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Before the

Federal Communications Commission
Washington, D.C.

SEP 27 1999

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 ALLIED RISER COMMUNICATIONS CORPORATION

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Summary

Allied Riser Communications Corporation ("ARC") is a facilities-based provider of broadband data, voice and video communications services to small- and medium-sized businesses in multi-tenant environments ("MTEs").

The FCC should be cautious about imposing new restrictions or obligations on building owners or carriers seeking building access. ARC is concerned that new regulations may impede its ability to obtain use of limited building access facilities, and thus have effects contrary to the FCC's objectives.

There are many types of carriers that seek to use the limited amount of building access facilities. A carrier providing advanced broadband services over fiber-optic in-building networks to all tenants in a building, such as ARC, is substantially different from a carrier that may offer a different set of services only to a few tenants over copper-based or radio facilities.

Regulations will not be able to sort the varied characteristics and capabilities of carriers, compare them to tenant requirements for each building, evaluate the space available in each building, and determine how much space to allocate to certain carriers and on what terms. While regulations cannot take all these factors into account, our experience is that market forces do.

In these reply comments, ARC makes three points: (1) the record in this proceeding contains strong support from diverse interests for continuing the

current marketplace conditions for access to MTEs; (2) proponents of mandatory access regulations rely on erroneous arguments regarding marketplace incentives for property owners and managers as well as the ability of regulations to guarantee building access for all providers; and (3) the FCC's findings in other proceedings on the benefits of an unregulated market for Internet access and related services should cause the FCC to refrain from regulating building access for broadband networks.

The marketplace for building access is competitive and diverse. Thousands of property owners and managers are licensing access to telecom providers in the context of the unique physical characteristics and tenants of each building. The market is working toward the FCC's objective of widely available, competitive, advanced networks. Facing the penalties and rewards of the competitive market, property owners and managers play an important role in licensing building access to achieve this objective because of the limited building access facilities and cherry-picking desires of many carriers. As new technologies are introduced and tenants demand access to these technologies, building owners are in the best position to respond to these demands on a building-specific basis.

Any regulations which would restrict this market process would be less effective in allocating limited building access facilities and undermine achievement of the FCC's objectives.

Introduction

Allied Riser Communications Corporation ("ARC"), a facilities-based provider of broadband data, voice and video communications services to small- and medium-sized businesses in multi-tenant environments ("MTEs"),[1] submits these reply comments in response to the above-captioned notices of proposed rulemaking ("Notice").

Our comments in this proceeding stated that we are rapidly deploying in MTEs the facilities-based, competitive broadband services sought by the FCC under current market conditions. The FCC should be cautious about imposing new restrictions or obligations on building owners or carriers seeking building access. ARC is concerned that new regulations may impede its ability to obtain use of limited building access facilities, and thus have effects contrary to the FCC's objectives.

As evidenced by the comments filed in this proceeding, there are many types of carriers that seek to use the limited amount of building access facilities. A carrier providing advanced broadband services over fiber-optic in-building

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[1] ARC owns and operates in-building fiber-optic networks inside 61 office buildings with more than 33.6 million rentable square feet in 16 major metropolitan areas in the United States. In addition, we have agreements with building owners to install and operate fiber-optic networks in more than 1000 office buildings with more than 325 million rentable square feet.

networks to all tenants in a building, such as ARC, is substantially different from a carrier that may offer a different set of services only to a few tenants over copper-based or radio facilities. Regulations will not be able to sort the varied characteristics and capabilities of carriers, compare them to tenant requirements for each building, evaluate the space available in each building and determine how much space to allocate to certain carriers and on what terms.

Our "building-centric" approach makes efficient use for all tenants of the physically-constrained resources of building entrances, equipment space and risers. While regulations cannot take all these factors into account, our experience is that market forces do. Under current unregulated market conditions, we expect to expand rapidly under agreements we have negotiated or are negotiating with property managers.

In these reply comments, ARC makes three points: (1) the record in this proceeding contains strong support from diverse interests for continuing the current marketplace conditions for access to MTEs; (2) proponents of mandatory access regulations rely on erroneous arguments regarding marketplace incentives for property owners and managers as well as the ability of regulations to guarantee building access for all providers; and (3) the FCC's findings in other proceedings on the benefits of an unregulated market for Internet access and related services should cause the FCC to refrain from regulating building access for broadband networks.

1. Broad Record Support for Continuing Current Marketplace Conditions.

ARC's extensive experience in acquiring access rights from landlords for the use of building entrances, equipment space and risers to provide its communications services demonstrates that (a) building access is available to new providers and is occurring in the competitive marketplace, and (b) new regulations could be detrimental to effective use of building access for telecom services. Put differently, building owners are currently seeking to license access to telecom providers that will maximize the attractiveness of their properties by efficiently using limited building access facilities for providing services their tenants demand. Mandatory access regulations will cause these scarce resources to be exhausted on carriers based on regulatory prowess rather than the characteristics that are important to tenants.

The record in this proceeding shows broad support for these points from diverse interests.

A wide range of property owners and managers[2] presented strong evidence that the current marketplace, and especially the decision-making role of property owners and managers, promotes the widespread availability of competitive,

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[2] See Building Owners and Managers Association International, et al. ("Real Access Alliance"); Cornerstone Properties, et al. ("Joint Comments"); Equity Office Properties Trust; Apex Site Management; Arden Realty; and dozens of smaller property owners and managers.

advanced telecom offerings. Property owners and managers state that they seek to have competitive, advanced telecom services available to their tenants in order to meet tenants' needs and increase the attractiveness and value of their buildings. They assert that they have granted building access in reasonable time frames in response to most requests from telecom providers. Moreover, they explain that they are actively pursuing access agreements with telecom providers that will efficiently use their physically-constrained building access resources to the greatest benefit of their tenants.

In particular, property owners and managers express their disappointment that many telecom providers seeking building access do not effectively use building access resources to meet tenants' needs.[3] Many license agreements are granted to telecom providers that lock up the facilities but fail to build networks for long periods of time. Many carriers intend to use scarce building access resources to cherry-pick some tenants but fail to serve most tenants. Furthermore, many carriers intend to serve only tenants in one or a few buildings out of an owner's or manager's varied portfolio of MTEs, making it harder for an owner or manager to attract new carriers to serve tenants in its other buildings.

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[3] See Joint Comments at 15-16; Apex Site Management at 5; Equity Office Properties Trust at 2-5.

In managing the unique mix of facilities and tenants in each MTE, property owners and managers state that they are negotiating with telecom providers to achieve precisely what the FCC is seeking – improved penetration of competitive, advanced telecom services to all tenants of all MTEs.[4] ARC's experience in dealing with property owners and managers confirms this.

Numerous other commenters also provide record support that the current unregulated market conditions are working to achieve the FCC's objective. Incumbent local exchange carriers (United States Telephone Association, Bell Companies and others) point to the CLECs' access to MTEs under current market conditions, and the likelihood that mandatory access would not advance the FCC's objectives. Cable television companies and other video providers (Independent Cable Telecommunications Association; OpTel) point to some of the practicable difficulties of mandatory access for numerous providers in terms of customer disruption, service outages, property damage, safety and health risks, etc. Other opponents to mandatory access include local governments (National Association of Counties, et al.), electric utilities and shared tenant service providers.

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[4] See Real Access Alliance at 13-24.

2. Proponents of Mandatory Access Regulations Rely on Erroneous Arguments.

The record demonstrates two errors undermining arguments for mandatory access regulations.

Error 1: Allegation that property owners and managers have economic incentives to deny access to competitive providers or to coerce them into paying unreasonably high fees, which must be remedied through FCC regulations.[5]

The record demonstrates the competitive marketplace already gives property owners and managers incentives to act according to the FCC's objectives for MTE access.[6] Property owners and managers are granting building access on competitive terms and are responding to tenants' demands for competitive, advanced telecom services. The growth of ARC (which has obtained access to over 1000 buildings containing more than 325 million square feet) and other competitive providers (landline as well as wireless) demonstrates that the market is working.[7]

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[5] See Competitive Telecommunications Association ("CompTel") at 4-5; Association for Local Telecommunications Services ("ALTS") at 6-18; WinStar at 16-18; Teligent at 9-10; AT&T at 6-8.

[6] See Real Access Alliance at 8-9 ("Ancillary revenue from telecommunications providers is not substantial enough for building owners to put tenant rent revenues at risk."); Joint Comments at 9; Shared Communications Services at 6-9.

[7] See Teligent at 9 ("Teligent expects to have general access to over 6,000 MTEs by year's end and will have done so entirely pursuant to voluntary

(continued...)

Landlords who exclude telecom providers desired by tenants decrease the attractiveness of their buildings to tenants and suffer from lower property values. The commercial office building market is highly unconcentrated and competitive.[8] In fact, that market is clearly less concentrated than the local exchange market, the long distance market, and the cable television market.

Property owners and managers explain that any perception of an anticompetitive bottleneck is based largely on a combination of physical constraints on building access facilities, ordinary business issues that arise in lease negotiations, and issues about making advanced networks widely available to tenants.[9] Mandatory access regulations are unnecessary to promote the FCC's objectives.

Error 2: Allegation that mandatory access regulations will make building access readily available to all requesting carriers.[10]

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7 (...continued)
negotiations."); WinStar at 3 ("WinStar is proud to be the single most successful entity in obtaining building access rights, having obtained 5,500 buildings to date, 700 in the last quarter."); AT&T at 8 (AT&T has deployed its own loop facilities in 123 commercial buildings in Los Angeles). These are not, as ALTS (p. 4) claims, "isolated examples wherein the marketplace has resulted in MTE access agreements that afford tenants the ability to take advantage of competitive telecommunications options" (emphasis added).

8 See Real Access Alliance at 5-9.

9 See Real Access Alliance at 29-31; Apex Site Management at 4.

10 See WinStar at 10 (FCC must guarantee competitive telecom providers
(continued...)

Even if the FCC had the authority to impose such regulations on building owners and concluded that such regulations would serve the public interest (ARC believes the FCC lacks such authority and cannot so find), such regulations cannot overcome the physical constraints of limited building access facilities. The record demonstrates that numerous telecom providers operating under mandatory access regulations will rapidly exhaust the capabilities of building entrances, equipment space and risers.[11]

Regulations cannot guarantee access for all telecom providers. Consequently, there will still be excluded telecom providers -- including new providers of innovative advanced services -- complaining that they cannot serve tenants in certain MTEs. There will be other telecom providers complaining about their inability to expand their networks, or about the interference to their operations from the numerous telecom providers packed into limited space. Many tenants will complain that the telecom providers in their buildings fail to satisfy their needs, and that other telecom providers that would be right for them are excluded.

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[10] (...continued)
nondiscriminatory and reasonable access to customers in MTEs); Teligent at 16; CompTel at 5.

[11] See Joint Comments at 17-25; Real Access Alliance at 66-68.

Given the limitations on building access facilities, it would be impossible to implement regulations effectively distinguishing which providers to allow in and on what terms. The building-by-building, provider-by-provider analysis being performed by property owners and managers, together with the rewards and punishments of the competitive marketplace, is making these selections. As new technologies are introduced and tenants demand access to these technologies, building owners are in the best position to respond to these demands on a building-specific basis. Mandatory access regulations are likely to do worse than the competitive marketplace in allocating these scarce resources, and may lead to exclusion more often of efficient users of building access facilities which would serve all tenants (such as ARC).

In summary, the marketplace for building access is competitive and diverse. Thouands of property owners and managers are licensing access to telecom providers in the context of the unique physical characteristics and tenants of each building. The market is working toward the FCC's objective of widely available, competitive, advanced networks. Facing the penalties and rewards of the competitive market, property owners and managers play an important role in licensing building access to achieve this objective because of the limited building access facilities and cherry-picking desires of many carriers. Any regulations which would

restrict this market process would be less effective in allocating limited building access facilities and undermine achievement of the FCC's objective.

3. The FCC's Commitment to Refraining from Regulating the Internet Requires Restraint in Building Access Regulations.

Much of the demand for building access rights by ARC as well as by many other carriers is for deploying broadband capabilities, particularly Internet access.[12] The FCC has repeatedly found that regulation of such services is unnecessary and likely to be detrimental. Mandatory building access regulations are similarly unnecessary and likely to be detrimental to the deployment of such services.

The FCC has taken an "unregulation" approach to Internet access, with great benefits to the public.[13] For example, the FCC on September 15, 1999 declined to require ILECs to unbundle the facilities used to provide high-speed Internet access and other data services, reflecting the FCC's desire "to do nothing to

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12 See Notice at para. 26; Teligent at 4-5; WinStar Form 10-K (Dec. 31, 1998) ("The Need for a Broadband Network Solution").

13 See Speech of Chairman Kennard to the National Cable Television Association, June 15, 1999, 1999 FCC LEXIS 2776 at *10 ("[W]e have to get these [broadband] pipes built. But how do we do it? We let the marketplace do it. If we've learned anything about the Internet in government over the last 15 years, it's that it thrived quite nicely without the intervention of government."); Oxman, The FCC and the Unregulation of the Internet (Office of Plans and Policy, July 1999).

discourage the rapid deployment of advanced services."[14] Such policies protect monopoly ILECs from unbundling obligations, and they should certainly protect competitive property owners and managers from mandatory access regulations.

The FCC has recently found that advanced telecom capabilities are reasonably deployed for all Americans and that it should rely as much as possible on free markets.[15] The record in this proceeding confirms that tenants in MTEs are receiving the benefits of competitive, advanced networks under current market conditions.[16]

For any particular proposed regulation, there are always entities that perceive benefits to themselves from granting them new rights or imposing on others new obligations. Often, these self-interests lead to inconsistencies in support for unregulated Internet development.

For example, AT&T has in other proceedings argued against an open access requirement for Internet access through cable television systems' broadband capabilities, and the FCC has supported restraint from such regulatory require-

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14 "FCC Promotes Local Telecommunications Competition; Adopts Rules on Unbundling of Network Elements," FCC News Release 99-238 at 2 (Sept. 15, 1999).

15 See Inquiry Concerning the Deployment of Advanced Telecommunications Capability, 14 FCC Rcd. 2398, at paras. 5, 7 (1999).

16 See Real Access Alliance at 9-13; Joint Comments at 6-9.

ments.[17] In this proceeding, nevertheless, AT&T argues for mandatory access and unbundling requirements imposed on building owners and other carriers based on expansive interpretation of Section 224.[18] Even though AT&T notes that it has successfully negotiated building access for its local loops in a large number of buildings,[19] it would like regulations to (a) eliminate any delays or above-cost charges for building access, but (b) allow AT&T to deny requests on any terms for access to its monopoly cable television facilities.

Although some individual parties take inconsistent, self-serving positions with regard to access regulations, the FCC should not deviate from its conclusions and policies on the Internet and advanced telecommunications capabilities. As with other Internet-related areas, new regulations in the area of building access are unnecessary and likely to be detrimental.

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17 See Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from TCI to AT&T, 14 FCC Rcd. 3160, at paras. 74, 90 (1999) (citing statements from the financial community that "equal access would harm the deployment of advanced telecommunications infrastructure"); Brief of the FCC as *amicus curiae* in AT&T Corp. v. City of Portland at 18, U.S. Court of Appeals for the Ninth Circuit, No. 99-35609 (filed Aug. 16, 1999) ("the Commission has cautioned against regulatory actions that could skew the development of broadband capability or delay broadband deployment").

18 See AT&T at 9-23.

19 See AT&T at 8.

ARC and many other carriers pursuing building access are seeking to meet the growing demand for high-speed Internet access and other broadband services. The tenants of MTEs are attractive customers for these services, and building owners responding to the unregulated marketplace will see that carriers obtain building access to provide these services to MTE tenants. However, with limited building access facilities, not all telecom providers can gain access to all tenants. Instead of mandatory access regulations, the FCC should allow the unregulated marketplace to address this aspect of Internet services. As in other aspects of the Internet, FCC regulations could slow the growth and availability as well as impair the quality of these services.

Conclusion

Under current market conditions ARC is rapidly deploying the facilities-based, competitive broadband services sought by the FCC. The record demonstrates broad support for continuing to use market forces to govern carrier access to MTEs. Regulations are unnecessary to meet the objectives of the FCC with regard to service providers, tenants or landlords. FCC building access regulations are unlikely to meet their objective in light of the physical constraints on building access facilities as well as the difficulties in assuring that new telecom capabilities reach all tenants.

Respectfully submitted,

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