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JUN 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 21, 2001

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

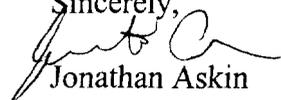
EX PARTE OR LATE FILED
EX PARTE OR LATE FILED

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

Dear Secretary Salas:

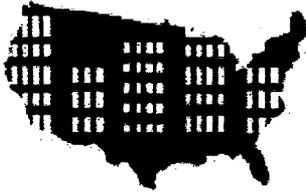
Pursuant to Sections 1.1206(b)(2) of the Commission's Rules, this letter is to provide notice in the above-captioned docketed proceedings of a June 20, 2001 ex parte meeting by representatives of the Smart Buildings Policy Project (SBPP) with Jim Schlichting, Deputy Chief, Wireless Telecommunications Bureau, David Furth, Senior Legal Advisor to the Bureau Chief, and Leon Jackler, Attorney/Advisor, Commercial Wireless Division. The SBPP was represented by Jonathan Askin, ALTS; Tom Cohen, SBPP spokesperson; Kelsi Reeves, Time Warner Telecom; Teresa Marrero and Gregory Cameron, AT&T; Terri Natoli, Teligent; Larry Fenster, WorldCom; Joe Sandri, Winstar; and Carla Kraus and Erik Rhee, Yipes. During the meeting, the parties discussed problems faced by the competitive industry in contracting with building owners and gaining access to multi-tenant environments. Specifically, the parties discussed problems with the proposed Telecommunications License Agreement prepared by the Real Access Alliance setting forth terms and conditions for carrier access to multi-tenant environments. The attached documents cover the issues discussed in the meetings.

Pursuant to the Commission's rules, an original and a copy of this notice of *ex parte* contact are being submitted for inclusion in the public record of the above-referenced proceedings. If you have any questions about this matter, please contact me at 202-969-2587.

Sincerely,

Jonathan Askin

cc: Jim Schlichting, WTB
Jeff Steinberg, WTB
David Furth, WTB
Leon Jackler, WTB

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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
society 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 12th 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.

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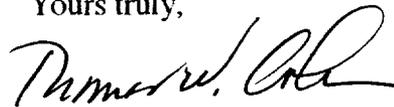
Thomas J. Sugrue, Esquire

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,

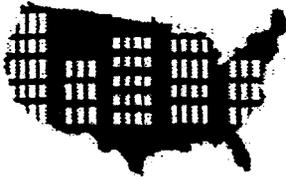


Thomas W. Cohen

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

Enclosure





Smart Buildings Policy Project

April 13, 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.

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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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.



Mr. Roger Platt
Real Access Alliance
April 13, 2001
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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



Mr. Roger Platt
Real Access Alliance
April 13, 2001
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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 large flourish that resembles the letters 'GSA'.

Thomas Cohen



Memo

To: Ben Wilson, Manager Building Access
From: Larry Fenster, Senior Economist
Re: Analysis of Real Access Alliance Model Contract
Date: June 8, 2001

General Comments

Although the Press Release accompanying the Model Agreement portrays it as a means to fulfill non-discriminatory, timely access to buildings through voluntary agreements rather than regulation, the Agreement does not substantively differ from Building Owner Model Agreements that existed prior to the Competitive Networks Order.

It must be stressed that the impetus behind the Competitive Networks Proceeding was the FCC's concern that standard building owner practices were inhibiting the development of local competition. The FCC opted to give the voluntary approach a chance, but stated that if voluntary commitments do not resolve our concerns regarding the ability of premises owners to discriminate unreasonably ...we are prepared to consider taking additional action." (Competitive Networks Order at ¶ 9).

By failing to address the factors causing unreasonable delays gaining access to buildings, namely the unreasonable and discriminatory terms and conditions owners continue to seek, the building owners have made clear they are not committed to giving their tenants timely communications' choices. The model contract fails to specify that building owners will respond to entrant's requests for access in a reasonable amount of time. The Real Access Alliance promised (in a September 7, 2000 letter to the FCC) that they would respond to requests for access within 30 days. This promise is not reflected in the model agreement. The model agreement fails to set reasonable time frames for concluding negotiations, primarily because it fails to address the anticompetitive and unreasonable terms and conditions (exorbitant rates, use of CDS, revealing equipment, revenue and services) that are the cause of delay. The model contract fails to set reasonable time frames for letting a licensee begin work to serve a tenant once a contract is negotiated. We have SLA's that obligate us to begin service within 2 weeks after a contract is negotiated, but often wait months after contract is negotiated before getting permission to perform actual upgrades and/or installation work.

Here are a some of the most problematic features of the “current” Model Agreement from WorldCom’s perspective:

2. License Grant

- b. Would give owner the right to approve which equipment was installed in non-common equipment rooms. Serves to delay entry. It also amounts to disclosure of trade secrets, since this equipment will reveal what service capabilities the entrant has.
- c. Would require moving licensee facilities in event owner installs a central distribution system (CDS). CDS systems fail to offer redundancy, often do not have sufficient capacity to serve our customers, and are priced to extract all net revenue and make it unprofitable to retain our customers.
- j. Prohibiting line sharing goes against FCC’s Telecom Attachment Order that permits leasing of dark fiber on a pole without permission of, or separate contractual arrangement with, the pole owner. Only notification is required. This provision is unreasonable because at times our presence in a building is as a wholeseller. We provide local connection, but do not know who is the tenant. We would have no way of enforcing the terms the owners seek to impose on his/her tenants.

7. Construction

- i. This provision, requiring each cable to be marked with circuit information and schematics showing cable delivered to each customer, discloses trade secrets and serves to permit owners to determine the entrant’s revenue potential in an attempt to charge rates based on revenue. This would be discriminatory, since ILECs are not charged on a revenue basis or are charged a nominal cost-based amount.
- j. This provision would require new entrants to gain approval for the contractors it wishes to use within the building. This provision is in addition to having the entrant assume liability for any damages it causes, and posting an insurance bond to guarantee it can pay damages. The provision will serve to delay the provision of service by new entrants, or force entrants to use the owner’s contractors. This provision is in contradistinction to FCC’s Local Competition Order which permits attachers to choose qualified contractors to perform attachment work without approval of pole owner, so long as they use contractors that adhere to generally accepted engineering practices and standards.

- k. The 1st sentence of this provision protects the owner from any liability associated with a decline in the quality of space in the building due to owner negligence. The second sentence is a case where the owner chooses to make changes that materially impact the entrant. In this case, the provision requires the entrant to pay for all relocation costs associated with the disruption.
- l. Owners want the right to inspect installations, but do not necessarily have knowledge about telecommunications installations to know if they have been done properly. Motivation for this provision therefore seems to be the desire to learn the scope of revenues earned from our customers, in order to extract the maximum locational rent.
8. Maintenance Obligations
 - a. Requires entrants to adhere to unspecified technical standards in maintaining space occupied. Owner may then change the technical standards, and impose additional costs on entrant. If the costs are exorbitant, building owner is exempted from any liability.
9. Access
 - d. Indemnifies owner from any liability for negligent behavior on its part during an inspection of space used by entrant.
10. Removal of Equipment Upon Termination
 - a. This provision requires removal of equipment upon termination, but does not establish model terms for the amount of time an entrant has to remove equipment. The scale of our operations requires that we have a minimum of 120 days.
11. Cable Distribution System (CDS)

This provision imposes many serious entry barriers:

- It appears to require entrants agree to pay CDS fees without knowing what the fees may be, since the CDS system may be put in place after the agreement is signed.
- Who will enforce the provision that all LECs will be required to use the CDS (see Exhibit J)? We have cases where we are told the ILEC has agreed to the

(exorbitant) terms and conditions being proposed for us, but the owner refuses to reveal the ILEC's terms and conditions.

- Owner is providing an essential telecommunications facility, but assumes no liability for malfunction.
- The CDS agreement does not specify any quality of service standards or commitments.
- The CDS agreement does not specify the reasonable time permitted before repairs are made. We insist on 90 minute turn-around, in order to meet service level agreements with our tenants. As with many other provisions of the model lease, this undermines our service, places us at a competitive disadvantage with the ILEC, and retards the pace of local competition.
- Exhibit J IIIA authorizes owner to appropriate entrant's inside wire in order to build its own inside wire facilities which entrant will then be required to use.
- Once a CDS is installed, entrant will have to remove any of its equipment not purchased by the owner at its own expense.
- Does not give entrants unconditional right to continue to directly serve customers with facilities they deem best for their customers. Only if owner does not purchase any of the entrant's equipment, can the entrant continue with existing customers, but no longer than existing lease. Then, the entrant may not serve new customers with facilities it deems are best.
- Entrant is required to use CDS, but does not have the right to make a claim against the owner if he/she fails to provide service, keep quality standards, etc., unless caused by gross negligence.
- Exempts owner from compensating entrant for lost investment in inside wire and electronics, and the cost of removal of inside wire and electronics, in the event the owner requires entrants to use their CDS.

16. Default

- b.3. Granting owner the right to terminate electricity in the event of a default, does not contemplate the possibility that the owner was mistaken that entrant had defaulted. The provision does not allow for any mediation regarding whether a default has occurred, since the owner has created the right to turn off electrical service at their sole discretion.

Exhibit A. Definitions

Equipment. The requirement to list every piece of equipment (in connection with Exhibit C) is a violation of trade secrets, and is not necessary for safety reasons, since entrants agree to carry the requisite bond to cover building damage from equipment.

Exhibit F. Services

Specifying our services is a violation of trade secrets.

Exhibit H. Financial Standards

Specifying our financial and technical capacity is a violation of trade secrets.

Exhibit J. Access Request Form

Specifying equipment in non-common areas is a violation of trade secrets.

Exhibit K. REIT Provisions

Generally, anticompetitive. Prevents us from offering new services requested by our customer. Prevents us from marketing new services.

3. Generally objectionable, since it makes the entrant responsible for preserving the favorable IRS tax status of a REIT.
6. Specifying tenants, services, etc., is a violation of trade secrets.