VI. The Constitutionally Required Compensation For Access Is *De Minimis*.

What will nondiscriminatory access cost? If nondiscriminatory access is considered a taking, I suspect the cost of compensation will be very low. The Supreme Court has repeatedly held that "'it is the owner's loss, not the taker's gain, which is the measure of the value of the property taken.'" *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 319 (1987), quoting *United States v. Causby*, 328 U.S. 256, 261 (1946). In valuing the compensation due for the taking of an easement for a telecommunications carrier to install its rooftop antenna and string its coaxial cable, the proper measure is the decrease in the value of the building.

In fact, the value of the building will likely experience a net increase from nondiscriminatory access. Building owners themselves have stated to the FCC that the presence of competitive carriers in their buildings and the ability of their tenants to choose among an array of advanced telecommunications services enhances the value of their buildings. This value enhancement must also be taken into account when determining the appropriate value of compensation. Finally, it must be remembered that it is standard industry practice for telecommunications carriers to bear all costs of facility installation and indemnify the building owner for any damage to the property that may inadvertently occur.

Nevertheless, I do not believe a federal nondiscriminatory access requirement will result in judicial challenges. With limited exceptions, I strongly suspect that the *mere existence* of a nondiscriminatory access requirement with established time frames for negotiation will result in building owners and telecommunications carriers successfully negotiating access agreements with each other. Again, Texas offers an example. A building owner refused to permit Time Warner Telecom access to a building where a tenant had requested Time Warner's service. Time Warner

Telecom filed a complaint with the Texas PUC. Within a week, the landlord against whom the complaint was filed apparently changed its policy to allow telecommunications carrier access. I understand that now the landlord -- after Time Warner Telecom filed its complaint-- has begun negotiating not only with Time Warner Telecom, but with other telecommunications carriers as well. Within a week after filing the complaint, Time Warner Telecom requested abatement of its complaint given the landlord's willingness to negotiate. The Texas PUC never had to consider the matter. But, this example indicates that the mere existence of the Texas statute and the availability of the Texas Public Utilities Commission to enforce that statute are having a positive effect on the problem.

VII. A FEDERAL SOLUTION IS NEEDED.

Only two States have nondiscriminatory access statutes. (As an aside, it is worth noting that neither of these statutes have been challenged in court.) Many of the larger real estate interests hold properties across many different States. If carriers insist on enforcing the statutes in Texas and Connecticut, they risk retribution from building owners in States that lack access statutes by building owners with properties nationwide. A federal nondiscriminatory access solution is not only sorely needed, it is eminently possible. In Florida last year, as part of a larger telecommunications bill, the competitive carrier community, along with BOMA and others in the real estate community, agreed to legislative language ensuring non-discriminatory building access. Although the overall bill ultimately was not passed, building owners and competitive carriers <u>did</u> reach agreement, as a group, on legislative language. Thus, no one should tell you today that a legislative or regulatory solution cannot be reached and agreed to throughout the industry. In fact, the Florida experience is evidence that the interests of competitive carriers and real estate holders are complementary and that a win-win solution to the building access issue can be accomplished.

Indeed, the United States Government encouraged adoption of nondiscriminatory building access requirements in another country. In October 1998, the U.S. Government stated that the Government of Japan should "establish rules that facilitate access to privately owned buildings, particularly multi-dwelling units, to ensure that cable TV and new telecommunications competitors can reach the same customers as the incumbent carrier." Other countries such as Canada and Hong Kong already have requirements that building owners permit telecommunications carrier access to tenants in their buildings. In this regard, the United States is woefully behind in supporting the components of competitive independent network construction necessary for full-blown, dynamic telecommunications competition and the widespread availability of affordable broadband capabilities.

VIII. CONCLUSION

In conclusion, I strongly recommend active support for the FCC's attempts to ensure that commercial and residential tenants can choose their telecommunications carrier, can enjoy the benefits of competition, and can take advantage of the dynamic broadband capabilities that true telecommunications competition can offer. The FCC's proposals and the telecommunications carrier requests are reasonable and should be kept in perspective. Facilities-based competitors are not seeking access to multi-tenant buildings that is not already provided to ILECs. Nor are they seeking access without providing just and reasonable compensation to building owners for access where compensation is appropriate. The facilities-based competitors are willing to assume responsibility for any repairs due to damages caused to a building during installation or operation -- indeed, they already do. The use of fixed wireless technology can be, and is being, safely managed. The presence of competitive telecommunications carriers and the availability of broadband services enhances the value of multi-tenant buildings. Therefore, it is not a disadvantage for building owners to provide nondiscriminatory access to competitors, such as Winstar, and it is a tremendous advantage to Americans. Unreasonable restrictions on access to multi-tenant buildings is costing America too much to allow it to continue.

Attachments

WALL STREET JOURNAL REPORT CONFIRMS THAT BUILDING OWNERS ARE PREVENTING CONSUMERS FROM CHOOSING TELECOMMUNICATIONS CARRIERS

A recent Wall Street Journal article, attached for your review, confirms what telecommunications carriers have been experiencing for some time: some building owners are prohibiting telecommunications carrier access to tenants in their buildings. Last week's Wall Street Journal article reports that "[a]ccording to people familiar with BroadBand Office, six of the seven original REITs involved with BroadBand don't intend to allow into their buildings any direct competitors to BroadBand." The article goes on to report that BroadBand Office enjoys preferred agreements with CarrAmerica, Spieker, Crescent Real Estate Equities Co., Duke-Weeks Realty Corp., Highwoods Properties, Inc. and Mack-Cali Realty Corp.

By way of background, in October, the Wall Street Journal reported that the nation's biggest office landlords were forming BroadBand Office -- a company to provide telecommunications services to their multi-tenant buildings. The October article, also attached for your review, reported that these building owners said they wouldn't "force tenants to use BroadBand Office and will give other telecommunications companies access to their buildings." Telecommunications carriers viewed this claim with skepticism given that building owners already were prohibiting CLEC access to buildings. Their financial interest in offering telecommunications services only increased the incentive for building owners to discriminate against competing telecommunications carriers with respect to access. Last week's Wall Street Journal article indicates that the telecommunications carriers' skepticism was well-founded.

The FCC is considering requirements that would ensure that commercial and residential tenants in multi-tenant buildings would not be held hostage to the building owner's choice of carriers but, rather, could choose their own telecommunications carrier. Similarly, H.R. 3487 would prohibit building owners from denying telecommunications carrier access or imposing unreasonable conditions or rates for access where a tenant had requested that carrier's services. Given the detrimental effect on broadband availability and telecommunications competition caused by discriminatory building owner practices, these measures deserve your support. The planned behavior reported in last week's Wall Street Journal heightens the need for action by the FCC and Congress to ensure that tenants in multi-tenant buildings will not be held hostage to their building owner's telecommunications services and, instead, can enjoy the benefits of telecommunications competition.

REIT INTEREST

By Barbara Martinez

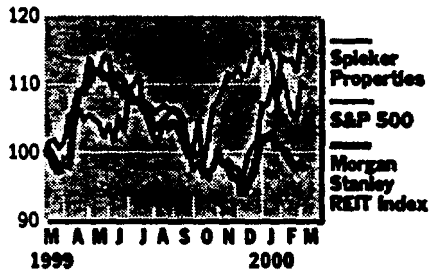
It Adds Up to More Than Just Semantics

BACK IN OCTOBER, seven real-estate investment trusts announced the formation of BroadBand Office Inc. with the backing of venture-capital giant Kleiner Perkins Caufield & Byers. BroadBand Office is touted as a one-stop provider of telephone, high-speed Internet and other high-tech services.

To allay fears that the office REITs were going to limit the number of telecom competitors in their buildings, they all professed their lack of so-called exclusivity pacts with BroadBand. In other words, as Craig Vought, co-chief executive of Spieker Properties Inc., a member of the BroadBand group, put it, "it doesn't preclude any other telecom company in the country from servicing these buildings."

Property Lines

Reindexed to 100 on March 1, 1999



But what really wasn't spelled out is just how much choice the tenants would really get. The little-publicized portion of the announcement was that six of the seven REITs struck "preferred" relationships with BroadBand, meaning they will not only help BroadBand market its services to tenants in their buildings, they could actually discourage certain other companies from wiring up their buildings.

"We're not trying to take sides here," says Philip L. Hawkins, chief operating officer of CarrAmerica Realty Corp., another BroadBand member. "We have national and regional agreements with more than 20 communications companies."

But ask Mr. Hawkins what would happen if Allied Riser Communications Corp., one of the most aggressive and successful telecom companies targeting office buildings to date, asked to wire up CarrAmerica's Washington portfolio, and Mr. Hawkins responds: "We'd say we're not interested at this point."

According to people familiar with BroadBand Office, six of the seven original REITs involved with BroadBand don't intend to allow into their buildings any direct competitors to BroadBand, such as Allied Riser and Onsite Access Inc. Those two companies appear to be the most formidable competitors to BroadBand because they want to go beyond just offering the telecommunications lines inside buildings. Like BroadBand, they want to offer services that can essentially take over a tenant's entire communications needs, from phone service to e-mail.

In addition to CarrAmerica and Spieker, the other REITs that have given BroadBand a preferred agreement are Crescent Real Estate Equities Co., Duke-Weeks Realty Corp., Highwoods Properties Inc. and Mack-Cali Realty Corp.

The REITs that chose the preferred method could risk tenant backlash if BroadBand fails to meet expectations of excellent service. But Gene Zink, executive vice president at Duke-Weeks, says the REITs have "structured a number of performance-related outs if the service is not" up to par.

The office REITs involved weren't as direct about the practice as is CarrAmerica's Mr. Hawkins. Last week, Spieker's Mr. Vought said Allied Riser hasn't tried to wire up Spieker's buildings. "Neither side has pursued a relationship," he said.

But David Crawford, CEO of Allied Riser, says that simply wasn't true. "We've met with representatives of Spieker on numerous occasions in an effort to obtain access to their buildings to no avail," he says.

Reached a second time, Mr. Vought said he had misspoken. "It was an incomplete statement on my part . . . David did come to see us in the spring of last year," he said, but a deal was never reached.

Equity Office Properties Trust is the only member of the REIT group that didn't confer upon BroadBand the preferred status. In fact, Equity Office has either an equity or revenue-sharing interest in Allied Riser, Onsite Access and BroadBand.

The preferential treatment could complicate building owners' defense against complaints by phone companies that they're being denied access. The Federal Communications Commission is considering whether to force landlords to allow all telecom providers equal access.

THE WALL STREET JOURNAL TUESDAY, OCTOBER 5, 1999 B1

WSJ
Oct. 5, 1999

Big Landlords Are Joining Telecom Fray

By SCOTT THURM AND BARBARA MARTINEZ
Staff Reporters of THE WALL STREET JOURNAL

Ma Bell, meet Sam Zell.

Eight of the nation's biggest office landlords, including the biggest, Mr. Zell's Equity Office Properties Trust of Chicago, are making an unusual leap into the crowded telecommunications arena. Joined by venture-capital heavyweight Kleiner Perkins Caufield & Byers, they are expected to announce today that they have formed a new company, Broadband Office, to offer their tenants both local and long-distance phone service as well as high-speed data lines.

The move signals that real-estate owners are tired of just sitting back and collecting the rent. They have amassed giant portfolios of buildings full of captive customers and are now ready to tap into some of the billions of dollars these tenants spend on various products and services.

For instance, Equity Office, which owns more than 285 properties in 23 states, has more than 320,000 people walking in and out of its buildings daily. Broadband Office's owners control 2,000 buildings, representing about 10% of the nation's offices.

The landlords are joining a big crowd in the lucrative telecommunications market, including the Baby Bells, long-distance providers, and upstart companies focused on both telephone and Internet services. Businesses spend about $125 billion annually on telephone service, according to market researcher International Data Corp.

Amid the bewildering array of choices, backers of Broadband Office say they will appeal to tenants on simplicity, convenience and cost. They'll offer a single contact for local phone service, long-distance, and data connections. Broadband Office plans to spend as much as $100 million during the next 12 months to install fiber-optic and other high-speed lines through its owners' buildings. The plan is to undercut prices the Bells typically charge, which can approach $1,000 a month for a single high-speed data line. Broadband says new users will have to wait a matter of days, not weeks, to get its service.

"This is a way of bundling services under one provider that only focuses on business customers," said Craig Vought, co-chief executive of Spieker Properties Inc., of Menlo Park, Calif., one of the new company's owner-members.

Broadband Office will have one clear advantage over outside telecommunications suppliers: When the property owners who also own stakes in Broadband Office sign up new tenants, they will refer them to the new service. The backers

Please Turn to Page B4, Column 4

NOW CONTRADICTED. SEE Mar. 15, 2000 WSJ, p. B12

Office Owners Are Joining Telecom Fray

Continued From Page B1

say they won't force tenants to use Broadband Office and will give other telecommunications companies access to their buildings.

The assurances may help address complaints from upstart phone companies, who say some landlords have sweetheart deals with established telephone companies and drag their feet or deny access altogether to new telephone-service providers. The Federal Communications Commission is considering whether to force landlords to allow all telecom providers access to their buildings.

"We are still leaving with our tenants total flexibility in how they obtain their service," said Staman Ogilvie, executive vice president of Hines, a Houston owner of 80 buildings and another partner in Broadband Office.

Both Hines and Equity Office have stakes in a rival venture, Allied Riser Communications Corp., of Dallas, which filed for an initial public stock offering in August. Indeed, Mr. Ogilvie said Hines is aligned with both Broadband Office and Allied Riser to promote competition. More services at lower prices, the landlords hope, will attract more tenants willing to pay big rents.

Backers say Broadband Office expects to raise $50 million to $100 million in equity to install equipment and wire buildings during the next year. Although Broadband Office officials say they hope to sign up other more equity investors, for now Kleiner Perkins is the only one. The property owners received undisclosed stakes in Broadband Office in exchange for the access and tenant references.

Eventually, the company's backers would like to take the company public. Dan Chu, an associate partner at Kleiner Perkins, will be Broadband Office's director of business development. Kleiner Perkins's other telecommunications investments include America Online Inc., AtHome Network, a unit of of Excite At Home Corp., and Juniper Networks Inc.

Mr. Chu says Broadband Office expects to begin offering service on Nov. 1. The company has recruited executives from MCI WorldCom Inc., BellSouth Corp., and Level 3 Communications Inc. It still is seeking a CEO.

Meanwhile, Allied Riser has raised $117 million from Goldman Sachs & Co. and other investors and hopes to raise $232 million more via its IPO. Another player, OnSite Access, New York, has raised $60 million from venture-capital firms and AT&T Corp.'s AT&T Ventures. Allied Riser and OnSite Access focus mainly on high-speed Internet access.

WSJ, Oct. 5, 1999

SUMMARY OF WRITTEN TESTIMONY OF

JOHN B. HAYES, CHARLES RIVER ASSOCIATES, INC.

BEFORE THE HOUSE SUBCOMMITTEE ON THE CONSTITUTION

MARCH 21, 2000

Absent a nondiscriminatory access requirement as contemplated by the FCC, building owners possess considerable control over the development of telecommunications competition and can impede a central goal of the 1996 Telecommunications Act. They can control the pace of competition by limiting facilities-based service provision to certain favored providers or by slowing the rollout of competitive networks. Building owners also can control the form of competition by denying access and effectively forcing competitors to provide service through resale or unbundled elements.

From an economic perspective, the market power possessed by building owners is most easily understood as the power to raise access prices above the cost of providing access, but it also can be expressed in other ways, such as by restricting the number of carriers that are allowed access to buildings. Some building owners have found it profitable to exercise significant market power.

The building owners' exercise of market power imposes real costs on consumers and it has slowed realization of the goals of the 1996 Telecommunications Act. When telecommunications competition is restricted or costs are increased by artificial barriers to entry--such as those imposed by unreasonable building access restrictions--the price reductions that result from competition are reduced or eliminated.

All telecommunications consumers -- including those not residing in multi-tenant buildings -- are harmed if competitive carrier entry is slowed by restrictive building access policies. Barriers to efficient network utilization — such as eliminating access to a substantial portion of the potential market — will prevent consumers from realizing the full cost savings benefits of these efficiencies. Similarly, as competitive carriers obtain additional customers and deploy more equipment, equipment costs per unit should fall, resulting in lower costs and additional savings for all customers. Excessive prices for access are particularly damaging to competitors because the incumbent local service provider typically is not assessed charges for access to multi-tenant buildings, placing new entrants at a cost disadvantage.

Weighed against the potential benefits of a nondiscriminatory access rule, the costs of such a rule are comparatively small. As the carriers will pay the access fee to the building owner, the Federal government should incur no cost related to the taking. The evidence from Texas and Connecticut (where there are nondiscriminatory building access statutes) suggests that nondiscriminatory access rules have been or are being implemented with minimal disruption and cost.

There is no realistic prospect that tenant moves are a significant constraint on building owners' market power over telecommunications carrier access to buildings. The direct costs and other barriers associated with moving are prohibitively large. Although it is difficult to quantify, one estimate is that the total cost for a tenant to relocate could equal a full year's rent. Assuming that telecommunications expenditures are 20 percent of rent and a CLEC's service can save tenants 30 percent on their telecommunications bills, it would take more than 16 years (ignoring discounting) for the savings on telecommunications services to pay for a move that cost one year's rent.

Congress included number portability requirements in the 1996 Telecommunications Act because it believed that if customers had to change telephone numbers to access competitive carriers, the development of competition would be slowed because changing telephone numbers was too inconvenient and costly for consumers. The cost and inconvenience of moving are substantially larger than the cost and inconvenience of getting a new telephone number.

WRITTEN TESTIMONY OF

JOHN B. HAYES
CHARLES RIVER ASSOCIATES, INC.

BEFORE THE HOUSE SUBCOMMITTEE ON
THE CONSTITUTION

MARCH 21, 2000

Good morning Mr. Chairman and members of the Subcommittee. My name is John Hayes, and I am an economist employed by Charles River Associates where I specialize in economic analyses of antitrust and regulatory issues in the computer and communications industries. I previously worked as an economist with the Antitrust Division of the U.S. Department of Justice. During that time, I also served as an Adjunct Professor of Economics at Georgetown University. A copy of my C.V. and a list of publications are attached. Thank you for the opportunity to discuss, on behalf of the Smart Building Policy Project, the economic issues surrounding the FCC's *Competitive Networks* rulemaking and building access generally.[1]

I. INTRODUCTION

The absence of federal rules governing access to multi-tenant buildings permits building owners to deny facilities-based competitive carriers access to space necessary for the provision of facilities-based telecommunications services. Competitive carriers cannot turn to a substitute for these intra-building facilities in order to provide facilities-based service to customers located in

[1] The members of the growing Smart Building Policy Project currently include the American Electronics Association, the Association for Local Telecommunications Services, AT&T Corp., the Competition Policy Institute, the Information Technology Association of America, the International Communications Association, MCI WorldCom, NEXTLINK Communications, Teligent, Inc., Winstar Communications, Inc., and the Wireless Communications Association.

multi-tenant buildings. Consequently, if competitive carriers are denied access to multi-tenant buildings, they cannot provide facilities-based service to those customers.

II. BUILDING OWNERS POSSESS AND EXPLOIT MARKET POWER OVER COMPETITIVE CARRIER ACCESS TO TENANTS IN MULTI-TENANT BUILDINGS.

Absent a nondiscriminatory access requirement as contemplated by the FCC, building owners possess considerable control over the development of telecommunications competition in their buildings. By controlling the access bottleneck, building owners can influence both the pace and form of local exchange competition. They can control the pace of competition by limiting facilities-based service provision to certain favored providers or by slowing the rollout of competitive networks. And they can control the form of competition by denying access and effectively forcing competitive carriers to provide service through resale or unbundled elements, if they choose to provide service at all. The Telecommunications Act of 1996 contemplates three forms of competitive entry: resale, unbundled network elements, and facilities-based entry. Hence this control over access can impede a central goal of the Act.

From an economic perspective, building owners possess market power over competitive carrier access to multi-tenant buildings. This market power is most easily understood as the power to raise access prices above the cost of providing access. However, the market power also can be expressed in other ways, such as by restricting the number of firms that are allowed access to buildings. Elementary economics teaches us that building owners will undertake such practices if they are profitable. In fact just last week, the Wall Street Journal reported that some building owners intend to provide telecommunications services to tenants themselves while simultaneously restricting access to buildings by competing carriers.

The FCC and Texas PUC records together contain many examples of multi-tenant building owners demanding excessive fees for access to their buildings. These examples demonstrate that some building owners have found it profitable to exercise significant market power.

III. Consumers And Competition Are Harmed By Building Owners' Market Power Over Access.

The exercise of market power by building owners imposes real costs on consumers in the form of higher telecommunications prices and reduced access to advanced telecommunications services. The ability of building owners to restrict access and raise access prices has slowed realization of the goals of the 1996 Telecommunications Act and will continue to impede the development of dynamic local exchange competition if allowed to continue.

A competitive telecommunications market will drive prices toward the cost of providing service. When competition is restricted or costs are increased by artificial barriers to entry, those price reductions that predictably result from competition are reduced or eliminated altogether. Experts agree that there is considerable scope for price reductions in local telecommunications service. Teligent, for example, routinely prices its service 30% below the incumbent's rates. Other competitive carriers offer similar discounts. Tenants in buildings where competitive carriers are denied access may not be able to realize these savings. Data supplied to the FCC suggest that nearly 10% of building owners have denied all requests for access received from competitive carriers. These same data further indicate that more than 50% of competitive carrier's requests for access are ultimately unsuccessful. Thus, the absence of a nondiscriminatory access requirement denies many tenants the full benefits of a competitive telecommunications market.

The effects of building owners' market power over access are not limited to the multi-tenant buildings where competition is directly limited. All telecommunications customers, including those not residing in multi-tenant buildings, are harmed if competitive carrier entry is slowed by restrictive access policies. As competitive carriers more efficiently utilize their networks, the cost savings predictably will be passed on to all customers as lower prices for service. Barriers to efficient network utilization — such as eliminating access to a portion of the potential market — will prevent consumers from realizing the full benefits of these efficiencies. Similarly, as competitive carriers obtain additional customers and deploy more equipment, equipment costs per unit should fall, resulting in lower costs and additional savings for all customers. Hence access restrictions to multi-tenant buildings can reduce the benefits of telecommunications competition for all consumers.

Finally, competitive telecommunications carriers are directly harmed when they are overcharged or denied timely access to their customers. Excessive prices for access are particularly damaging to competitors because the incumbent local service provider — their main competitor — typically is not assessed charges for access to multi-tenant buildings, placing new entrants at an immediate cost disadvantage.

IV. THE COSTS OF REQUIRING NONDISCRIMINATORY TELECOMMUNICATIONS CARRIER ACCESS TO MULTI-TENANT BUILDINGS ARE MINIMAL.

Weighed against the potential benefits of a nondiscriminatory access rule, the costs of such a rule are comparatively small. The nondiscriminatory access rule proposals under consideration offer building owners reasonable compensation for the loss of use of the property occupied by the telecommunications carriers' equipment. As the carriers will pay this fee, potentially together with a bond to indemnify building owners against specified carrier failures to perform, the Federal government should incur no costs related to a taking. Moreover, the advanced telecommunications capabilities installed by competitive carriers can increase the value of multi-tenant buildings, further mitigating any potential harm to the building owner from a reduction in the space available for lease to tenants.

In addition, there is no reason to expect that a nondiscriminatory access rule will limit creative and innovative access arrangements, as some have argued. Investments in telecommunications facilities in multi-tenant buildings, like other investments in building features and functionality, can be recovered through rent. Moreover, there is no reason to expect superior innovation performance in telecommunications markets where competition is restricted. The real danger of reduced innovation is that multi-tenant building owners will exercise market power over access and thereby limit CLEC entry and investment.

Admittedly, some implementation and enforcement costs will be caused by a nondiscriminatory access rule, but these are likely to be comparatively small. We are fortunate in this case to have direct experience with nondiscriminatory access rules in the states of Texas and Connecticut, and we can evaluate the experiences of those states to assess the magnitude of these types of costs. The evidence from Texas and Connecticut suggests that the implementation and enforcement costs of a nondiscriminatory access rule are quite limited. In those states, nondiscriminatory access rules have been or are being implemented with minimal disruption and cost.

V. Market Imperfections Prevent Tenants From Imposing Discipline On Building Owner Behavior.

There is no dispute that under the current regime, the only significant constraint on the profitability of restricting competitive carrier access to multi-tenant buildings is the willingness and ability of tenants to move to another building. A central question, therefore, in the policy discussion of nondiscriminatory access rules is whether tenant moves will prevent multi-tenant building owners from exercising significant market power over access. We can address the empirical importance of tenant moves as a constraint on building owner market power by assessing directly the costs incurred by tenants when moving.

The direct costs and other barriers associated with moving are prohibitively large. These costs may include relocation expenses, lost productivity, and potentially the loss of existing customers. In tight real estate markets, such as currently exist in many communities, tenants can expect to pay more for new space. In addition, leases average 5 to 10 years in length and seriously limit tenant mobility. Although it is difficult to quantify relocation costs precisely, one estimate is that the total cost to relocate could equal a full year's rent. Few tenants would find it economical to move in order to purchase a competitive carrier's service given these costs. A simple example can illustrate the problem. Suppose telecommunications expenditures are 20 percent of rent and that CLEC service can save tenants 30 percent on their telecommunications bills. Under these conditions, it would take more than 16 years (ignoring discounting) for the savings on telecommunications services to pay for a move that cost one year's rent. This is longer than the term of most leases and far too long for most businesses to cost justify the move.

The Real Access Alliance has argued that because a significant proportion of tenants move each year, there is on-going pressure on building owners to offer nondiscriminatory access. This argument assumes too much. While tenant churn likely does constrain the profitability of overcharging for access, it cannot eliminate it. Clearly, most tenant moves occur for reasons unrelated to telecommunications services. Such moves are unlikely to put significant downward pressure on building access prices. The evidence shows that, on balance, tenant churn has not been a sufficient constraint on multi-tenant building owner's market power. For this reason, the assertion that tenant churn will discipline the exercise of market power over access should be regarded with skepticism.

There are important parallels between the debates over number portability and nondiscriminatory access to multi-tenant buildings. In the debate about number portability, some opponents of a rule requiring number portability argued that local exchange competition could flourish without such regulatory intervention. In contrast, the proponents of a rule argued that if customers had to change telephone numbers to access competitive carriers, the development of competition would be slowed because changing telephone numbers was too inconvenient and costly for customers. Congress apparently agreed with this latter assessment, and included number portability in the Telecommunications Act of 1996. The cost and inconvenience of moving are substantially larger than the cost and inconvenience of getting a new phone number. Following the same reasoning underlying the number portability requirement in the Act, Congress should support a nondiscriminatory access requirement for multi-tenant buildings.

VI. CONCLUSION

In conclusion, and based on this review of the facts regarding tenant moves, there is no realistic prospect that tenant moves are a significant constraint on building owners' market power over access to multi-tenant buildings. Under the current regime, market forces are unlikely to drive prices for access down to costs, and consequently consumers may not realize the full benefits of a competitive telecommunications market. The nondiscriminatory access proposals considered in the FCC's *Competitive Networks* rulemaking can correct this market failure and encourage the development of vigorous telecommunications competition in multi-tenant buildings.

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Honors and Awards

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