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August 14, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Submission
WT Docket No. 99-217 & CC Docket No. 96-98

Dear Ms. Salas:

On Friday, August 11, 2000, I met with Thomas Sugrue, Chief of the Wireless Telecommunications Bureau, Diane Cornell, Associate Chief of the Wireless Telecommunications Bureau, Lauren Van Wazer and Joel Taubenblatt, both Senior Attorneys in the Wireless Telecommunications Bureau, on behalf of the Real Access Alliance.

We discussed the commitments that the Real Access Alliance made in its July 13, 2000 letter to Chairman Kennard. The commitments, which are voluntarily offered notwithstanding the Alliance's position that these matters lie outside the jurisdiction of the FCC, concern a range of matters associated with telecommunications services in multi-tenanted office, residential, industrial and retail real estate and in multi-tenanted manufactured housing. These include the development of model contracts and best practices aimed at improving the speed of processing tenant and carrier generated requests for access to those types of buildings. I explained that the Alliance is now developing and defining policies to implement those commitments. We discussed how the thinking and approach of the Alliance has been evolving.

- Non Exclusivity in Office Building Contracts

One area of work is the development of a firm policy not to enter into any future contracts regarding service to multi-tenant office buildings on an exclusive basis. Exclusive contracts are those that are exclusive by their explicit terms or that include requirements that make them "de facto" exclusive.

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- Quantitative Study

Another area of work is in support of the Alliance's continuing belief that competitive market forces are working in the area of building access. I suggested in my meeting with the Bureau officials that the Alliance believes that a disciplined, quantitative study of the development of competition in the office building market, periodically conducted under the auspices of the FCC, would support this belief, and would serve the public interest. The annual video competition or wireless competition report could provide a model. I suggested that the Alliance and its members could work with the FCC to provide objective data to be gathered by an independent source for use by the Commission and others to assess the status of the marketplace.

- Clearinghouse for Information and Complaints

Another area of discussion in the Alliance about the implementation details relates to a means of supporting the periodic study suggested above. It could be useful for the Alliance to establish an independent clearinghouse to which tenants, real estate companies and/or telecom providers can submit allegations of behavior inconsistent with the industry commitments set out in the July 13 letter. Such a clearinghouse could function somewhat like a "better business bureau" and allow a more transparent process for determining the state of the market for building access.

- Speed of Processing

I related that all of the discussions in the Alliance have reflected appreciation of the prominence of speed of processing as an issue in the Competitive Networks docket. Specifically, the discussions have reflected an appreciation that if there are pervasive speed of processing problems, this could adversely affect tenants by delaying their access to competitive telecommunications providers. In fact, the Alliance believes that ameliorating any difficulties that tenants may experience is the paramount reason to explore speed of processing improvements and commitments.

I related that, accordingly, the Alliance has been striving to develop ways in which to be more responsive to tenants' requests for competitive telecommunications providers. Such an effort might include deciding — as an industry and as individual companies — to establish and promote a practice of timely responses to tenant-generated requests for service from providers not yet serving a particular office building. Specifically, the practice might be to respond within 30 days with a yes or no answer to any request for access that is generated by an office building tenant. There might then be a further commitment that office building owners use their best good faith efforts to accommodate the tenant requests. To that end, the building owner would work expeditiously and in good faith with the service provider to resolve any outstanding contract terms and to ensure prompt tenant service. Building owners would offer this faster track speed of processing provided,

- that there is appropriate, uncommitted space available to accommodate the telecom provider (the tenant requesting service could, perhaps, have a "reasonable opportunity" to verify, with the assistance of the requested telecommunications provider, if the tenant desires, whether there is such space available).

- the telecommunications provider indicates its intent to execute an access agreement that is substantially in the form of the model contract(s) to be developed by the industry. While those agreements are being developed, a

telecom provider's willingness to abide by an interim model agreement or sample contract developed from among typical contracts already signed between building owners and competitive telecommunications providers might be an acceptable way to their meet this requirement.

I related that the Alliance believes that the whole point of the commitments in the July 13 letter, and the sole reason for legitimate public policy interest in the area, is to ensure that tenants have a meaningful array of choices among telecommunications service providers and the services they offer. Accordingly, the Alliance contemplates that in buildings where there are multiple competitive providers already serving the building, the tenant should be informed of the availability of the existing alternatives. The tenant, in turn, should indicate to the building owner whether there are material advantages offered by another provider whose services the tenant is seeking. Such advantages might include better price, better customer service, higher bandwidth, and/or better billing services. This dialogue will provide tenants with information about their existing choices and educate the building owner about the opportunities presented by a new service provider. It would also ensure that letters of authorization purporting to assert a tenant's choice are bona fide requests from the tenant and not carrier-generated requests. Carrier-generated requests could be addressed somewhat differently as indicated below.

- Policies to be Reflected in New Leases

I indicated that the Alliance believed it could be helpful to tenants for building owners to reflect the policies discussed in the preceding section of this letter ("Speed of Processing") in terms offered in new leases. Notice of any new policies reinforcing tenants' access to competitive telecom service providers could be furnished to existing leaseholders. Additionally, I indicated that it might also be useful to incorporate these policies in offered terms in the BOMA standard lease, a widely-used form. I also conveyed the firm position of the Alliance that the FCC's assertion of provisional or other jurisdiction over building access disputes would be unnecessary and, in some instances, even counterproductive to advancing *tenants'* interests in access to competitive telecom services.

- Industry Leadership

I indicated that these implementation policies had been the subject of specific and ongoing discussion among Alliance members and with the CEOs and senior management of the country's largest real estate investment trusts (REITs) as well as the leading institutional and private owners of commercial office real estate. I indicated that discussions so far had produced support among several such entities for all of the possible approaches described in this letter for implementing the industry's commitments, including, the idea of reflecting the speed of processing policies in the specific terms of the leases offered to their respective office building tenants.

- Clearer, More Predictable Process for Handling Carrier-Generated Requests

I indicated that tenant-generated requests are appropriately the concern of consumer-oriented public policy. Carrier generated requests, by contrast, may chiefly reflect the individual business plan objectives of specific commercial providers. Nonetheless, building owners are currently negotiating a wide range of access agreements with a wide variety of telecom providers even before any specific tenant indicates an interest in (or need for) their particular products or services. In fact, some of these agreements address the access rights of certain providers to a large number of buildings and, in some

instances, may help tenants get shorter "hook-up" times for services that are different or cheaper than those already available in the building.

Some telecom providers have complained that their requests for "pre-provisioning" access are handled in a confusing and often slow manner by building owners/managers. Since tenants may benefit from a clear and predictable line of communication between building owners and telecom providers, it may be appropriate to develop a clearer and more predictable process for responding to these pre-provisioning requests. Such a process might include a commitment that within 30 days of receiving any such carrier-generated request for space, real estate owners would respond with clear guidance as to their individual policies (including approval criteria) regarding such requests for space. Such guidance might include a specific timetable governing their decisions to respond to such requests for space.

This commitment would be limited to requests from carriers that indicate their intent to execute a model access contract that conditions their continuing access and use of space in the building(s) on their deploying their equipment and/or serving tenants at the building(s) by the dates negotiated by the parties to that contract.

I submit two copies of this letter for the record.

Very truly yours,

Brett Tarnutzer for:
Kathleen M.H. Wallman

cc: Chairman Kennard
Kathryn Brown
Clint Odom
Commissioner Ness
Mark Schneider
Commissioner Tristani
Adam Krinsky
Commissioner Powell
Peter Tenhula
Commissioner Furchtgott-Roth
Helgi Walker
Thomas Sugrue
Diane Cornell
Lauren Van Wazer
Joel Taubenblatt