



**RealAccess  
ALLIANCE**

Building Owners and  
Managers Association  
International

Institute of Real Estate  
Management

International Council  
of Shopping Centers

Manufactured Housing  
Institute

National Apartment  
Association

National Association  
of Home Builders

National Association  
of Industrial and  
Office Properties

National Association  
of Real Estate  
Investment Trusts

National Association  
of Realtors

National Multi Housing  
Council

The Real Estate  
Roundtable

ORIGINAL

EX PARTE OR LATE FILED

RECEIVED

September 6, 2000

SEP 6 2000

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: WT Docket No 99-217 & CC Docket No. 96-98

Dear Chairman Kennard:

The Real Access Alliance writes on behalf of the following national real estate associations and leading private and publicly held real estate companies to set out our strategy for implementing a number of the key elements of the building access commitments outlined in our letter to you dated July 13, 2000.

The Alliance, whose member associations represent over 1,000,000 owners and operators of real estate nationwide, consists of the following:

Building Owners and Managers  
Association International  
Institute of Real Estate  
Management  
International Council of  
Shopping Centers  
Manufactured Housing Institute  
National Apartment Association

National Association of Home Builders  
National Association of Industrial and  
Office Properties  
National Association of Real Estate  
Investment Trusts  
National Association of Realtors  
National Multi Housing Council  
The Real Estate Roundtable

The initial group of building owners publicly committing to the best practices outlined in this letter and who collectively own or operate over 250 million square feet of office space include the following: Arden Realty, Inc., Birmingham Realty, Boston Properties, Inc., Burnham Real Estate Services, CarrAmerica Realty Corporation, Catellus Development Corporation, Charles E. Smith Commercial Realty, Equity Office Properties Trust, Rudin Management Company, Inc., Spieker Properties, Inc., TIAA-CREF, and Tishman Speyer Properties.

Specifically, as detailed below, we are prepared to operationalize our speed of processing commitment to tenants. The above-listed real estate companies are committing to reflect that commitment in lease terms offered to new office tenants in the their buildings, and the undersigned trade associations are committing to promote the use of such lease terms among their members. Additionally these policies will be reflected in the BOMA standard lease, a widely-used form.

We made the July 13, 2000 commitments voluntarily and with the expectation that you would consider them as responsive to the broad policy objectives outlined in the docket referenced above. We took those steps notwithstanding our position that these matters raise constitutional questions and lie outside the jurisdiction of the Federal Communications Commission (FCC). Our commitments 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 communities. They include the development of model contracts and best practices aimed at improving the speed of processing tenant and provider generated requests for access to those types of buildings.

The overriding objective of this implementation plan is the same as that of our basic commitments — responsiveness to the needs of tenants in multi-tenanted buildings. Because the access issues discussed in this docket relate primarily to office building access, we have focused on those issues first. Nonetheless, we remain committed to developing model agreements and best practices aimed at benefiting tenants in other multi-tenanted buildings. We also are not setting these ideas out as a comprehensive list of office-related best practices. As our experience with the specific issues relevant to that market increases, we expect to review the effectiveness of these commitments and, if warranted, to add additional best practices.

The specific implementation details of these best practices are as follows:

- Non Exclusivity in Office Building Contracts

Real estate companies will reject telecommunications provider requests for exclusive contracts to serve office buildings. “Exclusive” contracts will be understood in the practical sense of that term, including contracts that are exclusive by their explicit terms and those that, as a practical matter, would necessarily require the owner to treat one telecommunications provider as having certain exclusive rights to serve tenants in the building.

- Quantitative Study

We welcome any objective, fact-finding studies of the marketplace, as we continue to believe that the market for building access is thriving. We, therefore, believe that a disciplined, quantitative study of the development of competition in the office building market, periodically conducted under the auspices of the FCC, will support this view, and would serve the public interest. The annual video competition or wireless competition report could provide a model. The Alliance members will 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

The Alliance is prepared 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. While such a clearinghouse would not exist to dictate the resolution of specific complaints, it

would function on the model of a “better business bureau.” It might also allow a more transparent process for determining the state of the market for building access.

- Speed of Processing

As reflected in our contributions to the record in this proceeding, we continue to believe that the market is working to ensure that tenants are not experiencing significant problems with the speed with which requests for providers’ access to buildings are being processed by real estate owners. Nonetheless, *any* such problems could adversely affect tenants by delaying their access to competitive telecommunications providers. Ameliorating any difficulties that tenants may experience is the paramount reason for speed of processing improvements and commitments.

Today, we are committed — as an industry and as individual companies — to establishing and promoting a practice of timely responses to tenant-generated requests for service from providers not yet serving a particular office building. Specifically, building owners will respond within 30 days with a yes or no answer to any written request for access that is generated by an office building tenant. Office building owners will proceed, in good faith, to accommodate the tenant requests. To that end, the building owner will work expeditiously and in good faith with the service provider to resolve any outstanding contract terms and to facilitate prompt tenant service. Building owners will offer this faster track speed of processing in any instance where,

- there is appropriate, uncommitted space available to accommodate the telecom provider (the tenant requesting service would have a reasonable opportunity to verify, with the assistance of the requested telecommunications provider, if the tenant desires, whether there is such space available), and
- 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, including the provider’s agreement to furnish service to any tenant in the building within a reasonable period of time. 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 would be an acceptable way to meet this requirement.

The sole reason for legitimate public policy interest in the area of building access 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, will 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 provider-generated

requests. Provider-generated requests for access to buildings where they do not yet have any customers, or where master contracts for multiple buildings are sought (“pre-provisioning requests”) will be addressed somewhat differently as indicated below.

- Policies to be Reflected in New Leases

As reflected in our contributions to the record, the Alliance remains committed to the view 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. Nonetheless, individual building owners that commit to abide by the particulars set out in the preceding “Speed of Processing” paragraph, including those already identified in this letter, will reflect that commitment in terms offered in new leases with office tenants. Notice of the commitments set forth above reinforcing tenants’ access to competitive telecom service providers will be furnished to existing leaseholders. Additionally these policies will be reflected in offered terms in the BOMA standard lease, a widely-used form.

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

Tenant-generated requests are appropriately the concern of consumer-oriented public policy. Provider-generated requests, by contrast, 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 can benefit from a clear and predictable line of communication between building owners and telecom providers, the Alliance has determined that it is appropriate to develop a clearer and more predictable process for responding to these pre-provisioning requests. Such a process will include a commitment that real estate owners will respond within 30 days of receiving any written provider-generated request for space with clear guidance as to their individual policies (including specific approval criteria) regarding such requests for space. Such guidance would also include a specific timetable governing their decisions to respond to such requests for space.

This commitment regarding provider-generated requests will be extended to any provider that indicates an intent to execute an access agreement that is substantially in the form of the model contract(s) to be developed by the industry, including an agreement to actually make the provider’s service available to the tenants of the building. In other words, the provider’s continuing access and use of space in the building(s) would be conditioned on their deploying their equipment and/or serving tenants at the building(s) by the dates negotiated by the parties to that contract.

*Conclusion*

This strategy is being implemented as an integral alternative to a federal regulatory approach for addressing building access issues. Should there be federal regulations issued in this area, this approach would need to be revised accordingly. Similarly, it remains to be seen how best to implement the July 13 commitments in states that purport to have legally enforceable building access regulations. That issue will require further consideration and deliberation.

Most importantly, this strategy will require a reasonable amount of time and a concerted and focused effort by both building owners and their trade associations on the one hand and by competitive telecommunications providers on the other hand to be implemented successfully. It cannot prosper in an environment in which it is perceived that policymakers are imminently poised to change the landscape of the marketplace through wide-ranging regulatory proposals. In fact, it will be important for the FCC and other regulatory agencies at the state and federal level to encourage our partners in the telecommunications industry to be full partners in this important project. In the end, this is intended to be a win-win-win for tenants, owners and telecom providers.

We submit two copies of this letter for the record.

Very truly yours,

The Members of the Real Access Alliance

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