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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Telecommunications Research & Action Center

Post Office Box 27279 Washington, D.C. 20005

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September 7, 2000

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

Re: Oral and Written Ex Parte Submission
WT Docket No. 99-217 & CC Docket No. 96-98/

Dear Ms. Salas:

Attached is a copy of a letter submitted today to Chairman Kennard. The letter relates to the FCC's anticipated action in the above captioned matter. In addition, this Ex Parte notice serves as notification to the Commission of TRAC's oral communications with Chairman Kennard's Senior Legal Advisor, Clint Odum regarding the same.

A copy of the letter was provided to Commissioner Ness, Commissioner Powell, Commissioner Furchtgott-Roth, and Commissioner Tristani.

Sincerely,

Dirck A. Hargraves
Counsel

Attachments

Cc: The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Harold Furtchtgott-Roth
The Honorable Gloria Tristani
Kathryn Brown, Chief of Staff to Chairman Kennard

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September 7, 2000

The Honorable William Kennard
Chairman
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

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

Dear Chairman Kennard:

The Commission is about to make a terrible mistake.

If the FCC acts as press reports suggest, it will in one proceeding do more to *increase* the digital divide than it has done to date in all of its other proceedings to bridge that divide. The FCC's anticipated action will acquiesce to and enhance the entrenched power of building owners over access by tenants to telephone and advanced services.

Building owners, specifically landlords, should not have the power to restrict tenant's choice of advanced services providers. Instead, the Commission should pursue a policy that is premised on maximum tenant choice.

Right now, single family homeowners control the wires in their homes. Indeed, they own them and can connect any provider to their home for telephone service, internet service or data service. Under Commission rules, those wires can be used by ILEC competitors to deliver data services over ILEC delivered local loops. A homeowner can have cable television services from the local franchise provider or from two different "dish" providers. The broadband wiring in the home can be made available to the consumer to connect with the provider of their choice.

Tenants living in Multifamily Dwelling Units (MDUs) do not enjoy such options. They generally are faced with a provider of copper loops and a single coaxial cable. While it may be possible for consumers to be offered choices over their copper loops under the Commission's rules for local telephone competition, that isn't the case if the copper is owned by the landlord/building owner. Yet, the rules that are likely to be approved will increase the building owners' control over inside wiring on new buildings and potentially even some existing buildings. This means that the tenant could use only

the provider selected by the landlord, and the Commission's pro-competition pro-choice rules would not apply!

With respect to broadband, those issues are being handled by the Cable Bureau (CS Docket No. 95-184) and they are not even part of this proceeding. By what logic is the Commission going to try and address tenant access to copper facilities which can deliver DSL, but treat coaxial and cable facilities separately?

I am sure you are acutely aware that the demographic make up of tenants is different from single-family dwellers. Minorities and low-income persons comprise a significant percentage of the residents as renters in MDUs. According to 1999 third quarter United States Census data, 73.5% of whites (non-Hispanic) own homes in this nation; whereas only 46.6% of blacks, 45.5% of Hispanics and 54.4% of other races own homes. As you are well aware, a large percentage of renters are low-income. As the data acutely demonstrates, almost half of the minority population in this nation rent and do not own a home. If the Commission does not reconsider its position on opening competition for telecommunications service providers for MDU residents, an entire segment of the population will be denied the rights of access, choice and competition now enjoyed by single family home owners.

And these rules are also not good for small business. Even in the commercial context, the proposed FCC rules will increase the power of the building owner over the telecommunications facilities available to tenants. We are convinced that as building owners/landlords gain the new assurance from the FCC that their power over the wires to their tenants is secure, small shops in malls, office parks and in office buildings will be faced with fewer and fewer choices for advanced services.

We are reminded of the grand mistakes associated with the deregulation of pay phones, when the Commission empowered premise owners to control the pay phones installed. It took an act of Congress to build consumer choice back into that system. Please, don't make the same mistake again.

We are aware of the Fifth Amendment concerns of building owners. At the same time though, we are particularly sensitive to the First Amendment interests of the tenants. There is a balancing test that should be guided by the First Amendment interest in access to the maximum number of sources of information and the congressional policy of choice and competition.

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September 7, 2000
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We urge that the Commission withdraw this matter, consolidate it with the matter pending in the Cable Bureau and issue a further notice seeking specific input on the issues of how to maximize tenant choice.

Sincerely,

A handwritten signature in black ink, appearing to read 'SAS', with a long horizontal flourish extending to the right.

Samuel A. Simon
Chairman

CC: The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Harold Furtchtgott-Roth
The Honorable Gloria Tristani
Kathryn Brown, Chief of Staff to Chairman Kennard