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Federal Communications Commission
Washington, D.C. 20554

DEC 16 1999

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COMMUNICATIONS SECTION

The Honorable Bob Graham
United States Senator
2252 Killearn Center Boulevard, Third Floor
Tallahassee, FL 32308

Dear Senator Graham:

Thank you for your letter on behalf of BGK Properties, an owner and landlord of commercial properties in the United States. BGK Properties believes that the Federal Communications Commission (Commission) should not adopt rules in WT Docket No. 99-217 and CC Docket No. 96-98 to facilitate reasonable and nondiscriminatory access by competitive telecommunications providers to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. BGK Properties believes that Commission action in this area is unnecessary because building owners are aware of the importance of telecommunications services to tenants and would not jeopardize any rent revenue stream by actions that would displease tenants.

The Commission sought comment on these matters in FCC 99-141, released on July 7, 1999. This item represents another step in the Commission's ongoing efforts to foster competition in local telecommunications markets pursuant to Congress' directive in the Telecommunications Act of 1996. These efforts are intended to bring the benefits of competition, choice, and advanced services to all consumers of telecommunications, including both businesses and residential customers, regardless of where they live or whether they own or rent their premises. In particular, this item addresses issues that bear specifically on the availability of facilities-based telecommunications competition to customers in multiple tenant environments, including, for example, apartment buildings, office buildings, office parks, shopping centers, and manufactured housing communities. The item also explores the effect of State and local rights-of-way and taxation policies on telecommunications competition.

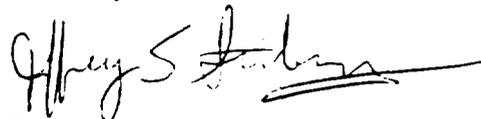
The purpose of this item is to explore broadly what actions the Commission can and should take to promote facilities-based competition to the incumbent local exchange carriers (LECs). Thus, the item seeks comment on a wide range of potential Commission actions, in most instances without reaching tentative conclusions. In addition to proposing and seeking comment on obligations that would apply to incumbent LECs and other utilities under certain provisions of the Communications Act, the item neutrally seeks comment on the legal and policy issues raised by a possible requirement that building owners, who allow any telecommunications carrier access to facilities that they control, make comparable access available to other carriers on a nondiscriminatory basis. The item also requests comment on whether the Commission should forbid telecommunications service providers, under some or all circumstances, from entering into

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exclusive contracts with building owners, and abrogate any existing exclusive contracts between these parties. Furthermore, the item requests comment on whether the Commission should modify its rules governing determination of the demarcation point between facilities controlled by the telephone company and by the landowner on multiple unit premises. In addition, the item requests comment on whether the Commission should extend rules similar to those adopted under section 207 of the 1996 Act to providers of telecommunications service. The item recognizes that section 207 by its terms applies only to video programming services, but asks whether the Commission has authority to adopt similar rules prohibiting restrictions on the placement of antennas used for over-the-air telecommunications service pursuant to other provisions of the Communications Act. These issues are addressed in BGK Properties' comments.

Your letter and your constituent's letter have been placed in the record of this proceeding and will be given every consideration by the Commission. Thank you for your interest in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Steinberg", with a long horizontal flourish extending to the right.

Jeffrey S. Steinberg
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

BOB GRAHAM
FLORIDA

United States Senate
WASHINGTON DC 20510-0903

October 22, 1999

*CATB
Tele Oct 9/96*

6051

Ms. Judith Harris, Director
Federal Communications Commission
Office of Legislative Affairs
1919 M Street Room 808
Washington, D.C. 20554

Dear Ms. Harris:

Enclosed is a letter from Mr. Howard C. Stross.

I would appreciate your reviewing the information that has been presented and providing me with your comments. Please address your reply to my state office:

United States Senator Bob Graham
2252 Killearn Center Boulevard, Third Floor
Tallahassee, Florida 32308
Attention: Marcia K. Rivenbark

Telephone: (850) 907-1100
Facsimile: (850) 894-3222

Your cooperation and assistance are greatly appreciated. I look forward to hearing from you soon.

With kind regards,

Sincerely,



United States Senate

BG/mkr

Enclosure

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Stross Law Firm

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Howard C. Stross*†
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August 20, 1999

The Honorable Robert Graham
United States Senate
524 Hart Senate Office Building
Washington, D.C. 20510

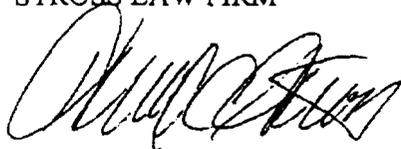
Re: Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98

Dear Senator Graham:

I am sending the attached letter on behalf of BGK Properties, 330 Garfield Street, Santa Fe, New Mexico 87501. BGK Properties is an owner and landlord of over 200 commercial properties in the United States, including large commercial real estate properties located in the State of Florida. BGK is concerned about the FCC's Notice of Proposed Rulemaking released July 7, 1999, regarding forced access to buildings, and asks that you consider my letter as their own.

Very truly yours,

STROSS LAW FIRM



Howard C. Stross

HCS/epg

Enclosure
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THIS already in
the record

Stross Law Firm

A Professional Association ♦ Attorneys and Counselors at Law

Howard C. Stross*†
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August 10, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
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:

This letter is in response to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings. Enclosed are six (6) copies of this letter, in addition to this original. As a landlord, and as an attorney that represents landlords and investors of commercial real estate, I am concerned that any action by the FCC regarding access to private property by large numbers of communications companies may inadvertently and unnecessarily adversely affect the conduct of these business and needlessly raise additional legal issues. The Commission's public notice also raises a number of other issues that concerns me.

Background

I am in the commercial and residential real estate business; and, I represent others that are also in the commercial real estate business. These properties include retail shopping plazas from 50,000 square feet to retail properties in excess of 100,000 square feet; and industrial property in excess of one million square feet. I also represent clients that are property managers for retail, industrial and office buildings that vary in size from 50,000 square feet to more than one million square feet. I am a residential landlord.

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Issues Raised by the FCC's Notice

Categorically, I speak for myself and my clients to say that we do not believe the FCC needs to act in this field because we are doing everything we can to satisfy our tenants' demands for access to telecommunications. In addition, the FCC's request for comments raises the following issues of particular concern to us: "nondiscriminatory" access to private property; expansion of the scope of existing easements; exclusive contracts with specific providers currently in place and some have options to renew; and expansion of the existing satellite dish or "OTARD" rules to include nonvideo services.

1. FCC Action Is Not Necessary.

- We are acutely aware of the importance of telecommunications services to tenants, and would not jeopardize any rent revenue stream by actions that would displease tenants.
- We compete against many other buildings in our markets, and thus there is great incentive to keep all of the properties up-to-date, including an allowance for providers to gain access that is not in contradiction to existing contracts with current providers.
- The market is working and regulation is not needed.

2. "Nondiscriminatory" Access.

- There is no such thing as nondiscriminatory access: There are dozens of providers out there, but limited space in buildings means that only a handful of providers can install facilities in buildings. "Nondiscriminatory" access discriminates in favor of the first few entrants.
- The building owners must have control over space occupied by providers, especially when there are multiple providers involved.
- The building owners must have control over who enters their buildings as they are responsible to tenants for damage in common areas. The owner faces liability for damage to building, leased premises, and facilities of other providers, and for personal injury to tenants and visitors. Owner also liable for safety code violations. The qualifications and reliability of providers are a real issue.
- What does "nondiscriminatory" mean? The terms of agreements with providers do vary because each property or building or its unique location is different. A new company to provide service that is without a record of accomplishment poses a greater risk than an established one. Examples include indemnity, insurance, security deposit, remedies and other terms that may differ.
- Concerns of owners of office, residential, and shopping center properties all differ: one size does not fit all, i.e. no agency should set a single set of rules to apply to all types of buildings in diverse locations.

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- Building owners often have no control over terms of access for Bell companies and other incumbents; they were established in monopoly environment. The only fair solution is to let the competitive market decide and allow owners to renegotiate terms of all contracts. An owner cannot be forced to apply old contracts as the lowest common denominator when the owner had no real choice.
- If carriers can discriminate by choosing which buildings and tenants to serve, building owners should be allowed to do the same.

3. Scope of Easements.

- The FCC cannot expand the scope of access rights held by every incumbent to allow every competitor to use the same easement or right-of-way. Grants in some buildings 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 piggyback, they would have negotiated different terms. Expanding rights now would be a taking due compensation to the Owners.
- In many examples, the terms of easements, rights-of-way or leases, many of which have extended terms far in excess of ten years, with automatic rights of renewal, do grant access to providers; however, these instruments are limited to a specifically named providers.

4. Demarcation Point.

- Current demarcation point rules work fine because they offer flexibility; there is no need to change them.
- Each building is a different case, depending on the owner's business plan, the nature of the particular property, and the nature of the tenants in the building(s). Some building owners are prepared to be responsible for managing wiring and others are not.

5. Exclusive Contracts.

- Many types of telecommunications services are already the subjects of long-term contracts that were negotiated and executed without contemplating the proposed rule change.
- There are benefits of these exclusive contracts to tenants, such as the ability to aggregate demand and negotiate a better deal than they could get on their own. (This is especially true in residential properties.)

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6. Expansion of Satellite Dish Rules.

- We are opposed to the existing rules because we do not believe Congress meant to interfere with owners' ability to manage their respective property.
- The FCC should not expand the rules to include data and other services, because the law only applies to antennas used to receive video programming.

In summary, I urge the FCC to consider carefully any action it may take. Thank you for your attention to our concerns.

Sincerely,

STROSS LAW FIRM



Howard C. Stross