

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Promotion of Competitive Networks In Local Telecommunications Markets</b>	)	<b>WT Docket No. 99-217</b>
	)	
<b>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</b>	)	<b>CC Docket No. 96-98</b>
	)	
	)	

**COMMENTS OF COMPTTEL**

COMPTTEL respectfully submits these comments in response to the Wireline Competition Bureau’s *Public Notice* seeking to refresh the record in the above-captioned dockets.<sup>1</sup> In the *Public Notice*, the Bureau asks parties to provide “any new information or arguments they believe to be relevant” to the proceeding so that the Commission may “determine whether additional action is necessary to address the ability of premises owners to discriminate unreasonably among competing telecommunications service providers.”<sup>2</sup> For the reasons explained below, COMPTTEL urges the Commission to move forward expeditiously to prohibit unreasonable discrimination by premises owners. In the nearly seven years since the Commission adopted the *Competitive Networks Order and FNPRM*<sup>3</sup>, the need to ensure reasonable and non-discriminatory access to multiple tenant environments (“MTEs”) has grown significantly. Absent effective rules to prohibit discrimination, premises owners could stand in

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<sup>1</sup> *Public Notice, Parties Asked to Refresh Record Regarding Promotion of Competitive Networks in Local Telecommunications Markets*, DA 07-1485 (rel. Mar. 28, 2007).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22983 (2000) (*Competitive Networks Order and FNPRM*).

the way of the growth of facilities-based competition in telecommunications services.<sup>4</sup>

Therefore, COMPTTEL respectfully submits that the Commission should prohibit incumbent LECs from entering into building access agreements with MTE owners that favor the ILEC over other telecommunications service providers. Such arrangements are unjust, unreasonable and unduly discriminatory and can be regulated by the Commission pursuant to its authority under Sections 201 and 202 of the Communications Act.

COMPTTEL consistently has advocated Commission action to ensure reasonable and non-discriminatory access to MTEs. In its initial comments in the *Competitive Networks* docket, COMPTTEL described numerous practices that premises owners engaged in, including unreasonable revenue sharing proposals, significant up-front fees for building access and the bundling of access to multiple buildings into a single arrangement even when a CLEC desires access to only one building.<sup>5</sup> COMPTTEL urged the Commission to, among other things, adopt rules prohibiting incumbent LECs from entering into arrangements with MTE owners that are unjust, unreasonable or contrary to the public interest.<sup>6</sup> COMPTTEL recommended this action in lieu of regulating MTE owners directly, which entail more difficult legal and constitutional considerations.<sup>7</sup>

In the *Competitive Networks Order and FNPRM*, the Commission prohibited exclusive access arrangements in commercial MTEs, but deferred to the Further Notice issues

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<sup>4</sup> In a recent report, the Government Accountability Office cited limited access to buildings as a barrier to entry for facilities-based competitors in the special access market. United States Government Accountability Office, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-80, at 26-27 (Nov. 2006).

<sup>5</sup> COMPTTEL Comments, at 3-5, WT Docket No. 99-217, CC Docket No. 96-98, filed August 26, 1999 (*COMPTTEL Initial Comments*).

<sup>6</sup> *Id.* at 16-18.

<sup>7</sup> *Id.* at 14-15 (explaining that the Commission has authority to regulate building owner actions directly but that other means may be equally effective at this time).

relating to non-discriminatory access requirements.<sup>8</sup> The Commission stated that it expected the initial steps it took to reduce barriers to competitive entry, but the Commission expressed concern that its initial actions would not be sufficient:

We remain concerned, however, that, based on the record, the ability of premises owners to unilaterally and unreasonably discriminate among competing telecommunications service providers remains an obstacle to competition and consumer choice. ... We will closely monitor [real estate industry ‘best practices’ efforts], as well as the development of competition in the market for the provision of telecommunications services in MTEs. We stress that if such efforts ultimately do not resolve our concerns regarding the ability of premises owners to discriminate among competing telecommunications service providers ... *we will consider adopting a nondiscriminatory access requirement.*<sup>9</sup>

The Commission has received comment on several occasions since the *Order and FNRPM* in which competitive carriers supplied additional information about the continuing problems they faced in gaining access to buildings.<sup>10</sup> In addition, in other proceedings, the Commission found that impediments to building access continue to exist. For example, in the Triennial Review proceeding in 2003, the Commission cited building access issues as a factor evidencing impairment in the provision of loops and sub-loops. Discussing self-deployment of loops by CLECs, the Commission found that, “competitive LECs face additional barriers with regard to serving multiunit premises due to difficulties and sometimes outright prohibitions in

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<sup>8</sup> *Competitive Networks FNRPM*, 15 FCC Rcd at 22987-88 (¶¶ 6-7).

<sup>9</sup> *Competitive Networks Order and FNRPM*, 15 FCC Rcd at 23039 (¶ 126) (emphasis added).

<sup>10</sup> See e.g. Comments of the Smart Buildings Policy Project filed *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, March 8, 2002, which contained both examples of barriers and a survey of competitive providers and the barriers they confront, and the *Ex Parte* Submission of the Smart Buildings Policy Project in WC Docket No. 04-313, CC Docket Nos. 01-338, 96-98, and 98-147, November 19, 2004.

gaining building access.”<sup>11</sup> The Commission found these problems were exacerbated when a CLEC sought access to facilities *within* a building. Requesting carriers in this situation face impairment under the Act resulting from “barriers in accessing customers in multiunit premises, including a general prohibition against facilities-based access, ... the refusal for reasonable access to the existing premises wiring; or the refusal to allow installation of the carrier’s own new wiring.”<sup>12</sup> Two years later, in the *Triennial Review Remand* proceeding, the Commission again found that the operational barriers faced by a CLEC in deploying loops to buildings were “substantial.”<sup>13</sup> Although the Commission pledged to address these “building-specific impediments” in other proceedings (including this *Competitive Networks* docket),<sup>14</sup> it left little doubt that the problems were real and substantial.

The problems have not disappeared in 2007. An informal survey of COMPTTEL members indicates that preferential treatment in building access arrangements continues to hinder CLEC deployment of facilities-based networks. COMPTTEL’s members report instances where building owners still do not provide equal treatment for CLECs compared to the treatment that incumbent LECs receive. Some MTEs will not allow a CLEC access to the MPOE for purposes of installing electronics necessary to serve customers in the building. Instead, a CLEC is required to install a cross-connect at the MPOE and place necessary electronics at the customer premises. This arrangement significantly increases a CLEC’s costs by requiring it to

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<sup>11</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 305 (2003) (*Triennial Review Order*).

<sup>12</sup> *Id.* at ¶ 348.

<sup>13</sup> *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, 2616 (¶ 150) (2005) (*Triennial Review Remand Order*). The operational barriers included, “the costs of obtaining rights-of-way *and other necessary legal permissions*” in addition to the cost of the physical facilities themselves. *Id.* at n. 419 (emphasis added).

<sup>14</sup> *Id.* at 2623 (¶ 163).

install equipment in each customer location within the MTE and denies it the ability to serve multiple customers with the same equipment.

In addition, CLECs frequently are forced to expend considerable amounts of time and resources to identify the demarcation point within a residential MTE. ILECs often will disclose demarc locations only to the building owner, not to a requesting CLEC. If the building owner does not disclose the demarc location to the CLEC (as it often does not), then the CLEC frequently wastes time attempting to determine the correct location for each resident.

Third, in some states, PUCs have sanctioned disparate treatment of ILECs and CLECs. For example, in Texas, the Public Utility Commission of Texas permitted the owners of an MTE in Houston to provide more favorable treatment to an incumbent LEC under an existing arrangement than offered to CLECs seeking to provide service in the building.<sup>15</sup> In that case, Tanglewood, the building manager, required CLECs to obtain a license and pay a fee for access to a building, but allowed the incumbent LEC to obtain access without a license or a fee. The PUC acknowledged differential treatment between carriers, but found that SBC (now known as AT&T) received its advantage “as a result of its incumbency,” not due to the actions of the property manager.<sup>16</sup> Tanglewood, the PUC found, had no obligation under Texas’ nondiscrimination law to force SBC out of the building or pursue litigation to remove SBC’s advantages.<sup>17</sup> Thus, an existing discriminatory arrangement was permitted to continue, as would be thousands of other “sweetheart deals” that incumbent carriers enjoy as a result of their incumbency.

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<sup>15</sup> Complaint of Time Warner Telecom of Texas, L.P. Against Tanglewood Property Management and Emissary Group, PUC Docket No. 24604 (Tex. PUC 2003).

<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.*

The Commission has a sufficient record to conclude that discrimination remains a problem that warrants action. The Commission's initial concerns articulated in 2000 remain valid: without additional action, the ability of premises owners to act unilaterally and unreasonably remains an obstacle to competition in telecommunications.

Respectfully submitted,

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Dated: July 30, 2007