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MATTHEW C. AMES  
FREDERICK E. ELLROD III  
MARCI L. FRISCHKORN\*  
MITSUKO R. HERRERA†

\*Admitted to Practice in  
Virginia Only

†Admitted to Practice in  
California Only

Incorporating the Practice of  
Miller & Holbrooke

1155 CONNECTICUT AVENUE, N.W.  
SUITE 1000  
WASHINGTON, D.C. 20036-4306  
TELEPHONE (202) 785-0600  
FAX (202) 785-1234

MILLER & VAN EATON, L.L.P.  
44 MONTGOMERY STREET  
SUITE 3085  
SAN FRANCISCO, CALIFORNIA 94104-4804  
TELEPHONE (415) 477-3650  
FAX (415) 398-2208

WWW.MILLERVANEATON.COM

WILLIAM L. LOWERY  
WILLIAM R. MALONE  
NICHOLAS P. MILLER  
JOSEPH VAN EATON

OF COUNSEL:  
JAMES R. HOBSON  
JOHN F. NOBLE

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AUG 1 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

July 31, 2000

**Via Hand Delivery**

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

Re: Ex Parte Presentation in WT Docket No. 99-217 and CC Docket No. 96-98

Dear Ms. Salas:

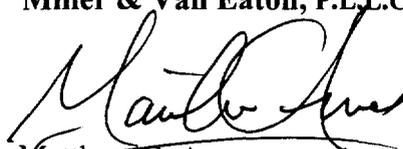
Pursuant to 47 C.F.R. § 1.1206, the Real Access Alliance, through undersigned counsel, submits this original and three copies of a written ex parte presentation in the above-captioned proceedings. On July 26, 2000, Gerard Lavery Lederer of the Building Owners and Managers Association, International sent Clint Odom of the Chairman's office the enclosed e-mail.

Please contact the undersigned with any questions.

Very truly yours,

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

By



Matthew C. Ames

cc: Clint Odom, Esq.  
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List A B C D E

Mr. Odom:

As promised, below is the story from the Property Council of Australia's webpage on the impact of mandatory access in Australia. As you read it, you can see the problems that are apparent. These problem are clearly apparent despite the Property Council's attempt to make these seem tolerable because they (PCA) failed to defeat the initiative, or more clearly stated never felt the issue was a threat I have also attached the editorial that ran the following month by the organization's CEO when he realized that sugar coating the issue just would not work. The actual article is from their April newsletter.

Gerry

Gerard Lavery Lederer, Esq., CAE  
Vice President  
Research, Government and Industry Affairs  
BOMA International  
glederer@boma.org  
(202) 326-6350  
URL: <http://www.boma.org>  
Building Knowledge and Solutions To Increase Workplace Performance.

- > (Story is from Property Council Of Australia Newsletter.)
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- >
- > Here come the teletubbies
- > By Tina Perinotto
- > AMP's Richard Opie wants to put a positive spin on the opportunities for
- > tenants and owners. Michael Cook from BT sees a nice income stream if you
- > don't push them too far. And a very busy property consultant to the
- > carriers says, just don't tell too many people what a nice little earner
- > this is.
- > But the mushrooming telecommunications carriers - 37 at last count -
- > riding on the "seriously flawed" legislation that allows nearly unlimited
- > access rights to buildings across Australia, are shaping up as one of the
- > biggest issues to face property owners and managers for some time.
- > And it's happening at the warp speed that Ziggy Switkowski of Telstra
- > likes to refer to.
- > Consider this: each of these 37 telco carriers, most licensed since the
- > 1997 Act, has the right to enter your property. They can set up optic
- > fibre cable, copper wires, microwave dishes, antennas, racks or
- > telecommunications equipment - all to enable property's galloping
- > convergence into the electronic age.
- > That's potentially 37 times two filing cabinet-size racks of equipment,
- > plus three to five sq m each for space to service the equipment. If the
- > MDF or com-munications room is full; then they'll want the common areas,
- > car parks, loading docks - wherever.
- > Cables are laid in the risers - some are at full capacity now - dishes and
- > antennas go up on the roof, more carriers come knocking at the door,
- > whether they have a customer lined up or not.
- > Already there are several hundred buildings throughout Australia with
- > multiple carriers installed. QV1 in Perth has 14, Governor Phillip Tower
- > in Sydney has 15 and 101 Collins Street Melbourne has nearly 20.
- > Here's the exciting side: a wonderful facility for your tenants, and happy
- > tenants mean happy shareholders, and a great marketing resource for your
- > building. There's an income stream implicit.

- > This is an "exciting opportunity" for building owners, says Richard Opie.
- > "When you see what's possible with the property industry and tenants, you
- > can't fail to be excited about the great opportunities for creative and
- > fruitful partnerships."
- > At 120 Collins Street in Melbourne, says Michael Cook, one carrier pays
- > \$862,000 a year for the rooftop, but has the ability to sub-lease for
- > satellite television or pay TV users.
- > Here's the downside: Does your building have enough power for the
- > energy-hungry installations? Are you charging the right price? What are
- > other people charging? What are the installation costs for the carriers
- > and how much money are they making out of them? What happens when you say
- > no thanks and they slap an access notice on your desk?
- > By law, you are required to respond within five days of the first query
- > and then you need to get an agreement sorted out quickly because these
- > carriers are in a hurry. The competition is intense.
- > So what terms do you set? Should it be a licence or a lease? What
- > conditions can you set and what happens when the technology is redundant
- > and you have risers full of frayed cables that no-one wants to know about?
- > Are you sure you can't be sued in the future for the health effects on
- > your tenants of multiple microwaves and electromagnetic radiation?
- > Space
- > "There is constant demand to get into buildings and a lot of
- > confidentiality with the agreements struck," according to Deutsche Asset
- > Management's Paul Best. There are suspicions some carriers are taking up
- > as much space as possible in order to prevent access by their competitors,
- > he says.
- > But space is running out. It doesn't matter how new your building is,
- > points out Deutsche's Chris Fisher, assigned last year to deal with the
- > telcos and working "double hours to keep up".
- > "Space is finite, whether it's in the risers, the communications room or
- > the basement. And most people don't want to give up car parking space. The
- > aim is to look at not running out of space, perhaps converting another
- > area to a communications room - to work proactively to find the space."
- > Sam Cuccurullo of Richard Ellis says he's found problems with lack of
- > space in the ducts for cables. Theoretically, optical fibre cable has
- > enormous capacity and carriers could "piggyback" off others, but they're
- > reluctant to run the risk of being overcharged by the host. In practice,
- > they all want their own installations, he says.
- > According to Richard Harris of AAPT, some carriers will want to put in
- > both cable and wireless systems - "fibre in the sky" - if the council digs
- > up the pavement, you have a back-up. AAPT has about 140 CBD sites and
- > plans to have about 300 in a year or so.
- > It's hard to find out what the rollout plan is for other carriers, such is
- > the high secrecy that surrounds this industry. But the legislation, says
- > Harris, "effectively encompasses multiple infrastructure rollout as the
- > basis of competition".
- > In practice, some carriers are niche players wanting access perhaps to
- > only 10 buildings in Australia, he says. But companies such as AAPT, plus
- > Optus and Telstra, see themselves as offering the "full range of service"
- > and there's probably another five or eight, to his knowledge, which fit
- > into the same category. Cable and Wireless Optus confirmed it has about
- > 800 cable installations across Australia but would not divulge its rollout
- > plan.
- > Aggressive
- > What's of interest to the owners right now, however, is that some carriers
- > don't worry too much about niceties. Some carriers, says Best, are "most
- > aggressive and we're trying to cooperate, but under the Act there is no
- > way of stopping them".
- > Other sources say some carriers have become so pushy they've been dubbed
- > the "teletubbies".
- > It's a race out there with competition and rollout fully supported by the
- > Telecommunications Act 1997. Recent amendments redefined most
- > installations, other than stand alone towers and overhead cables, as low
- > impact. As such, they're immune to state and territory laws, according to
- > executives with the Australian Communications Authority. Carriers don't
- > need council planning permission either and will only contact a council if
- > they want to set up on their land. The telcos also have the right to "add
- > things" to the power sources and access any facilities pertinent to their
- > installations. Despite what some owners may think, full access rights
- > include to the roofs of buildings, confirmed Warren Duncan from the
- > Australian Communications Authority.

> According to all sources contacted for this report, some carriers are very  
 > quick to resort to the "access notices" allowed under the Act. There are  
 > often referrals to the Telecommunications Industry Ombudsman (TIO). But  
 > with its clear mandate to support the rollout, most are told to go away  
 > and work it out for themselves. The TIO, by the way, is funded by the  
 > carriers.

> Richard Opie is property manager for AMP with responsibility for half a  
 > billion dollars in assets. But with his newly assigned informal role as  
 > liaison officer to deal with the telcos, his job has become far more  
 > important than usual - both to his company and other property managers  
 > who, despite his reticence, see him as having a leading role in  
 > understanding the complex issues facing owners.

> Opie is quick to point out that he is a property person and has no  
 > expertise in the telco industry. The entire industry is at a disadvantage,  
 > he says, both in lack of technical knowledge and in dealing with the Act  
 > which is very much in favour of the carriers.

> "The drafting of the Act is so poor, so full of holes, so open to  
 > interpretation that it's impossible to deal with," says Opie. "There is an  
 > enormous amount of confusion."

> Opie says there are six objections that can be made under the Act, but  
 > again these are ill defined.

> "In the market negotiations there are many companies prepared to come into  
 > our premises on terms that are commercially acceptable to the owner and  
 > it's a good partnership. Other concerns interpret the Act in their favour  
 > and issue (access) notices under the Act."

> Michael Cook, vice president funds management for BT, says, "The  
 > legislation is strong. Very strong. And it was lifted direct from the US."

> "Part of the problem is that Telstra has always had access to buildings  
 > and the MDF (Main Distribution Frame). These were designed for only one  
 > carrier and, of course, that carrier has generally had access to the  
 > building for nothing." Newcomers question the equity of this and sometimes  
 > want access on the same (free) basis, he says.

> "But the only thing we've got is space. They don't take account of the  
 > cost of this, nor of the income stream that's coming from the access."

> An Optus spokesperson confirmed to Property Australia that the company did  
 > not believe it should have to pay for access to a building. It prefers to  
 > see installations as a benefit or service for tenants.

> "We try to reach agreement before entering a building and we're not  
 > interested in running roughshod over owners, however we understand that  
 > some of the new entrants may be," she said.

> "We understand that issues with the property owners need to be resolved  
 > and we working together with the Property Council to look at a code of  
 > conduct. We need to enter (buildings), but think it's in our own best  
 > interests to have agreements."

> Optus preferred "agreements," which are "less of a legal document and more  
 > of an operating agreement. Where we have agreement, we don't look at  
 > paying the owner a fee; we see it as a service to the tenant."

> She said the company understood that there were costs involved for the  
 > owner and that's why it had entered talks with the industry.

> "Of course they don't want to pay," says Cook. "BT doesn't want to pay  
 > rent in Chifley Tower; they think they should get it for nothing. That's  
 > the position you start at; usually it's not where you end up."

> "Who knows," says Cook, "with the pace of change, maybe in two years  
 > they'll beam infrared rays or something straight to the tenant through the  
 > window. I keep thinking of some way we can put some type of electronic  
 > condom over the building to stop them getting in unless they pay."

> In the long run, thinks AAPT's Richard Harris, there will probably be a  
 > paradigm shift. "Perhaps the emphasis should be on the level of service  
 > provided. Maybe in the future carriers may be required to share  
 > infrastructure... and we need a code of practice an agreed method."

> Costs

> Richard Opie believes that in working out fair access charges, owners need  
 > to account for expenses such as management time, physical property damage  
 > and provision of security guards for access to the roof. In management  
 > time alone, he says, the pressure is intense and he's flat out just  
 > keeping up with enquiries.

> Aside from the property costs, there are the other costs such as taxes and  
 > service rates that the owner needs to bear. Some are contesting that they  
 > shouldn't pay anything for access.

> "But," says Opie, "we're in a business providing returns to stakeholders.

> "We are routinely dealing with nine or 10 carriers and, out of those, six

- > or seven are really active, excluding Telstra and Optus. Of those, we have
- > good relations with, say, five of them. We have problems with three of
- > them and they give us major problems."
- > Opie has taken only one case to the Telecommunications Industry Ombudsman,
- > but others may be pending. "We're encouraged to embrace them, but we're
- > frustrated at the quality of the Act, which is hopelessly inadequate and
- > seems to be a negation of owners' property rights.
- > "We have a great relationship with some carriers and we're excited about
- > the future. What we want are commercial partnerships with the industry and
- > to be a participant in it."
- > Paul Best agrees: "The biggest problem at the moment is attitude.
- > "We don't try in any way to limit their access, but at present we're being
- > reactive."
- > Best, however, wants this understood: as a building owner "the first and
- > foremost criteria is what services will be of most benefits to our
- > tenants."
- > "We've been impressed with the services the telcos offer in a number of
- > buildings. The main thing is to have an agreement that spells out where
- > they intend to cable, how long for and their obligations to remove them."
- > According to a lawyer, one of several contacted who would not be quoted
- > because of their work for carriers, his own carrier client preferred a
- > lease agreement over a licence for installations in buildings, since a
- > lease is registered on title.
- > "It gives them property rights," added Paul Best.
- > Market
- > Chris Fisher says a market has been established by the carriers themselves
- > with some prepared to pay between \$20,000 and \$25,000 a year.
- > Deutsche has issued 50-100 licences over about 50 buildings and each is
- > worked out on a case-by-case basis, using a team of specialist
- > consultants. The company, he says, prefers a standard licence form.
- > "Leases give them property rights."
- > The average charge for the access in Cook's experience is about \$25,000
- > for a two gigabyte link.
- > But he said, "We don't have the sophistication yet to understand what's
- > going on and what the potential is.
- > "The crude, rude and vulgar way is to give them short term leases. Or
- > charge them an up-front cost of say \$45,000 a year and see what the
- > reaction is."
- > Cook says he has found that at 120 Collins Street \$45,000 "was too much to
- > ask".
- > One angle Cook is exploring is a type of joint venture. "Is this is a
- > licence to print money?" he asks, only half facetiously. Perhaps owners
- > should aim for a percentage of the action, he suggests.
- > AAPT's Richard Harris says it can cost \$30,000 to \$40,000 to set up the
- > infrastructure and it takes three to five years to break even. Some sites
- > have more strategic value than others and most people contacted warned
- > that carriers can quickly back off if the owner is too negative. As Harris
- > says, "in some cases, it's just not worth the trouble".
- > In terms of future access agreements, whatever the form, Paul Best thinks
- > that the size of the Deutsche portfolio means there could be an
- > opportunity to leverage off the multiple buildings.
- > In the US, according to BT's Michael Cook, the market is so huge that the
- > giant US Office Equity Trust is thinking about taking out its own telco
- > licence.
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## Eye to Eye

By Peter Verwer

There would be hell to pay if telecommunication firms were allowed to march into your home uninvited, pull your ceiling apart and install data cabling for the benefit of your entire neighborhood.

Here is a snapshot of the ensuing commotion:

The Government is tossed out at the next election and will probably never sit on the Treasury benches again.

Damaged roofing tiles are pelted at government ministers during protests outside Parliament House.

And an Ambulance is called to a residence in Brisbane to pry the fingers of an unwelcome telco worker out of the front door of a suburban home.

No government in its right mind would allow this to happen. After all, property rights underpin Australia's democratic political system. That's if you don't own a commercial building.

The telcos are using the Telecommunications Act 1997 as a weapon to barge into your building to wire up tenants to their latest services in an aggressive pursuit of the corporate dollars being pumped into the new economy.

The deregulated telecommunications market has meant that competition amongst the telcos is rife. Space is limited and, as a result, the telcos have zeroed in on commercial buildings to install their wares.

The Act does give the telcos vague and ambiguous rights to install "low impact" cabling in a commercial building, provided they give the building owner 10 day's notice of their proposal.

The owner can object, which then brings the two parties to the negotiating table. If a deal is not forthcoming, the next stop is the Telecommunications Ombudsman, who has recently reported a considerable increase in the number of complaints from building owners.

Ultimately, both parties lose out. The dispute may force a tenant to approach another carrier, the telcos lose money from delays and the building owner can be caught up in a costly legal battle.

At last month's Liberal Party National Convention in Melbourne, Federal Communications Minister Richard Alston told the Property Council that building owners were only trying to make money by renting out ceiling space to the telcos.

But the Minister should be wary of taking side with the telcos. The Liberal Party's Federal platform nominates property rights as one of the fundamental tenets of Liberalism.

I'm sure the Minister knows that taking property rights away from building owners would breach what the Liberal Party says it stands for.

The only winners from a pitched battle between telcos and property owners will be law firms.

Companies in the United States have recognized that the provision of telecommunication services presents huge strategic opportunities for both telco firms and property owners and have formed partnerships to chase the new revenue streams on offer.

It's a pity the telcos in Australia are yet to recognize and follow the American experience. Instead, building owners are being left out of pocket by the hundreds of hours spent overseeing installation, reviewing drawings, approving plans and fixing damage to their ceilings.

The Government would never dream of permitting telco providers to walk uninvited into people's homes. Why then, should there be a different rule for commercial buildings?

Email: [pverwer@nat.propertyoz.com.au](mailto:pverwer@nat.propertyoz.com.au)

this article may be found at  
[http://203.21.116.131/data/info/magazine/fs\\_mag.htm](http://203.21.116.131/data/info/magazine/fs_mag.htm)