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Bob,

Please accept these comments as a formal written response to Docket Number UT-990146 Chapter 480-120 WAC Telecommunications – Access to Premises as I would like it to serve as my first written comments on the topic. BOMA would like to participate with further comments and will provide even greater detail in future correspondence.

The Building Owners and Managers Association of Seattle King Count, along with our colleagues in Tacoma and Spokane, would like to go on record as opposing any form of mandatory or forced access to our properties by telecommunications companies in Washington State.

BOMA Position

Telecommunications legislation and regulation at the state and local levels must preserve the viability of a free and effective marketplace that respects private property. Forced building entry privileges for telecommunications service providers (TSPs) are unnecessary, unmanageable and unconstitutional. BOMA is strongly opposed to any such initiatives.

Background

Technological advances and an era of deregulation have ushered in the age of competition and choice in communications. Despite this era of choice, some TSPs, rather than marketing their services to building owners and tenants, are seeking government mandates to use others' private property for their own economic benefit. These interests are asking legislators and regulators to ignore the concerns of property owners and tenants by mandating forced building entry.

Typical forced entry proposals allow an unlimited number of TSPs to take office building interior and rooftop space for their equipment and wiring. Furthermore, such access is granted at free or at low government established prices and over the owner's opposition. This opposition is justly based on space limitations, safety & security concerns, the TSP's reputation or commercial viability, and the economic impact such access would have on the property.

Page 1 of 3 of comments on Docket Number UT-990146 Chapter 480-120 WAC Telecommunications – Access to Premises submitted by; Rod Kauffman, Executive Vice President, Building Owners and Managers Association Seattle King County, (206) 622-8924 rkauffman@bomaseattle.org

Despite the rhetoric of TSPs to the contrary, mandatory access does not serve the interests of building tenants. Mandating such access privileges would create a static regulatory regime, and would retard the technological and real estate market forces that would otherwise ensure tenant access to cutting edge telecommunications services.

The federal Telecommunications Act of 1996 did not mandate forced building access for telecommunications providers. The federal government recognized that it was unnecessary and unconstitutional to enact forced access legislation. The marketplace is driving healthy competition and providing tenants with an array of telecommunication provider choices.

BOMA Opposes any attempt to pass forced access legislation in Washington State.

Competitive telecommunications access is thriving in the marketplace.

1. Competitive Local Exchange Carriers (CLECs) by their own admission have signed tens of thousands of contracts with building owners to bring telecom service to tenants, making those same CLECs very successful enterprises. In their own industry report earlier this year, even the CLECs admitted: "Competition is the best regulator."
2. A survey of office building tenants by the Building Owners and Managers Association (BOMA) found that property owners had facilitated 98% of tenant requests for access to a particular telecom service provider.
3. 82% of building owners/managers cite tenant-related reasons (choice, satisfaction, retention) and building marketability as their primary reasons for offering telecom services, according to an independent survey conducted by Charlton Research.
4. Many building owners are already working in partnership with a variety of telecommunications providers to deliver even better, faster and cheaper services to tenants.

Forced building access is unconstitutional.

Any action giving telecommunications providers access to private buildings at non-market rates would amount to a "taking" of private property by the government - a clear violation of the Fifth Amendment of the U.S. Constitution.

Forced access would represent an enormous expansion of regulatory power and fly in the face of Congressional policy.

The intent of the 1996 Telecommunications Act was to stimulate competition by deregulating the industry. Re-regulation would fly in the face of the intent of Congress, and the desire of voters, for less government interference in the marketplace.

A forced access mandate would not be practical or achievable

1. A one-size-fits-all mandate can't address the unique needs of hundreds of buildings and thousands of tenants. There are:
2. Real limits on physical space in a building to accommodate wiring by multiple telecom providers (telephone closets, risers, rooftop).
3. Huge security/liability/accountability issues for owners and tenants if multiple CLECs are given unlimited building access.
4. Issues of technological obsolescence - fast-moving market forces demand that property owners be able to quickly adapt to evolving technology needs of their tenants, yet limits on wiring capacity as technologies change constrain that ability.

Any bottleneck to providing telecom services to buildings isn't coming from the real estate industry - it's coming from CLECs.

1. Two leading CLECs, Winstar and Teligent, already have access agreements for twice as many buildings as they can serve, according to Commercial Property News. These companies are among the leading proponents of imposing a forced access rule on property owners.
2. Winstar has agreements for 8,000 buildings, but only half are "lit" with actual service.
3. Teligent has agreements for 7,500 buildings, but only 40 percent have service.
4. Some property owners have long-standing license agreements with CLECs who have yet to wire all their buildings.

Some CLECs aren't seeking more competition - they're making a land grab.

1. Some of the most profitable CLECs are "cherry picking" - signing up customers in major cities while ignoring residential, rural and small business customers.
2. Since some CLECs aren't serving buildings for which they already have signed access contracts, a forced access mandate would only stimulate a land-rush mentality and help them grab more buildings to impress Wall Street - rather than encourage good customer service.

Where access is denied, it's for valid business reasons, such as a telecom provider:

1. Refusal to meet standard contractual requirements agreed to by a great majority of other providers for building access;
2. Failure to assume liability for the safety and security of the building's infrastructure;
3. No business track record or limited company capitalization;
4. Inability to meet relevant building codes; and/or
5. Insistence on exclusive access rights to a building.