Building owners would be prohibited from charging CLECs more than ILECs or otherwise favoring ILECs for building access. If the ILEC refused to pay the building owners' fees, the CLECs serving the building also would be justified in not paying fees.<sup>11</sup> SCS turns now to address such a nondiscrimination requirement in greater detail.

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<sup>11</sup> If the ILEC threatened to withdraw service to the building, it may have to justify its abandonment of service to the state public service commission.

**C. Any nondiscrimination requirement imposed on building owners must be strictly tailored to correct abuses resulting from ILEC market power.**

In the NPRM, the Commission seeks comment on how any nondiscrimination requirement it may adopt should be structured to achieve the Commission's procompetitive objectives. NPRM, ¶ 61. As discussed above, SCS does not believe building owners possess the market power necessary to extract excessive fees from CLECs. Indeed, SCS's experience is that building owners generally want competitive providers in their buildings that offer tenants an alternative to the ILEC. It makes their buildings more attractive to tenants. Moreover, were a building owner to make excessive demands on a CLEC, the CLEC can simply move on to another building.

It is the ILECs that may have the market power to insist on favorable treatment from the building owners. Accordingly, any nondiscrimination requirement the Commission imposes on building owners should be structured to curb abuse by the ILEC, not the building owner.

One issue on which the Commission specifically seeks comment in the context of a nondiscrimination requirement is "whether it is sound policy, and would promote competition, to permit exclusive contracts between property owners and service providers under some circumstances." NPRM, ¶61. SCS addresses this issue below, as well as another issue raised by the nondiscrimination agreement but not specifically addressed by the NPRM – namely, the level of and bases for fees a building owner may charge an incumbent or competitive LEC.

1. **Except for ILECs with market power, exclusive contracts between property owners and service providers should be allowed.**

During the 1980s and early 1990s, STS providers entered agreements with building owners that often conferred on the provider the exclusive right to provide STS in a building. However, SCS is not aware of any STS provider ever obtaining an arrangement that excluded the ILEC from serving the building and its tenants. Thus, at the most, the STS providers have only a "partial" exclusivity, in a limited area of service.

Such partially exclusive arrangements were necessary to ensure that the STS provider could recoup the significant investment the provider had made in the PBX, peripheral equipment (telephone stations, voice mail system, etc.), and, in some cases, building wire and other telecommunications related infrastructure,<sup>12</sup> perhaps including conduit, power supplies, etc. From the building owner's perspective, exclusive agreements provide a significant concession to offer to a vendor to ensure the provider offers an attractive package of telecommunications and related services to its tenants.<sup>13</sup> For example, STS providers establishing operations in office buildings offered small and mid-sized tenants features that until recent years were available only to large users -- detailed billing, voice mail, speed dial, call forwarding, etc.

In the absence of ILEC market power, there should be no ban on exclusive or partially exclusive agreements, and no restrictions on term. Such agreements are simply

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<sup>12</sup> Once the ILECs ceased to wire new buildings, or to rewire existing structures, on a "no-charge" basis, owners either had to absorb the cost of such infrastructure, make it the responsibility of their prospective tenants, or find a third-party (such as an STS provider) willing to absorb such costs. These are all models that have found their place in the market and all represent appropriate market responses under certain circumstances.

<sup>13</sup> See, e.g., Testimony of Jodi Case, Manager of Ancillary Services, AvalonBay Communities, Inc. before the House Subcommittee on Telecommunications, Trade and Consumer Protection, May 13, 1999, p. 5.

one of a variety of responses to market demand. The market will ensure that consumer welfare is maximized. With regard to existing exclusive contracts, such arrangements should not be abrogated unless there is compelling evidence that one of the parties to the arrangements exercised market power at the time the arrangement was established.

**2. If the Commission requires nondiscriminatory access it should allow the market to determine fee levels.**

Although the Commission did not specifically seek comment on fee levels, the issue is implicitly raised in the NPRM where the Commission alludes to allegations that building owners are imposing charges “that are not based on their cost. . . .” NPRM, ¶ 31. SCS believes fee levels should be determined by the market and not by Commission prescribed methodology.

As long as fees are nondiscriminatory, the building owner and the competitive or incumbent LEC seeking access to the building should be free to negotiate whatever fees they desire. A building owner who attempted to extract supra competitive – albeit nondiscriminatory – fees from LECs would face the following response from the market. Either the LEC would refuse to provide service to the building, or would be forced to pass some or all of the supra competitive fees through to tenants in the form of higher prices. Because all LECs in the building must pay the same fees, the tenant’s ability to avoid high prices is limited if it continues to lease space in the building. Thus, the tenant will be faced with higher cost of occupancy if he chooses to occupy the premises owned by such a building owner.

Since, as discussed in Section II. A. above, the building owner must contend with the ability of current and prospective tenants to choose another building where comparable telecommunications services are available at lower prices because the building

owner charges lower access fees. In short, the market will force owners to charge carriers reasonable fees for building access.

### **III. THE COMMISSION SHOULD ADHERE TO ITS ESTABLISHED RULES ON INSIDE WIRING.**

The Commission has invited comment on whether its rules governing the demarcation point between facilities controlled by the LEC and the building owner should be modified or clarified to promote access. NPRM, ¶ 65. The Commission also seeks comment on whether the “person who controls the wire and related facilities for purposes of installation and maintenance must necessarily be the same person who exercises control for competitive access” (NPRM, ¶ 67), and whether its rules should address such matters as space constraints, safety, insurance, liability and other issues (NPRM, ¶ 63).

#### **A. The Commission should continue to adhere to its current definition of the demarcation point.**

In 1997, SCS filed comments in response to the Commission’s Second Further Notice of Proposed Rulemaking on telephone inside wiring in CC Docket No. 88-57.<sup>14</sup> In its comments, SCS pointed out that the Commission had found in its 1997 Telephone Inside Wiring Order that its rules were working “to ensure proper installation of complex wiring, even where that wiring is on the customer’s side of the demarcation point and thus is the responsibility of the customer or the building owner.” SCS urged the Commission

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<sup>14</sup> Review of Sections 68.104 and 68.213 of the Commission’s Rules Concerning the Connection of Simple Inside Wiring and the Telephone Network, *Order on Reconsideration, Second Report and Order, and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11897 (1997). (“1997 Telephone Inside Wiring Order”)

to adhere to its current definition of the demarcation point, noting that to do otherwise “would introduce needless disruption and confusion. . . .” SCS Comments, filed July 11, 1997 in CC Docket No. 88-57. SCS’s views remain the same.

**B. The person who controls building access need not be the same person who controls the wiring infrastructure inside the building.**

The Commission has correctly perceived that there is a difference between restricting competitive access to a building to an exclusive provider and allowing only a single vendor to install and maintain crucial common facilities that are available to multiple providers. The Commission has long recognized that there is a special interest in the integrity of common facilities; direct provider access to such facilities by multiple providers may pose risks of error or even sabotage by one vendor to the facilities of another vendor. The reaction of the market reflects this need for oversight of common building wire facilities.

Since the Commission de-regulated inside wiring, three general models have emerged: (1) building owners allowing tenants to contract directly with providers of dedicated wire facilities with controlled access to conduit, etc.; (2) the building owner installing and/or maintaining wiring within the building; and (3) the building owner contracting with a third party to handle wiring services.

In some of the buildings that SCS currently serves on an STS basis, the building owners have opted for variations of the second and third model and have contracted with SCS to handle the building’s infrastructure for telecommunications wiring. The arrangements vary from building to building, but in certain of the buildings SCS has the exclusive right of access to telephone closets, main and intermediate distribution frames and

riser conduit. SCS installs and maintains all the common wiring for all providers.<sup>15</sup> A CLEC wanting to offer service to a tenant in such a building first obtains permission from the owner to access the building, then coordinates with SCS to connect the CLEC's facilities with the tenant's premises. SCS provides nondiscriminatory access to the building's wiring infrastructure at rates that are equal to or less than the rates charged for comparable service by the incumbent local exchange carrier.

Arrangements such as these serve the public interest. Under no circumstance should the Commission disturb them. They ensure that facilities will be properly administered so that service will be maintained. At the same time, they encourage investment in advanced infrastructure by allowing the recoupment of investment for sufficient capacity and capability to provide service to multiple providers of telecommunication services. The Commission should not intervene and regulate such arrangements.

**C. The market, not Commission rules, should govern matters regarding space constraints, safety questions, insurance and other aspects of inside wiring.**

Following the Commission's deregulation of inside wiring in the mid-1980s, there has emerged a very competitive market of vendors able and willing to install, maintain and manage inside wiring for building owners.<sup>16</sup> The market also has addressed matters of

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<sup>15</sup> Within a tenant's premises, the tenant can use SCS's services or contract with its vendor of choice.

<sup>16</sup> For example, the Bell Atlantic Yellow Pages for the District of Columbia (April 1999 – May 2000), pp. 1284-1295, lists at least 21 vendors that specifically advertise telecommunications cabling services.

safety, liability and insurance and is in the process of addressing the issue of space constraints.

As a general matter, SCS believes it is critical that a building's inside wiring infrastructure be centrally managed, and that access to telephone closets and distribution frames be tightly controlled. Absent such control, the risks of service interruptions for tenants significantly increase.

Building owners are free to choose from a variety of models available in the market for satisfying the inside wiring requirements of their buildings. This variety of arrangements appears to be working successfully to satisfy market demands, and there is no need for the Commission to intrude into this area.

#### IV. CONCLUSION

The market for building access is working well, and there appears to be no need for Commission action with one possible exception. That exception relates to the market power ILECs still wield, and the distortions in the market that result from the favored treatment they may receive or demand from building owners with regard to access. Commission action aimed at correcting such market distortion may be warranted, but in doing so the Commission should take care not to disrupt other arrangements, such as those SCS has in place, that were established years ago and that still function well in the market.

Respectfully submitted,

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