

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Promotion of Competitive Networks in Local Telecommunications Markets	)	WT Docket No. 99-217
	)	
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	)	CC Docket No. 96-98
	)	
Review of Sections 68.104 and 68.213 of The Commission's Rules Concerning Connection Of Simple Inside Wiring to the Telephone Network	)	CC Docket No. 88-57
	)	

**REPLY COMMENTS OF COMCAST CORPORATION**

Comcast Corporation ("Comcast") hereby replies to comments filed in response to the *Public Notice*<sup>1</sup> that seeks to refresh the record regarding the above-captioned *Further Notice of Proposed Rulemaking* ("*Further Notice*").<sup>2</sup> As Comcast expected, the record in this proceeding

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<sup>1</sup> *Parties Asked to Refresh Record Regarding Promotion of Competitive Networks in Local Telecommunications Markets*, Public Notice, 22 FCC Rcd. 5632 (2007) ("*Public Notice*").

<sup>2</sup> *In re Promotion of Competitive Networks in Local Telecommunications Markets*, 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, Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983 (2000) ("*Competitive Networks Order*" or "*Further Notice*," as appropriate).

provides a stronger legal and factual basis for regulatory intervention than does the record in the MDU Proceeding,<sup>3</sup> but even here the factual evidence is exceedingly weak.

Only eight parties filed comments. Overall, they presented a reasonably strong showing that the Commission has the necessary legal authority to restrict the use of contracts that exclude competitive telecommunications service providers from multi-tenant environments (“MTEs”). For example, commenters cited Sections 201(b),<sup>4</sup> 202(a),<sup>5</sup> 205(a),<sup>6</sup> and 224,<sup>7</sup> among others, as sources of Commission authority in this matter. Unlike the statutory authority cited in the MDU Proceeding, these statutory provisions actually do provide the Commission with sufficient authority to prohibit the incumbent Bells -- and possibly other telecommunications carriers -- from engaging in discriminatory and anti-competitive practices.<sup>8</sup>

However, just as in the MDU Proceeding, the first-round comments furnished only weak, anecdotal evidence of any need for regulatory intervention. COMPTTEL says that it has performed an informal survey of its members that “indicates that preferential treatment in building access arrangements continues to hinder CLEC deployment of facilities-based networks.”<sup>9</sup> With only a single exception,<sup>10</sup> however, its comments provide no specific data

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<sup>3</sup> See *In re Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Notice of Proposed Rulemaking, 22 FCC Rcd. 5935 (2007).

<sup>4</sup> See, e.g., XO Comments at 19; COMPTTEL Comments at 2; Qwest at 3.

<sup>5</sup> See, e.g., XO Comments at 19; COMPTTEL Comments at 2.

<sup>6</sup> See, e.g., XO Comments at 19.

<sup>7</sup> See, e.g., *id.* at 20.

<sup>8</sup> As in the MDU Proceeding, the legal support for abrogating existing contracts is far weaker than the legal authority for a prospective-only rule.

<sup>9</sup> See COMPTTEL Comments at 4.

about any particular practices, much less the extent of those practices, and it sheds no light on the relative extent to which COMPTTEL's members experience competitive impediments in residential buildings, as opposed to in commercial buildings. Qwest says that "[a]necdotally, Qwest is increasingly encountering residential buildings or whole developments where it is prohibited from access to sell its voice services," but it too cites only a single specific example of an MTE where it has been precluded from competing (a "Gateway project" where the developer allegedly only allows its affiliate to offer voice services).<sup>11</sup> XO's comments are limited entirely to problems allegedly involving "buildings owned by AT&T where AT&T and others are tenants,"<sup>12</sup> and XO even admits that "this is not the traditional building access problem discussed in the *Competitive Networks Proceeding* ... ."<sup>13</sup>

On this record, the Commission should be reluctant to use whatever authority it has to interfere in the workings of the marketplace. While the evidence put forward in this proceeding is not the product of the Verizon/AT&T/US Telecomm echo chamber, it still constitutes the kind of "skimpy anecdotal evidence" that the Real Access Alliance rightly says should not be the basis for granting certain providers "regulatory favors."<sup>14</sup> Even though there is no evidence that exclusive access arrangements for consumers of telecommunications services produce the same

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(...footnote continued)

<sup>10</sup> This exception involves a single MTE in Houston. *See* COMPTTEL Comments at 5.

<sup>11</sup> *See* Qwest Comments at 1.

<sup>12</sup> XO Comments at 4.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *See* Real Access Alliance Comments at 2.

kinds of consumer benefits that have been demonstrated in the MDU *video* proceeding, there still is no evidentiary proof of genuine market failure or consumer harm.

In contrast, the first-round comments do provide support for Comcast's recommendation that the Commission should launch a comprehensive proceeding to review the inside wiring rules for both telecommunications services and cable services. As noted by other parties to this proceeding, the ability to deliver voice, video, and broadband Internet service over the same wire is increasingly demanded by property owners and their tenants.<sup>15</sup> Commission rules that treat wires differently based on the legacy service those wires used to provide, and not based on the services actually carried on those wires today, tend to distort the marketplace and, in the end, will harm consumers.

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<sup>15</sup> See, e.g., Embarq Comments at 2-3.

The record affirms Comcast's position that the Commission should proceed with extreme caution in both this proceeding and its companion video proceeding. In both proceedings, it should refrain from interfering with the marketplace absent more compelling factual evidence of a problem that requires Commission intervention. In neither case does the Commission have any legal or factual basis for abrogating existing contracts.

Respectfully submitted,

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August 28, 2007