
March 14, 2001

Docket number: UT-990146

Washington Utilities & Transportation Commission
1300 South Evergreen Park Drive SW
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Proposed Rule WAC 480-120-049 – Access to land and premises; exclusive or restrictive agreements by telecommunications companies not permitted.

This proposed rule sounds like it might aid competition and give residents more choice, but the fact is that just the opposite will occur if this rule is implemented.

I am writing on behalf of the National Multi Housing Council and National Apartment Association. While headquartered in Washington, DC and Alexandria, VA respectively, our membership extends across the country into the state of Washington. We are the leading trade groups for owners and managers of apartment communities in the United States.

A number of states around the country have looked into enactment of the type of rule that is being proposed. In fact, more than 25 states have looked at this type of rule since 1996 and only Massachusetts has put such a rule on the books. Even in the case of Massachusetts, the rule does not take effect until July 1 of this year (unless overturned in court) and is greatly modified with provisions such as only pertains to leases more than 12 months in length.

Apartment properties have a special set of economic characteristics that set them apart from commercial office buildings. Residents in apartments are looking for good, affordable, and dependable telephone (voice) service. They are also looking for reliable and affordable video service that offers a broad array of viewing options. Finally, a small but growing number of residents are looking for high-speed data service. Apartment property owner/managers must satisfy the needs of residents in order to attract and retain residents. No apartment owner/manager in his/her right mind would intentionally enter into agreements with telecom providers that did not meet resident needs. Most contracts with providers have a duration of 5-10 years so that a given apartment property is not stuck with an outdated technology. Additionally, most contracts written within the past 2-3 years carry strong default clauses in case of non-performance by a provider.

Apartment properties come in all shapes and sizes. One of the dominating characteristics is the lack of space for multiple telecom systems beyond the three basics of voice, video, and data. For most properties, multiple systems for each of these types of service would be unworkable and unmanageable. Deployment of such multiple services would be chaotic. Not all apartment

properties are the same. Placing of equipment on rooftops might void roofing warranties. Stringing of cables and wires in hallways might trigger numerous fire and safety code violations.

Rooftops are of special concern because some of the “new technology” wireless providers need rooftop space for their receiving and transmitting devices. Sometimes just the rooftop is needed for beaming of signals to other properties. Other times, the wireless provider also seeks to wire the building upon which the devices are installed. The placement of these devices and the drilling of holes can cause serious damage. Rooftop management has become a prime preoccupation of many apartment community owner/managers.

While there are many providers in a given market, a much smaller number can actually meet the criteria of reliability, dependability, and affordability. Chaos would ensue on some properties because of the high annual turnover of residents. Much to the chagrin of apartment owner/managers, some residents skip out before a lease is over. If each resident has a separate contract for installation of service then each apartment unit would be its own entity. How does a new resident move into a unit if the telecom service contract with the resident who left has not been satisfied with the telecom provider?

The economics are also important to telecom providers. Many of the smaller telecom providers are important to the competitive environment. But these providers simply cannot compete in a marketplace where the bigger companies have a right to come onto a property per se. All of the smaller providers will be driven out. There is nothing wrong with an exclusive contract with a specific telecom provider for a given property. In fact, they are essential. On the other hand, an exclusive contract for a geographic area would stifle competition. Please do not get the two confused: exclusivity on a given property is vital for competition while exclusivity in a region is bad.

To understand why the proposed rule will actually kill competition in Washington, you have to think through what will actually occur after such a rule goes into effect. There are hundreds of telecommunications providers in the marketplace. But, as you have seen in recent months, many of these providers are at or near bankruptcy. Trying to go into a 100, 200, or 300 unit apartment property against several other providers of the same service would be suicidal. That is why the Federal Communications Commission on October 25, 2000 decided against a ban on exclusive contracts on residential properties.

Finally, the implementation and use of new telecom technology will be choked off in the Washington if this rule is put into effect. Space in apartments is limited. Once a couple of competitors are let in, all of the space will be gone. That property and its residents will be pre-empted from taking advantage of new service offerings.

The proposed rule is too one-sided and not clearly thought through. The only people to benefit

from this law will be a few select telecom providers. There is nothing in the proposal that guarantees top-notch service, new technology, and affordable rates. There is nothing in the proposed law that requires providers to give service to all who seek it.

Will the few select telecom providers seeking this type of rule guarantee to serve all requests for service? If they will not make this guarantee, then why should they be given a right to serve if they so choose? Without such guarantees, you will set in motion a system that results in fewer and fewer telecom providers serving low and moderate income housing. As stated above, no telecom provider is going to take the risk of providing all of the wiring infrastructure in low and moderate income housing if that investment is rendered worthless by other providers coming onto a property and overbuilding.

We strongly urge the Washington Utilities and Transportation Commission to reject this rule. Other states have examined the same type of rule and rejected it. We are confident that a detailed study that asks the right questions will show you why citizens in Washington would be ill-served by such a rule.

Sincerely,

Jim Arbury
Vice President, National Multi Housing Council/National Apartment Association