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FCC ACTS TO FOSTER TELECOMMUNICATIONS COMPETITION AND CONSUMER CHOICE IN MULTIPLE TENANT ENVIRONMENTS

Washington, DC – The Federal Communications Commission took action today furthering its ongoing efforts under the Telecommunications Act of 1996 to foster competition in local communications markets. The FCC implemented measures to enhance the ability of competing telecommunications providers to provide services to customers in residential and commercial buildings or other multiple tenant environments (MTEs).

In the Competitive Networks Notice of Proposed Rulemaking, the FCC requested comment on the state of access to MTEs and on a variety of potential measures to improve such access. Based on the extensive record compiled in response to that Notice, today the FCC adopted several measures to remove obstacles to competitive access in this important portion of the telecommunications market.

The Commission noted that, while the adopted measures will help significantly to advance competition and customer choice, they may well be insufficient in themselves to secure a full measure of choice for businesses and individuals located in MTEs. The FCC recognized that the real estate industry has taken positive steps to facilitate tenant choice of telecommunications providers by working towards the development of best practices and model agreements. In particular, a coalition of 11 trade associations representing over 1 million owners and operators has committed to a best practices implementation plan regarding these issues. The Commission stated it will closely monitor these industry efforts and, if such efforts ultimately do not resolve concerns regarding the ability of premises owners to unreasonably deny competing telecommunications service providers access to customers in MTEs, the FCC is prepared to consider taking additional action, including adopting rules to ensure that competing telecommunications service providers receive access to MTE premises.

In order to be prepared to take further action quickly, if necessary, the FCC also adopted a Further Notice of Proposed Rulemaking.

Actions Taken Today by the Commission:

- First, the FCC forbade telecommunications carriers in commercial settings from entering into exclusive contracts with building owners, including contracts that effectively restrict premises owners or their agents from permitting access to other telecommunications service providers.
- Second, the FCC established procedures to reduce competitive carriers' dependence on the incumbent local exchange carriers (LECs) to gain access to on-premises wiring, while at the same time recognizing the varied needs of carriers and building owners. These actions relate to the location of the demarcation point, which marks the end of LEC control over wiring and the beginning of the customer's or MTE owner's control. Under current law, the demarcation point may be located either at the minimum point of entry (MPE) to the MTE or further inside the premises. The FCC established procedures to facilitate moving the demarcation point to the MPOE at the building owner's request, and required incumbent

LECs to timely disclose the location of existing demarcation points where they are not located at the MPOE.

- Third, the FCC determined that under Section 224 of the Communications Act, utilities, including LECs, must afford telecommunications carriers and cable service providers reasonable and nondiscriminatory access to conduits and rights-of-way located in customer buildings and campuses, to the extent such conduits and rights-of-way are owned or controlled by the utility.
- Fourth, the FCC extended to antennas that receive and transmit telecommunications and other fixed wireless signals its existing prohibition of restrictions that impair the installation, maintenance or use of certain video 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.

Comment Sought in the Further Notice of Proposed Rulemaking:

- First, based upon review of the relevant authority, the FCC recognized that a strong case can be made that it has the statutory authority to prohibit LECs from providing service to MTEs whose owners maintain a policy that unreasonably prevents competing carriers from gaining access to potential customers located within an MTE.
- Second, in order to help inform a decision whether to implement such an obligation, the FCC sought to refresh the record on the status of the market for the provision of telecommunications services in MTEs, including the development of new access technologies, as well as on possible constitutional and implementation issues.
- Third, the FCC asked whether today's prohibition on exclusive access contracts in commercial buildings should be extended to residential buildings, either in addition to or in lieu of a nondiscriminatory access requirement applicable to these premises, and whether it should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs.
- Fourth, the FCC sought comment on whether it 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.
- Fifth, the FCC sought additional comment on the definition of "right-of-way" in customer buildings for purposes of Section 224.
- Finally, the FCC sought additional comment on whether it should extend its cable inside wiring rules 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.

Action by the Commission on October 12, 2000 by 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, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57 (FCC 00-366). Chairman Kennard, Commissioners Ness, Powell and Tristani with Commissioner Futchgott-Roth dissenting and issuing a separate statement.

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WT Docket No. 99-217
CC Docket No. 96-98
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