BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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
	)	

REPLY COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")[1] hereby submits its Reply Comments in the above captioned proceeding.[2] Specifically, CTIA opposes several

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[1] CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

commenters who assert that the access provisions of Section 224(f) of the Communications Act do not extend to wireless telecommunications carriers. CTIA supports amending Section 1.4000 of the Commission's rules to extend the preemption provisions to antennas used by all wireless services. CTIA maintains that the Commission should extend such protection not only for fixed wireless services but to all wireless telecommunications, including mobile wireless services.

Several utility companies ("Utilities") maintain – yet again – that the non-discriminatory access provisions of Section 224 do not extend to wireless telecommunications carriers.[3] The Electric Utilities rationalize, albeit erroneously, that Congress intended to limit such access to wire communications.[4] Several utilities contend that Commission action is premature because

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[2] 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. *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) ("*Notice*").

[3] Comments of American Electric Power Service Corporation, Commonwealth Edison Company, Duke Energy Corporation and Southern Company ("Electric Utilities Comments") at 21-23; Comments of the Electric Utilities Coalition ("EUC Comments") at 6-7; Comments of Florida Power & Light Company ("FPLC Comments") at 4, 7 n.11, and 9; Joint Comments of the United Telecom Council and Edison Electric Institute (UTC/EEI Comments) at 8 (suggesting that the Commission rely on and enhance the ability of consumers to access wireless services by alternative technologies such as DSL and cable.). See also Comments of Minnesota Power, Inc. at 2 (supporting the adoption of UTC/EEI's position); Comments of Kansas City Power & Light Company at 2-3 (suggesting that general access to utility property is not contemplated under Section 224 and the Commission's implementing regulations).

[4] See Electric Utilities Comments, Exhibit B, 30-32 (Reply Brief of Petitioners American Electric Power Service Corporation, Commonwealth Edison Company, Duke Energy Corporation

petitions for reconsideration related to this issue are pending in three separate dockets[5] and other aspects of the Commission's rules are under review by the U.S. Court of Appeals for the Eleventh Circuit.[6] They advocate that the Commission wait, rather than proceed to address Section 224 issues in this proceeding.

Both the Commission and the Courts have consistently rejected arguments challenging the constitutionality of Section 224, including whether Section 244 extends to wireless services and antennas.[7] The Commission and Courts have consistently concluded that the Telecommunications Act of 1996 expanded the access requirements of Section 224 to all telecommunications carriers, without any restrictions to the technology used by the carriers.[8]

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and Union Electric Company, Gulf Power Co. v. Federal Communications Comm'n, Case No. 98-6222, (11th Cir. filed Jan. 28, 1999).

[5] UTC/EEI Comments at 9; Electric Utilities Comments at 5-7; EUC Comments at 2 (noting that petitions for reconsideration are pending in the following proceedings: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd. 15499 (1996) ("Local Competition Order"); In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151, *Report and Order*, 13 FCC Rcd. 6777 (1998) ("Pole Attachment Order") and In the Matter of Telecommunications Services Inside Wiring Customer Premises Equipment, CS Docket No. 95-184, *Report and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd. 3659 (1997).

[6] Gulf Power Co. v. Federal Communications Comm'n, Case No. 98-6222.

[7] See Local Competition Report, 11 FCC Rcd at 16058 n. 2730 (citing 47 U.S.C. §§ 224(f)(1) and 153(44) the definition of "telecommunications carrier" as controlling authority; Pole Attachment Order , 13 FCC Rcd. At 6798-99, ¶¶ 39-42. See also Gulf Power Co. v. United States, 998 F. Supp. 1386 (1998), *aff'd* 1999 U.S. App. Lexis 21574 (11th Cir. 1999)(concluding that though the access provision of Section 224(f) effects a taking of a utility's property, Section 224 is not facially unconstitutional under the Fifth Amendment, because it provides a constitutionally adequate process to ensure that a utility does not suffer a taking without just compensation.);

[8] Id.

Ignoring the string of unambiguous decisions on this issue, the Utilities repeat the same arguments in this proceeding in yet another attempt to deny wireless carriers the benefits and protection of Section 224. CTIA opposes such efforts, and the Commission should regard them for what they really are -- a red herring that serves only to undermine and delay the Commission's efforts to help ensure a competitive local telecommunications market. Accordingly, CTIA strongly urges the Commission to reaffirm in this proceeding its decision to afford wireless carriers the benefits and protection of Section 224. Furthermore, the Commission should use this proceeding to consolidate the relevant petitions in the other three dockets. Such action would streamline the administrative process and ensure consistent regulatory treatment with respect to non-discriminatory and reasonable access to multi-tenant environments.

CTIA, along with several commenters, advocate a pro-competitive regulatory policy that provides all competitive telecommunications carriers with reasonable and non-discriminatory access to needed facilities in multi-tenant environments.[9] As Teligent correctly observes in its comments, all segments of the telecommunications industry support nondiscriminatory access to consumers in multi-tenant environments.[10] While the various segments of the telecommunications industry may differ on the appropriate method or level of regulatory oversight for achieving such

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[9] CTIA Comments at 2; Teligent Comments at 16; Comments of the Association for Local Telecommunication Services ("ALTS") at 60-61; Comments of Sprint Corporation at 9-10 (recommending the adoption of national rules that allow access to MTEs and ROW and facilities within MTEs in a technology-agnostic, flexible and nondiscriminatory manner); Comments of Bell Atlantic at 2; Comments of GTE at 11 (advocating a "simple and straightforward approach" by modifying the Commission's existing wiring rules and applying them to all telecommunications carriers equally); Comments of Central Texas Communications, Inc. at 6; Comments of South Central Wireless, Inc. at 5.

[10] Teligent Comments at 19.

access, the determining factor should be whether consumers in multi-tenant environments are effectively denied access to the telecommunications carrier of their choice. CTIA urges the Commission to take appropriate action to ensure that consumers located in a multi-tenant environment are not denied the benefits of facilities-based competition, particularly the innovative and advanced services offered by wireless carriers as an alternative to traditional wireline service.

Several fixed wireless service providers seek modification of Section 1.4000 of the Commission's rules.[11] Section 1.400 governs the preemption of any restriction, including local and state laws, covenants and homeowner associations rules, that impair a viewer's ability to receive television broadcast signals, direct broadcast satellite services or Multichannel Multipoint Distribution Services, including instructional television fixed services and local multipoint distribution services.[12] Specifically, they ask the Commission to extend the benefits and protections of Section 1.4000 to antennas used to receive fixed wireless services. These commenters also contend that the Commission has sufficient authority to extend the scope of Section 1.4000 to include fixed wireless antennas.[13]

While CTIA supports extending the Commission's antenna preemption protection rule to all wireless services, CMRS and non-CMRS fixed wireless service providers must be treated similarly with respect to any Commission action that provides reasonable and non-discriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. The

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[11] Comments of Winstar Communications, Inc. at 73-75, Comments of the Wireless Communications Association International, Inc. at 7-14, Comments of the Fixed Wireless Communications Coalition at 14-15.

[12] 47 CFR § 1.4000 (1998).

Commission must ensure that whatever regulatory relief it proscribes to address access barriers, including modifying Section 1.4000 of its rules, such modifications must afford comparable relief to both CMRS and non-CMRS wireless service providers. Accordingly, CTIA supports an amendment to Section 1.4000 provided that the benefits and protections of Section 1.4000 are extended to both CMRS and non-CMRS wireless carriers.

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[13] Comments of Winstar Communications, Inc. at 73-75, Comments of the Wireless Communications Association International, Inc. at 7-14, Comments of the Fixed Wireless Communications Coalition at 14-15.

Conclusion

For the foregoing reasons, CTIA respectfully requests that the Commission: 1) reaffirm in this proceeding that Section 224 of the Communications Act extends to wireless carriers; 2) take appropriate action to ensure that consumers in a multi-tenant environment are not denied access to the telecommunications carrier of their choice; and 3) modify Section 1.4000 of its rules by extending the Commission's antenna preemption protection rule to both CMRS and non-CMRS wireless carriers.

Respectfully submitted,

CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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