



N A R U C  
National Association of Regulatory Utility Commissioners

EX PARTE OR LATE FILED

February 22, 2001

RECEIVED

FEB 22 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dorothy Attwood  
Common Carrier Bureau Chief  
Office of the Bureau Chief, 5<sup>th</sup> Floor  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW Portals II Building  
Washington, DC 20544

ORIGINAL

**RE: Reply Comments - *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets; Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, WT Docket No. 99-217; CC Docket No. 96-98; CC Docket No. 88-57 /***

Dear Ms. Attwood:

The National Association of Regulatory Utility Commissioners commends the FCC for the actions it has taken to date to enhance competitive access in multiple tenant environments. We also appreciate the opportunity to comment on the further notice contained in the FCC's October 25, 2000 *First Report and Order and Further Notice of Proposed Rulemaking* in WT Docket No. 99-217, *Fifth Report and Order and Memorandum Opinion and Order*, in CC Docket No. 96-98, and *Fourth Report and Order and Memorandum Opinion and Order*, in CC Docket No. 88-57 (22 Comm. Reg. (P & F) 1) (FCC 00-366).

As discussed in more detail below, NARUC's November 2000 resolution *not only specifically commends the FCC* for the actions it has take thus far, *it also suggests that "if the FCC sees the need to act further concerning access to multiple tenant environments, it should first consider a delegation of authority to state commissions."* I've attached a copy of this resolution to these comments as Appendix A.

**BACKGROUND**

As you know, NARUC is a quasi-governmental nonprofit organization founded in 1889. Members include the governmental bodies engaged in the regulation of carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. Because of the potential impact on state commission procedures, and NARUC's stated goal of promoting more efficient regulation, NARUC has an interest in this proceeding.

On October 25, 2000, the FCC released a non-unanimous *Report and Order and Further Notice of Proposed Rulemaking* concerning Consumer Choice in Multiple Tenant Environments (MTEs). The *Report and Order* took several steps to enhance the ability of competing telecommunications providers to provide services to customers in residential and commercial buildings or other MTEs, including:

- Establishing an exclusive access rule prohibiting carriers from entering into contracts that restrict owners and managers of commercial MTEs from permitting access by other carriers;
- Clarifying existing FCC rules governing control of in-building wiring and the location of demarcation points in wiring;
- Finding that local exchange carriers must provide access to conduits or rights-of-way that are owned or controlled by that carrier within MTEs; and
- Finding that parties with a direct or indirect ownership or leasehold interest in property, including tenants in MTEs, have the ability to place antennas one meter or less in diameter used to receive or transmit any fixed wireless service in areas within their exclusive use or control, and prohibiting most restrictions on their ability to do so.

The FCC also issued a FNPRM because it remains concerned that the ability of MTE owners to unilaterally and unreasonably discriminate among competing telecommunications service providers remains an obstacle to competition and consumer choice. In the FNPRM the FCC indicated that where an MTE owner unreasonably prevents competing carriers from gaining access to potential customers in the MTE, the FCC might in the future prohibit local exchange carriers from providing service to that MTE. The FNPRM also sought comment on other possible actions, including:

- Extending the exclusive access prohibition on carriers that is now applicable to commercial MTEs so as to apply also to residential MTEs;
- Prohibiting carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs or entering contracts that grant them other preferences, such as exclusive marketing or landlord bonuses to tenants that use their services; and
- Applying existing inside wiring rules that now apply to cable television providers, to telecommunications service providers.

DISCUSSION

In response to that FNPRM, NARUC passed a resolution at its November 2000 meetings. The resolution reaffirms an earlier 1998 NARUC resolution that urges state and territory regulators to

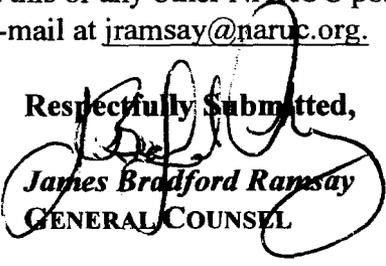
- *Closely evaluate building access issues within their jurisdictions, and*
- *Support legislative and regulatory policies that allow customers to have a choice of access to properly certificated telecommunications carriers and that allow all telecommunications carriers access to public and private property at fair, nondiscriminatory and reasonable terms.*

As that resolution clearly indicates, NARUC and its member commissioner share the FCC's concerns with respect to access to commercial and residential MTEs and are sensitive to the concerns the FCC has identified.

Unfortunately, *utility commissions in some states have limited or no authority under state law over carrier access to MTEs.* However, those same commissions might be able to implement delegated federal authority. NARUC and the FCC have engaged in many cooperative efforts during the past few years – including initiatives to eliminate slamming and coordinated numbering exhaustion policy. We believe this further rulemaking offers another opportunity for coordinated State-FCC action. Accordingly, if the FCC sees the need to act further concerning access to multiple tenant environments, we urge the Commission to first consider a delegation of authority to state commissions.

As always, if you have any questions about this or any other NARUC position, please do not hesitate to contact me at 202.898.2207 or via e-mail at [jramsay@naruc.org](mailto:jramsay@naruc.org).

Respectfully Submitted,

  
*James Bradford Ramsay*  
GENERAL COUNSEL

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS  
1101 VERMONT AVE, NW SUITE 200  
WASHINGTON, D.C. 20005

Phone: 202.898.2207

Facsimile: 202.898.2213

DATE: February 22, 2001

## **Appendix A - Resolution Concerning Carrier Access to Multiple Tenant Environments**

**WHEREAS**, On October 25, 2000, the Federal Communications Commission (FCC) released a non-unanimous Report and Order and Further Notice of Proposed Rulemaking (FNPRM) concerning Consumer Choice in Multiple Tenant Environments (MTEs); *and*

**WHEREAS**, The Report and Order took several steps to enhance the ability of competing telecommunications providers to provide services to customers in residential and commercial buildings or other MTEs, including (1) an exclusive access rule prohibiting carriers from entering into contracts that restrict owners and managers of commercial MTEs from permitting access by other carriers, (2) clarifying existing FCC rules governing control of in-building wiring and the location of demarcation points in wiring, (3) ruling that local exchange carriers must provide access to conduits or rights-of-way that are owned or controlled by that carrier within MTEs, and (4) ruling that parties with a direct or indirect ownership or leasehold interest in property, including tenants in MTEs, have the ability to place antennas one meter or less in diameter used to receive or transmit any fixed wireless service in areas within their exclusive use or control, and prohibiting most restrictions on their ability to do so; *and*

**WHEREAS**, The FCC also issued a FNPRM because it remains concerned that the ability of MTE owners to unilaterally and unreasonably discriminate among competing telecommunications service providers remains an obstacle to competition and consumer choice; *and*

**WHEREAS**, In the FNPRM the FCC indicated that where an MTE owner unreasonably prevents competing carriers from gaining access to potential customers in the MTE, the FCC might in the future prohibit local exchange carriers from providing service to that MTE; *and*

**WHEREAS**, The FNPRM indicated that the FCC seeks comment on other possible actions, including (1) extending the exclusive access prohibition on carriers that is now applicable to commercial MTEs so as to apply also to residential MTEs, (2) prohibiting carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs, (3) prohibiting carriers from entering into contracts that grant them other preferences, such as exclusive marketing or landlord bonuses to tenants that use their services, in some or all situations, and (4) apply existing inside wiring rules, that now apply to cable television providers, to telecommunications service providers; *and*

**WHEREAS**, in 1998 NARUC resolved: (1) to urge state and territory regulators to closely evaluate building access issues within their jurisdictions, and (2) to support legislative and regulatory policies that allow customers to have a choice of access to properly certificated telecommunications carriers and that allow all telecommunications carriers access to public and private property at fair, nondiscriminatory and reasonable terms; *and*

**WHEREAS**, Utility commissions in some states have limited or no authority under state law over carrier access to MTEs, but might be able to implement delegated federal authority, *now therefore be it*

**RESOLVED**, That the National Association of Regulatory Utility Commissioners (NARUC) assembled in its November 2000 112<sup>th</sup> Annual Convention in San Diego, California commends the FCC for its actions to enhance competitive access in multiple tenant environments, *and be it further*

**RESOLVED**, That the 1998 resolution on building access is affirmed, *and be it further*

**RESOLVED**, That if the FCC sees the need to act further concerning access to multiple tenant environments, it should first consider a delegation of authority to state commissions, *and be it further*

**RESOLVED**, That NARUC General Counsel is directed to file comments with the FCC in accordance with this resolution.

---

Adopted in Convention November 15, 2000.