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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 1, 2001

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**RE: Promotion of Competitive Networks in Local Telecommunications  
Markets, WT Docket No. 99-217 and CC Docket No. 96-98**

Dear Secretary Salas:

Please include the attached *ex parte* letter, filed on behalf of the Smart Buildings Policy Project, in the public file of the above-referenced proceedings. I have enclosed a copy of this letter for each of the above-referenced proceedings.

If you have any questions, please contact Jonathan Askin at (202) 969-2587.

Sincerely,

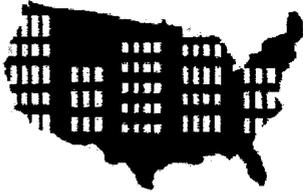


Jonathan Askin

cc: Jim Schlichting, WTB  
Jeff Steinberg, WTB  
Lauren Van Wazer, WTB  
Leon Jackler, WTB  
Joel Taunenblatt, WTB

Roger Platt, Real Access Alliance

No. of Copies rec'd of 2  
List A B C D E



## Smart Buildings Policy Project

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June 1, 2001

Alcatel USA  
American Electronics Association  
Association for Local  
Telecommunications Services  
AT&T  
Comcast Business Communications  
Commercial Internet eXchange Association  
Competition Policy Institute  
Competitive Telecommunications Association  
Digital Microwave Corporation  
Focal Communications Corporation  
The Harris Corporation  
Highspeed.com  
Information Technology  
Association of America  
Lucent Technologies  
NetVoice Technologies, Inc.  
Network Telephone Corporation  
Nokia Inc.  
International Communications Association  
P-Com, Inc.  
Siemens  
Telecommunications Industry Association  
Teligent  
Time Warner Telecom  
Winstar Communications Inc.  
Wireless Communications  
Association International  
WorldCom  
XO Communications, Inc.  
Yipes Communications, Inc.

Thomas J. Sugrue, Esquire  
Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Promotion of Competitive Networks in Local Telecommunications Markets,  
WT Docket No. 99-217 and CC Docket No. 96-98

Dear Mr. Sugrue:

Beginning last December, the Real Access Alliance (“RAA”) began to create a Telecommunications License Agreement for Multi-tenant Office Buildings (“Model Agreement”). In an April 23, 2001 letter to you, the RAA represented that this effort to create a Model Agreement would “help streamline and speed the process for entry of telecommunications providers into commercial multi-tenant buildings.” Numerous comments were received, and, on May 22, 2001, the RAA released the final version of this agreement.

The Smart Buildings Policy Project (“SBPP”) and its members participated in the RAA’s effort. A copy of our most recent comments is attached. We believe there is value in reaching a consensus on many of the terms and conditions for access to multi-tenant buildings. However, we also made it clear that we believe this process, while well-intended, does little to correct the real failures in the marketplace which frustrate tenants in accessing their telecommunications providers of choice.

Because the Model Agreement is being trumpeted so loudly by the RAA as a panacea for the problems competitive carriers often face in gaining access, we believe we need to set the record straight on the value of this agreement and its shortcomings. The principal hope for any such model agreement is that, for many of the issues concerning access, a model agreement would set forth language on which there would be agreement between many building owners and telecommunications providers. By narrowing these differences, negotiations should be facilitated.

**SBPP/ALTS**  
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**888 17th Street NW**  
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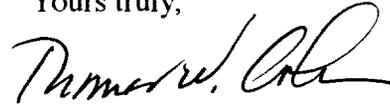
Thomas J. Sugrue, Esquire

June 1, 2001

The RAA Model Agreement, however, has serious weaknesses, many of which are set forth in the attached comments. There is, for instance, no guarantee that any building owners will use the Model Agreement, and it is certain that many will not. One particular deterrent is the great length of the agreement, which runs about ten times longer than agreements competitors actually use today. But, even more important is the fact that nothing in the RAA's agreement ensures that tenants will be able to choose their telecommunications providers. There is nothing to prevent the continuation of the process of delay and denial that all too frequently characterizes negotiations today. Thus, the value of the Model Agreement is, at best, limited.

It is for this reason that the FCC needs to continue with its process of ensuring telecommunications providers have reasonable and non-discriminatory access to multi-tenant environments. The pending further notice of proposed rulemaking in the Competitive Networks docket provides the FCC with momentum to reach this objective. We look forward to working with the Commission in the coming months as this proceeding moves toward a conclusion.

Yours truly,

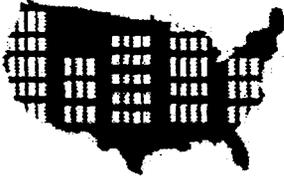


Thomas W. Cohen

cc: Peter Tenhula  
Adam Krinsky  
Jim Schlichting (WTB)  
Jeffrey Steinberg (WTB)  
Lauren Van Wazer (WTB)  
Leon Jackler (WTB)

Enclosure





## Smart Buildings Policy Project

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April 13, 2001

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Lucent Technologies

NetVoice Technologies, Inc.

Network Telephone Corporation

Nokia Inc.

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Siemens

Telecommunications Industry Association

Teligent

Time Warner Telecom

Winstar Communications Inc.

Wireless Communications  
Association International

WorldCom

XO Communications, Inc.

Types Communications, Inc.

### VIA HAND DELIVERY

Roger Platt  
Coordinator, Best Practices Implementation  
Real Access Alliance  
1420 New York Ave., N.W.  
Suite 1100  
Washington, D.C. 20005

Re: *Promotion of Competitive Networks in Local Telecommunications  
Markets, WT Docket No. 99-217 and CC Docket No. 96-98*

Dear Mr. Platt:

This letter is submitted in response to the Real Access Alliance's ("RAA" or "Alliance") most recent draft of its Telecommunications License Agreement for Multi-tenant Office Buildings ("Model Agreement"). The Smart Buildings Policy Project ("SBPP") and its members appreciate the substantial effort that already has been expended in creating and revising a Model Agreement. The SBPP also supports the goal of this effort to improve the timeliness of negotiating access agreements. However, in its current form of fifty pages, the SBPP fears that the Model Agreement remains unwieldy and is likely to have the unintended effect of deterring building owners, particularly smaller, less sophisticated ones, from even beginning the process of negotiations. As a result, the use of the Model Agreement is likely to *increase* the time necessary to negotiate access arrangements. While the SBPP supports the Model Agreement effort, it remains firmly convinced that the Model Agreement is no substitute for the FCC action that is necessary to ensure reasonable and nondiscriminatory access by competitive telecommunications providers so that they can bring the benefits of competition to tenants in commercial and residential multi-tenant buildings.

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Real Access Alliance  
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In actual practice, access agreements entered into by SBPP members can be as short as a single page, and agreements between four and seven pages long can be sufficient to ensure competitive access while safeguarding the parties' legitimate interests. Indeed, agreements under ten pages long are the industry norm. Thus, for example, Teligent's building access agreement – which is only six pages long – provides a better exemplar of real-world practice than the fifty-page Model Agreement assembled by RAA. *See, e.g.,* Teligent, Inc. Reply Comments, Attachment (filed Sept. 27, 1999). Such agreements are the *de facto* norm and have been used thousands of times to the mutual satisfaction of both carriers and building owners. It was the hope of the SBPP that such an agreement would offer more guidance to the RAA in drafting a Model Agreement when Gunnar Halley forwarded copies of the Teligent building access agreements to Wallman Strategic Consulting on August 8, 2000.

SBPP members have raised a host of specific concerns with the current draft of the Model Agreement. However, listing those concerns here would not facilitate the process of reaching a final version because they address a document that is so lengthy as to be unworkable at the outset. However, some specific principles warrant mention for purposes of any future efforts that the RAA may undertake with a shorter Model Agreement. For example, under the Model Agreement, building owners retain the right unilaterally not to renew the access agreement, thereby placing the CLEC's investment and its ability to compete against ILECs in jeopardy. *See* Model Agreement, Transaction Specific Terms and Conditions § 2.3. Similarly, the Agreement permits building owners to limit the size, type and location of necessary equipment, *see* Model Agreement, General Terms and Conditions § 2(b), and demand that equipment be maintained with "technical standards developed" by the building owner, rather than by the telecommunications industry, *id.* § 8(a). Further, within 30 days of the termination of the agreement, if the CLEC does not remove its equipment, then it becomes the property of the building owner "without compensation to the [CLEC]." *Id.* § 10(a). These items are of particular concern to SBPP members because they involve unwarranted building owner interference with the technical operation and maintenance of telecommunications facilities and entrench more favorable terms for the ILECs.



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In addition, although the Model Agreement purports to be non-exclusive, it does not address the FCC's concern that ILECs receive one set of favorable access terms while CLECs are subject to a second set of more onerous terms. Thus, a principal concern of the FCC remains unanswered by the current draft of the Model Agreement because ILECs can continue to exploit their market power to secure preferential terms of access while CLECs must engage in often protracted negotiations and pay fees from which ILECs are exempt.

Moreover, on previous occasions, the SBPP has raised concerns with the Model Agreement and the RAA's best practices commitments that remain unaddressed in the current draft of the Model Agreement. For example, the Model Agreement does not apply to any residential MTEs. Further, as to commercial MTEs, there is little assurance that RAA members would feel bound by any of the specific terms of the Model Agreement. But even if RAA members were bound by the terms in the Model Agreement, those terms do not address nondiscriminatory access on par with the treatment received by ILECs. To the contrary, the Model Agreement expressly leaves to individual negotiation such essential terms as access fees, any annual increase, the length of the access term, and the length or availability of additional extension terms. Model Agreement, Transaction-Specific Terms and Conditions §§ 1.6, 1.8 to 1.10. Finally, the current draft of the Model Agreement does not, and cannot, define a national process by which consumers can access their carrier of choice within a reasonable time period.

At bottom, the Model Agreement does not address the unfair playing field that stands as a barrier to CLECs seeking to provide facilities-based competition for the provision of telecommunication service to tenants in commercial and residential MTEs. It may also have the reverse of its intended effect by increasing the time and difficulty of CLEC/building owner building access negotiations.

As you are, by now, aware, the SBPP fervently believes that FCC action is warranted to ensure that tenants may freely choose their telecommunications carriers, notwithstanding the RAA best practices commitments. That being said, the SBPP does appreciate the RAA's efforts in crafting the Model Agreements and other practices to facilitate



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negotiated solutions. Although the RAA's efforts will not unilaterally resolve the current problem in a manner that gives effect to the federal goals underlying the Telecommunications Act of 1996, we are hopeful that, in conjunction with the FCC's efforts and continuing dialogue between the RAA and SBPP, they will move this process in the right direction.

Very truly yours,

The signature is a cursive-style name, appearing to read 'TH Cohen', followed by a horizontal line and the initials 'GBA'.

Thomas Cohen

