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MAY 24 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 24, 2000

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in CS Docket No. 95-184 and MM Docket No. 92-260

Dear Ms. Salas:

Pursuant to 47 C.F.R. § 1.1206, the Real Access Alliance, through undersigned counsel, submits this original and three copies of a letter disclosing an oral and written ex parte presentation in the above-captioned proceedings. On May 23, 2000, the following representatives of the Real Access Alliance met with members of the staff of the Cable Services Bureau:

Jim Arbury	National MultiHousing Council
	National Apartment Association
Tony Edwards	National Association of Real Estate Investment Trusts
Gerard Lavery Lederer	Building Owners and Managers Association, International
Roger Platt	Real Estate Roundtable
Nicholas P. Miller	Miller & Van Eaton, P.L.L.C.
Matthew C. Ames	Miller & Van Eaton, P.L.L.C.

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Bureau staff present at the meeting were John Norton, Royce Dickens, Eloise Gore, Carl Kandutsch and Cheryl Kornegay. In addition to the matters discussed in the attached written ex parte materials, the participants addressed the following issues:

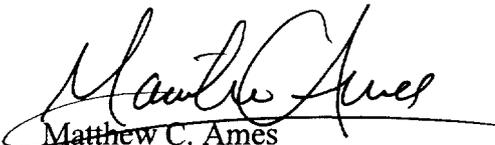
- The Real Access Alliance representatives stated that they generally favor the proposals outlined in the Second Further Notice of Proposed Rulemaking.
- The discussion centered on exclusive contracts and the differences in the economics of serving residential subscribers in apartment buildings and business subscribers in office buildings. Although the data presented in the written materials demonstrates that the critical factor behind the need for exclusive contracts has to do with the differences in the revenue potential of providing residential video service as compared to office telecommunications service, the same analysis would probably apply to providing competitive telecommunications services in MDUs. There was also some discussion of changes in the marketplace arising from the provision of bundled services over a single network; it was the view of the Real Access Alliance representatives that this type of convergence is not yet a significant factor in the market and it is too early to tell what effects it will have.
- The participants briefly touched on the Real Access Alliance's concerns regarding regulations at the state or federal level that would give telecommunications providers or cable operators the right to install their facilities in buildings over the owners' objections. Any such rule would conflict with the current cable home run wiring rule and render it ineffective, in the same fashion as current state mandatory access statutes.
- The participants also discussed various approaches for making the current cable inside wiring rules more effective, such as requiring a cable operator to post a bond equal to the value of any wiring that it intends to remove, and the possibility of moving the cable home wiring demarcation point to a different location. The latter approach raised concerns among the Alliance representatives to the extent that it might give apartment residents the right to own facilities located in common areas.

Please contact the undersigned with any questions.

Very truly yours,

Miller & Van Eaton, P.L.L.C.

By


Matthew C. Ames

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cc: John Norton, Esq.
Royce Dickens, Esq.
Carl Kandutsch, Esq.
Cheryl Kornegay, Esq.
Eloise Gore, Esq.
Mr. Jim Arbury (by mail)
Tony Edwards, Esq. (by mail)
Gerry Lederer, Esq. (by mail)
Roger Platt, Esq. (by mail)

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**THE REAL ACCESS ALLIANCE SUPPORTS THE COMMISSION'S
CABLE INSIDE WIRING RULES AND THE PROPOSALS
IN THE FURTHER NOTICE OF PROPOSED RULEMAKING**

➤ **Any federal regulation requiring MDU owners to grant access to telecommunications or video programming providers would eviscerate the FCC's cable inside wiring rules.**

- The fundamental purpose of the cable inside wiring rules is to limit the ability of incumbent cable operators to use their incumbency and market power to force MDU owners to sign unfavorable agreements. The rules strike a delicate balance between promoting competition in the delivery of video services in MDUs and protecting the rights of incumbent providers under the Constitution and state law. Consequently, the rules do not apply if a provider has “a legally enforceable right to remain” in a building. 47 C.F.R. § 76.804.
- Any federal rule that would allow a video programming provider to install its facilities in a building over the objections of the building owner would circumvent the inside wiring rule. Such a new right to install facilities would mean that the provider would have a legally enforceable right to remain in any building in which it already had facilities, because if the building owner sought to exercise its rights under §76.804, the provider could simply counter by exercising its rights under the new forced access rule.
- Even a rule that applied only to telecommunications providers would circumvent the cable inside wiring rules, because most multiple system operators are certificated CLECs. Even if they are not now offering telecommunications services, they intend to do so in the near term.
- Because of the economics of serving MDUs, as discussed below, adopting a forced access rule would not only undercut the current inside wiring rule, but it would not even advance the alleged goal of promoting access for multiple providers. The true effect of such a rule would be to strengthen the current monopoly position held by the ILECs and the incumbent franchised cable operators. The result would be a two-wire world, in which the vast majority of MDU residents would have the same two choices they have now.

➤ **Providers of competitive video programming services – unlike competitive local exchange carriers -- require exclusive contracts to serve MDUs because the economics of the video market differs greatly from that of the telecommunications market.**

- The debate over exclusive contracts arises entirely out of the economics of providing service in the two different markets. Exclusive contracts are very rare in the office market because they typically do not benefit tenants, providers, or building owners. On the other hand, exclusive contracts are more common in the residential video

market because by creating alternatives to the incumbent they benefit tenants and building owners as well as the competitive providers.

- The total revenue for video programming services yielded by the typical MDU is only a fraction of the total telecommunications revenue produced by an office building. This is a function of the average revenue per subscriber and the total number of potential subscribers in a building. The attached example shows that on average the video service revenue potential of an MDU is only 7.5% of the telecommunications revenue potential of an office building. When one compares buildings of median size, MDU video revenues are still only one-quarter of office building telecommunications revenues.
- The average revenue obtained from an individual MDU resident for video services is only a fraction of the average revenue received for providing telecommunications services to an office tenant. Cable subscribers pay, on average, about \$50 a month for service, while office telecommunications subscribers pay about \$1000 a month for service.
- It is important to remember that not all MDU residents pay for video service, and many are still unlikely to do so even if there is a competitive option, while every office tenant must have telephone service.
- In addition, individual MDU residents will never be willing to pay nearly as much for telecommunications services as office tenants, which is one reason that CLECs – despite their protestations – have little interest in serving the residential market, even over the long term.
- Because total revenues from providing video service in an MDU are so much smaller than office telecommunications revenues, each competitor needs a larger share of the total to be profitable. CLEC's often can afford to share access in a building, because even a small share of the total revenue may be enough to make money. CLECs oppose exclusive contracts, because even a single tenant may justify the cost of installing facilities. Competitive video providers, on the other hand, require exclusive contracts because they typically cannot justify the cost of installing facilities if there is another provider in the building: no single tenant could possibly produce enough revenue to be profitable.
- Similarly, because each individual cable subscriber in an MDU pays so much less than an office telecommunications subscriber (\$50 versus \$1000), it is harder to justify the increased costs of serving many such subscribers without aggregating demand through an exclusive contract. A video service provider must spend a larger proportion of its total revenue from each subscriber on marketing, billing, customer service and administration than a CLEC does for each office tenant.

- In sum, CLECs and competitive video providers are serving two entirely different markets using very different business models. The Commission should not be misled by the superficial similarities.

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**COMPARISON OF REVENUES RECEIVED BY PROVIDERS
FROM PROVIDING VIDEO SERVICE IN APARTMENT BUILDINGS
AND TELECOMMUNICATIONS SERVICE IN OFFICE BUILDINGS**

Annual revenue from providing video service in an average-sized apartment building:

- 30 units x \$50 per month per unit (\$600 per year) = **\$18,000**

Annual revenue from providing video service in a median-sized apartment building:

- 150 units x \$50 per month per unit (\$600 per year) = **\$90,000**

Annual revenue from providing telecommunications service in an average-sized office building:

- 20 tenants x \$1000 per month per tenant (\$12,000 per year) = **\$240,000**

Annual revenue from providing telecommunications service in a median-sized office building:

- 30 tenants x \$1000 per month per tenant (\$12,000 per year) = **\$360,000**

Therefore, an average-sized office building can yield over 13 times as much revenue as an average-sized apartment building. When comparing a median-sized office building to a median-sized apartment building, the office building yields four times as much revenue.

Assumptions:

1. According to a recent BOMA survey, the average number of tenants in office buildings is 22. We have used 20 to simplify the arithmetic and provide a slightly more conservative figure. The median number of tenants in the buildings covered by the BOMA survey was between 20 and 40, so we have assumed that the median number of tenants in a building is 30.
2. The number of units in apartment buildings varies greatly, but according to Census Bureau data available on the National Multi Housing Council's Web site, there are about 15,029,100 apartment units in 518,820 apartment buildings with five or more rental units. This is an average of 29 units per building. In the first example, we have rounded to 30 units both to simplify the arithmetic and to provide a slightly more conservative figure. The second example, using 150 units, represents the roughly 46% of apartment buildings that have between 50 and 300 units. On that basis, we have assumed that the median number of units in an apartment building is 150.
3. According to the FCC's 1999 Annual Cable Television Competition Report, average cable revenue per subscriber is \$44. We have rounded this figure to \$50 for the same reasons as above.

4. We do not have an accurate figure for the average amount paid by office building tenants for telecommunications services. For purposes of this comparison, we have used \$1000 per month, which we believe is a conservative estimate. The estimate was calculated by dividing an estimate of total revenues received by telecommunications providers from business subscribers by an estimate of the number of office tenants in the country. The \$1000 figure is only an approximation, but we think it provides a rough basis for comparison.

According to the Census Bureau's 1992 Economic Census, there are 5,829,983 business establishments in the country. Note that this figure is likely to be considerably higher than the number of office tenants because many businesses, especially smaller ones, will not rent space in office buildings. Therefore, to estimate the number of actual office tenants, we subtracted the number of business establishments that had no employees (411,549) or only 1 to 4 employees (2,330,762), which resulted in 3,087,671. We rounded that number to 3.1 million.

To determine total telecommunications revenues received from office tenants, we started with the Census Bureau's estimate of local, long distance and network access revenue for 1998. The Census Bureau reports \$30.3 billion in nonresidential local service revenues, \$60.0 billion in long-distance revenues, and \$31.7 billion in network access revenues, for a total of \$122 billion. We ignored long distance revenues, and assumed that all network access revenues were ultimately paid by telephone subscribers and received by local exchange carriers, so that nonresidential subscribers paid LECs approximately \$62 billion for telecommunications services in 1998. We then reduced that figure by 30% to account for revenue from owner-occupants and other subscribers who do not rent space in office buildings. The resulting figure of \$43 billion was then divided by 3.1 million office tenants for an average of \$13,870 per year or \$1156 per month, which we rounded down to \$1000 to provide a conservative figure. If long distance revenues are included, using the same method yields an average of \$2400 per month.

5. Note that we have assumed 100% penetration rates for both types of service, which exaggerates total cable service revenues by about one-third, based on historical experience.