

**EXHIBIT A**  
**Implementation Report**



**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

MEMORANDUM

February 20, 2001

TO: Federal Communications Commission

FROM: Roger Platt, Coordinator  
Best Practices Implementation, Real Access Alliance

RE: Progress in Implementing Real Estate's Voluntary Commitments

**I. Introduction and Summary**

In the summer of 2000, the real estate industry made a series of voluntary commitments to further speed consumer access to competitive telecommunications services through best practices and model agreements. Those commitments are being implemented through a dynamic, iterative and transparent process. This memo provides background on that effort, a snapshot of where it stands today as well as a brief discussion of next steps. It also reviews the response, including constructive assistance, our efforts have engendered from various telecommunications providers.

One achievement worth highlighting right at the outset relates to our commitment to develop a model license agreement for access to multi-tenanted office buildings. Members of our coalition have pledged to expedite access negotiations with telecom providers that choose to use the model agreement. (Use of the model by telecom providers is, of course, completely voluntary.) In mid-December, the real estate industry posted on [www.realaccess.org](http://www.realaccess.org), and circulated to almost fifty different real estate and telecommunications associations and companies, an initial review draft of the model license template. Within thirty days of posting and distributing the draft we received hundreds of general comments and specific ideas for modifying various elements of the model license agreement. These proposals came from building owners, incumbent local exchange providers and competitive local exchange providers, including both traditional CLECs and so called "BLECs." As a result, we fully expect to be in a position to release a more refined draft of the model agreement for office building access within the next couple of weeks.

In short, just months after the Alliance's last correspondence with the Federal Communications Commission (FCC) on our commitments project, tangible and very significant progress in the dialogue between building owners and the telecommunications industry has been achieved. Since receiving input on the model license agreement in January, the Alliance has been working diligently to respond to the various constructive suggestions and concerns of many different segments of the telecommunications industry. In addition, we are focusing on a number of other related projects. *In pursuing all our commitments we remain focused on advocating practices that will benefit consumers — the customers/tenants in our members' buildings — and not necessarily any specific type of service provider or their specific technology.* At the same time, of course, we are endeavoring to protect the reasonable investment-backed expectations of building owners. In the end, we think these objectives are fully compatible. The details of our ongoing efforts are set out below.

## **II. Background: Alliance Commitments to Expedite Consumer Access to Competitive Services**

In the summer of 2000, The Real Access Alliance coalition<sup>1</sup> (“Alliance”) made a public commitment to expedite consumer access to competitive telecommunications services in multi-tenanted buildings. The broad reach of the coalition’s membership<sup>2</sup> ensured its actions would extend across the entire real estate industry. For example, the overwhelming majority of the owners of the particular multi-tenanted office, residential and retail buildings actually targeted for service by competitive telecommunications providers are likely to be members of one or more of the associations affiliated with the Alliance.

### *Core Public Commitment to Develop and Promote Best Practices*

The Alliance’s basic access commitments were set out in a letter to the FCC dated July 13, 2000. (A copy is attached as Exhibit A.) In that letter, the Alliance outlined commitments intended to reflect the industry’s ongoing efforts to reach out and communicate constructively with our partners in the telecommunications industry. To further advance our tenants’ interests we committed “to develop and actively promote the nationwide use of”:

- Model forms of agreements between property owners and telecom providers regarding the terms and conditions for licensing access to multi-tenanted office, residential and retail buildings; and
- Best practices aimed at further facilitating swift negotiations between building owners and telecom providers regarding access to these buildings.

### *More Specific Commitments Welcomed by the FCC, Winstar*

On September 6, 2000 the Alliance, joined by a number of office building owners that collectively own or operate over 250 million square feet of office space, set out in greater detail a plan to begin implementing the “best practices” commitment. The purpose and specific details of these initiatives were set out in a letter to the FCC. (A copy is attached as Exhibit B.) The Alliance’s intention was then, and remains today, to:

- Advance tenant choice of telecom providers in commercial office buildings;
- Facilitate the expeditious build-out of the nation’s telecommunications network; and
- Sustain continued progress in the expansion of the markets for competitive telecommunications services in multi-tenanted buildings.

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<sup>1</sup> The Alliance is comprised of 11 national real estate associations: 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 and the Real Estate Roundtable.

<sup>2</sup> The collective membership of the individual associations exceeds one million individuals involved in the real estate industry.

The associations that signed the September commitment letter agreed to promote, with and through their respective memberships, the development and implementation of certain best practices and related model agreements. The leading companies in the office building industry that joined in the letter agreed, on a voluntary basis, to honor these best practices in actual dealings with their tenants and their tenants' chosen telecom providers.

In addition to the development of model agreements, the associations agreed to "reject carrier requests for exclusive rights of access to any individual office building", and to reflect in new leases with tenants a commitment to respond within 30 days to tenant-generated requests for the service provider of its choice in office buildings. The September letter included a variety of other commitments including a commitment to establish a clearinghouse for complaints of behavior inconsistent with the best practices contemplated by the commitment and to collect data on the evolution of the relevant marketplace. (A one-page summary of the concepts set out in the September 6 letter to the Commission is attached as Exhibit C).

The September 6 plan was welcomed by, among others, the then-Chairman of the FCC, William Kennard, in a separate statement issued on October 12, 2000, and was cited positively by the full Commission in its First Report and Order and Further Notice (WT Docket No. 99-217) adopted on the same day. In addition, the commitments presented an opportunity for the telecommunications and real estate industries to work together toward a common goal. That opportunity was welcomed by, among others, Winstar CEO William J. Rouhana, Jr., who issued an October 12 press release which included the statement that:

"Our biggest opportunity, however, is to advance the cooperative efforts that we have already undertaken with the real estate community to bring consumers and businesses the broadband communications services that they need to be successful."

### **III. Model License Agreements: Their Purpose and Benefits**

The existence of standardized models for different types of building access transactions will streamline negotiations between building owners and telecom service providers. Beginning their access discussions with reference to a common template will benefit both parties. While those parties are always free to use any other mutually agreeable form, the "model" terms developed by the Alliance should offer them a document they are both familiar with and that both recognize as a fair starting point. It is the experience of our members that whether they are using model AIA forms for construction or design contracts or model BOMA forms for agreements with prospective tenants, the existence of commonly used standard forms significantly expedites the negotiating process.

As is necessarily the case with all business transactions, the specific parties to particular business transactions will bring their own economic (and other) bargaining strengths into the negotiations. Telecommunications companies that provide particularly attractive or cutting-edge services to tenants may enjoy more leverage in negotiating the terms of their use of a building owner's property than might other providers. In all cases, the parties to the actual agreement will remain free to negotiate the economic terms of their transaction without reference to any particular Alliance guidance or model. Indeed, the Alliance believes that the market continues to create positive incentives for building owners, providers and tenants to negotiate fair and reasonable access transactions. As a result, the Alliance has endeavored to ensure that economic elements of access agreements are not specified in the model terms.

#### **IV. Progress in Developing the Office Building Model License Agreement**

With respect to office buildings, the Alliance is developing a model license agreement and related best practices. The license agreement is also a key to the Alliance's specific commitment to provide expedited processing of tenant-generated requests for service from specific providers. We intend to distribute the final agreement when we have completed our outreach to the telecommunications industry and are confident that we have produced a document that will enjoy broad support from the real estate industry while addressing key concerns of the telecom industry. We anticipate that within a few more weeks we will be in a position to issue a revised draft of the model agreement for one final (albeit shorter) comment period. If we can achieve our intended schedule this process will require a number of additional weeks before it is finally concluded.

##### *Development and Vetting of the Initial Draft*

The initial draft was developed through a process that involved the consideration of hundreds of industry forms and executed access agreements. Virtually every provision included in the draft has been "road tested" in the sense that it has been agreed to by building owners and telecom providers in actual business transactions. (A copy of the initial review draft is attached as Exhibit D.) On December 15 we sent copies of the draft agreement to almost fifty different real estate and telecommunications companies and/or associations. (A copy of the form circulation letter is attached as Exhibit E.) In addition, we placed the draft on our web site and issued a press release to more broadly communicate its existence. (A copy of the press release is attached as Exhibit F.)

In order to ensure development of the model would proceed in an expeditious manner, we gave would be commenters on the draft 30 days to provide us with their comments. When some organizations and companies asked for an extension of time we simply agreed to take their comments after the deadline. To date, no comments have been refused simply because they arrived after January 15. To date, the document has been subject to hundreds of specific comments. The Alliance is in the process of creating a detailed summary of those comments and the action taken with regard to the most commonly made suggestions. It is our intention to issue one more draft of the agreement together with the comment summary. Approximately 15 to 20 days later we anticipate issuance of the final agreement.

##### *Additional Outreach and Educational Efforts*

At the same time that the Alliance has been developing our responses to comments on the draft agreement it has already begun promoting the basic concepts underlying the industry commitments. I have spoken or will in the near future speak on the subject of the "best practices" commitments at various conferences in locations as diverse as New York, Chicago and San Francisco. (A list of those events is attached as Exhibit G.) In addition most members of the Alliance have organized seminars or sessions on the subject at meetings of their own members. (A list of those events, both past and present, is attached as Exhibit H.)

In general, the Alliance has been pleased by the good faith efforts of telecommunications companies whether BLECs, CLECs or ILECs to join us in trying to develop a solid model agreement. A number of prominent companies, many of which have taken positions contrary to those of the Alliance in FCC proceedings, have made constructive suggestions for improving the model. Some have spent considerable time and energy in dialogue with our transactional expert/advisors, Nelson Migdal and Eric Fishman (partners with the national law firm of Holland and Knight), working to develop creative ways to address some of the tougher issues. In contrast, however, a number of major CLECs have chosen, for whatever reason, not to participate in the process. Whether or not we can agree on *all* the issues raised by any given telecom company, the idea that the model agreement project merits no cooperative response whatsoever, is an attitude we are at a loss to comprehend. As a result, we will continue our efforts to encourage input from those companies and others.

The Smart Building Policy Project (SBPP), which represents a subset of Association for Local Telecommunications Services (ALTS) members concerned with building access issues, has not yet provided written comments on the draft citing a lack of time to coordinate a joint set of comments. While this has been disappointing, the fact that many of that coalition's key members have submitted their individual comments already has greatly improved the process and will ensure a much stronger final product. We are grateful to SBPP for what we understand are their continuing efforts to encourage individual member companies to provide us with feedback. Nonetheless, because SBPP has not submitted its own specific comments on our draft, we are not able to respond to their generalized allegations (in their last FCC submission) that the initial draft was in some respects "overreaching" and "invasive." We feel confident, however, that our response to the specific points raised by their individual members should mitigate these concerns substantially.

#### **V. Ongoing Efforts to Revise the Initial Model to Address Telecom Providers' Concerns**

The initial draft of the office building model agreement already included many provisions for the benefit of telecom providers and was intended to be a balanced document. Nonetheless, providers had certain concerns — in some cases, the same or highly similar concerns — which they felt should be more fully accommodated in the final "model." The following are a sampling of the more significant issues raised in actual comments that the Alliance is working, we believe with considerable success, to address in the final model.

- The desire to have the discretionary acts or decisions by building owners (contemplated by the agreement) qualified by some "reasonableness" or "commercially reasonable" standard.
- The desire to have parity between the way that different types of carriers, whether ILECs, BLECs or CLECs, may gain access to the already licensed property to manage and maintain their wiring (and to otherwise service existing customers).
- The desire to limit building owner involvement in the specific details of the telecom providers' dealings with their own customers.
- The desire to avoid specific provisions in the model (including related default provisions) whereby providers would warrant their *ongoing* financial or technical capacity to effectively serve their customers.

In addition to the issues listed above, telecom providers have also raised a number of other concerns that have proven more difficult to address consistent with the needs of building owners to preserve their property rights and maximize their tenants' choice of quality, competitive services. These include:

- The desire to have building owners warrant that CLECs will enjoy *complete* parity with incumbent local exchange providers with respect to every element (financial and otherwise) of the access transaction;
- The desire to delete or dramatically revise the rights reserved by some building owners to develop their own central distribution systems (CDS) in order to accommodate a very large number of competitive providers in the building;
- The desire to have the unconditional right to assign use of the licensed space (or wiring or equipment in that space) to other providers who may be unknown to the building owner; and
- The desire to have the property owner assist with the marketing of their particular company's services to *other* tenants in the building.

(A full list of the types of comments received on the first draft and action taken with regard to those comments will be released together with the penultimate draft of the document.)

We will continue to work to develop creative ways to bridge the gap on at least some of these latter types of issues. At the end of the day, however, it may be necessary to leave some, or perhaps even all, of these concerns to individual negotiations.

## **VI. Next Steps**

Following the completion of the model office building license agreements, the Alliance plans to develop some "model" language for use in new lease agreements with office tenants. Such language would be aimed at reflecting an owner's commitment — to its tenant — to provide expeditious access by the tenant's provider of choice. While such language will always be tailored to the specifics of a given transaction, the Alliance is eager to ensure real estate companies have guidance in implementing this important aspect of the plan set out in the September 6 letter.

In addition, the Alliance plans to continue its substantial educational campaign regarding the full range of best practices concepts. A highlight of those efforts may be a program in Washington this spring that will bring the General Services Administration together with senior representatives of the many owners that lease space to federal tenants. That program will include a detailed dialogue on how owners can best ensure federal tenants receive the providers of their choice. As GSA moves to insist, as a matter of policy, that building owners should be prepared to fully meet their government tenants' telecom demands, it will be in a position to exert its considerable market leverage to that end.

There are, of course, several other elements of the September 6 plan for implementing the real estate industry's voluntary commitments. For example, the industry has indicated that it 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.”

To date, the industry has pursued a number of possible approaches for implementing the clearinghouse including, most notably, the possibility of having a credible third party, such as the J.D. Powers and Associates, develop and maintain a web site for that purpose. Winstar, among others, has offered to provide additional ideas on how best to advance the clearinghouse concept and we look forward to working with them and other interested CLECs on that important project. In that regard, we look forward to considering a form of “better business bureau” that is sufficiently neutral in character that a joint real estate-telecom funding arrangement can be developed.

Other initiatives such as model agreements and best practices for the residential and retail sectors are also underway. In sum, the real estate industry is pleased with the progress we have made to date and we look forward to keeping the FCC informed of any significant new developments.

## **VII. Conclusion**

As stated at the outset, our public commitments to expedite consumer access to competitive telecom services in multi-tenanted buildings is focused directly on the interests of *our* tenants. The failure on the part of any building owner to meet the needs of those particular consumers may place their real estate investments in serious jeopardy. Tenants, after all, always have the option of choosing *another* building where their telecommunications requirements are more effectively addressed. As a result, we believe we have a substantial stake in achieving the goals of our commitments and will continue on our current path. In doing so, we look forward to receiving continued assistance from the telecom industry.

July 13, 2000

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

Re: WT Docket No99-217 & CC Docket No. 96-98

Dear Chairman Kennard:

We, the undersigned national real estate associations, are writing regarding the critical issue of more effectively facilitating tenants' access to competitive telecommunications service. We appreciate that, in recent months, the Commission has paid considerable attention to this issue. Our goal is to bring this matter to a mutually agreeable conclusion. The overriding objective is responsiveness to tenants' needs. Toward that end, we propose that you consider the commitments outlined below as responsive to the broad policy objectives outlined in the docket.

Our members share the Commission's commitment to ensuring that the occupants of multi-tenanted buildings enjoy the broadest possible array of competitive telecommunications services. We continue to believe that this is already occurring without the need for new regulations. Our members regard the expanding universe of competitive telecommunications providers as partners in fulfilling this mission. These partnerships attest to our industry's recognition that high quality telecommunications service is essential to attracting and keeping tenants. When tenants succeed, both our industries succeed.

In the marketplace — and in discussions over the past few years that have specifically focused on the policy matters at issue in this docket — our members have evidenced their willingness to listen to the concerns of telecom providers as to how best to achieve our mutual goals. This letter reflects our commitment to redouble ongoing efforts to reach out and communicate constructively with our partners in the telecommunications community.

We have watched closely as the formal record of Congressional and Commission consideration of building access issues has developed. In the process, our members have gained a deeper understanding of the concerns of some telecom providers regarding what they view as obstacles to the efficient provisioning of telecommunications services. To further advance our tenants' interests, we have committed to develop — and actively promote the nationwide use of — a model set of building access agreements between property owners and telecommunications service providers. In addition, we believe it will be equally important to develop — and promote the nationwide use of — a model set of "best practices" aimed at further facilitating negotiations with telecom service providers. As part of this commitment, we will make every effort to ensure that this initiative reaches the retail, office, industrial, residential and manufactured housing sectors of the real estate industry.

We intend to work together on model agreements and best practices that directly address many of the concerns expressed in the Commission record, including speed of processing. In

addition, we will solicit as much input from representatives of the telecommunications industry as possible in furthering our ongoing dialogue. All fair and reasonable recommendations will be welcomed as our members pursue this initiative. We would also certainly welcome the Commission's input in this dialogue.

In the end, this is a project that our members believe will benefit their tenants, and therefore, the health of their own real estate businesses. It is, therefore, an initiative to which they are wholeheartedly committed. We trust that you will accept our commitment in the good faith in which it is offered, aimed at a sensible and workable outcome in this important proceeding.

Very truly yours,

The members of the Real Access 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

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  
Thomas Sugrue, Chief of the Wireless Telecommunications Bureau