

FCC Adopts New Measures to Promote Carrier Access to Multi-Tenant Buildings

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Washington, DC - October 27, 2000 - The FCC on Wednesday released its latest decision in its on-going "building access" docket. The decision adopts additional regulations governing building access by competing telecommunications providers, and seeks further comments to address numerous issues which the FCC will address in forthcoming proceedings. [See our previous article -- "[FCC Takes Steps to Open Access to Multi-Tenant Buildings](#)" (Telco Times - September 14, 2000) -- for details on prior actions by the FCC].

The "building access" docket has been an integral part of the FCC's continuing efforts to promote local competition in telecommunications markets as mandated by the Telecommunications Act of 1996. The measures implemented by the FCC have sought to enhance the ability of competing telecommunications providers to provide services to customers in residential and commercial buildings or other multiple tenant environments (MTEs). The FCC and state regulatory authorities have for some time struggled with the bottleneck that exists in the so-called "last hundred feet;" this is, in gaining access from the street to customers, principally in large buildings and building complexes. The FCC has correctly recognized that the bottleneck in the "last hundred feet" is a major impediment to competition in the local exchange market, and that both building owners and incumbent LECs have often obstructed competing telecommunications carriers from gaining access on reasonable and nondiscriminatory terms. Consequently, the FCC has worked hard to develop an effective regulatory regime to promote the ability of competing communications providers to gain non-discriminatory access to the rights-of-way, buildings, rooftops, and facilities necessary to reach customers located in MTEs.

In furtherance of the goal of promoting facilities-based competition in telecommunications markets and insuring wider access to MTEs by all carriers, the FCC's latest decision has taken several additional actions, including:

1. Prohibiting carriers from entering into any contracts for the provision of services to commercial properties that directly or indirectly restrict the property owner's ability to permit access to its premises to other carriers.
2. Establishing procedures to facilitate moving the demarcation point to the minimum point of entry (MPOE) at the building owner's request, and to require incumbent LECs to timely disclose the location of existing demarcation points where they are not located at the MPOE. The FCC concluded this action was necessary to reduce competitive carriers' dependence on the incumbent LECs to gain access to on-premises. The FCC has also come to believe that both building owners and incumbent LECs have obstructed competing telecommunications carriers from obtaining access on reasonable and nondiscriminatory terms to necessary facilities located within multiple unit premises. The FCC has also come to believe that both building owners and incumbent LECs have obstructed competing telecommunications carriers from obtaining access on reasonable and nondiscriminatory terms to necessary facilities located within multiple unit premises. wiring, while at the same time respecting the concerns of existing carriers and building owners.
3. Determining that Section 224 of the Communications Act requires utilities, including LECs, to provide telecommunications carriers and cable service providers reasonable and nondiscriminatory access to conduits and rights-of-way owned or controlled by the utility that are located in customer buildings and campuses.
4. Extending to antennas that receive and transmit telecommunications and other fixed wireless signals, the existing prohibition on restrictions that impair the installation, maintenance or use of certain types of antennas on property within the exclusive use

or control of the antenna user, where the user has a direct or indirect ownership or leasehold interest in the property.

In addition, in its latest decision, the FCC has for now sought to further encourage increased MTE access short of imposing additional regulatory obligations on property owners and utilities, by working cooperatively with the industry to develop "best practices" guidelines governing MTE access. To that end, the FCC has obtained the commitment by a coalition of 11 trade associations representing over 1 million property owners and operators, to implement a "best practices" plan to improve MTE owners' processing of tenant requests for service from alternative telecommunications carriers or carrier requests for access to MTEs to serve tenants. Specifically, the plan would include commitments to:

1. adopt a firm policy not to enter into any exclusive contracts for building access in the future;
2. respond within 30 days to written tenant requests for a particular telecommunications provider, and accommodating such requests in good faith, where appropriate space is available and the provider intends to execute an access agreement that is substantially in the form of a model contract to be developed by the industry;
3. inform tenants of existing alternatives in buildings that are already served by multiple competitive providers, and encouraging a dialogue with tenants regarding the advantages of additional providers;
4. incorporate the plan's guidelines in new leases and notices to existing leaseholders;
5. establish a clearer and more predictable process for responding to requests from carriers to access the MTE to serve customers, including provision of clear guidance regarding the MTE owner's policies within 30 days, where the carrier agrees that its access to the MTE is conditioned on deploying equipment and/or providing service to tenants by a date certain;
6. establish an independent clearinghouse to which interested parties could submit allegations of behavior that is inconsistent with either the model contracts or "best practices" developed as part of this initiative; and
7. support a periodic, quantitative study of the market for building access, to be conducted under the auspices of the FCC.

Nevertheless, in recognition of concerns expressed by many carriers "that these voluntary commitments may fall short of protecting tenants' ability to choose among competing carriers," the FCC has noted that it would closely monitor the implementation of the voluntary "best practices" commitments made by the industry. If need be, the FCC has stated that it would revisit the need for further regulatory action based on its review of the effectiveness of the plan in promoting building access by competing carriers. To that end, the FCC has issued yet another request for comments covering several areas, including:

1. The status of the market for the provision of telecommunications services in MTEs in order to evaluate the necessity of a nondiscriminatory access requirement.
2. Whether the FCC has the authority to impose requirements on carriers in order to ensure nondiscriminatory MTE access, and whether it should exercise such authority.
3. On the circumstances under which the benefits would exceed the costs of imposing additional MTE access requirements, and on how any nondiscriminatory access requirement could best be implemented.
4. Whether the prohibition on exclusive access contracts in commercial MTEs should be extended to residential settings, and whether carriers should be prohibited from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs.
5. Whether we should proscribe carriers from entering into contracts that grant them preferences other than exclusive access, such as exclusive marketing or landlord bonuses to tenants that use their services, in some or all situations.

6. The appropriate definition, in the MTE context, of "rights-of-way" to which a utility must allow access under Section 224.
7. Whether the existing FCC cable inside wiring rules should be extended to facilitate the use of home run wiring by telecommunications service providers where an incumbent cable provider no longer has a legal right to maintain its home run wiring in the building.

The FCC has directed all interested parties to submit comments by December 22, 2000, and reply comments by January 22, 2001.

The FCC recently has been making rapid progress in addressing many long-standing and controversial issues which have surrounded its efforts to promote wider non-discriminatory building access to competing carriers. The controversy which has surrounded the FCC's efforts is not surprising given the need to engage in a four-way balancing act in developing an effective regulatory regime to govern building access. Specifically, the FCC has had to consider the competing concerns and interests of consumers, competing carriers, property-owners, and utilities (including LECs) with existing access to MTEs. As a result, the FCC has sought to develop as complete a record as possible, and has proceeded cautiously by combining the adoption of new regulations with efforts to promote voluntary compliance with "best practices" access guidelines. As is evident from the breadth of the FCC's latest request for comments, many important issues remain to be determined, or even revisited. How the FCC will decide these issues will affect the interests of all concerned, and should be closely followed.

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