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February 4, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

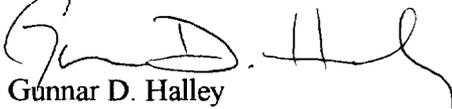
Re: Ex Parte Presentation in WT Docket No. 99-217 and CC Docket No. 96-98

Dear Ms. Salas:

Please find attached a letter from David Turetsky of Teligent, Inc. delivered today to Jeffrey Steinberg and Joel Taubenblatt of the Wireless Telecommunications Bureau and Vincent Paladini of the Common Carrier Bureau regarding the above-referenced proceedings.

In accordance with the Commission's rules, for each of the above-mentioned proceedings, I hereby submit to the Secretary of the Commission two copies of this notice of Teligent's written ex parte presentation.

Respectfully submitted,


Gunnar D. Halley

Counsel for TELIGENT, INC.

cc: Jeffrey Steinberg
Joel Taubenblatt
Vincent Paladini

Enclosures

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February 4, 2000

Mr. Jeffrey S. Steinberg, Deputy Chief
Commercial Wireless Division
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Washington, DC 20554

Joel D. Taubenblatt, Esq.
Commercial Wireless Division
Federal Communications Commission
445 12th Street, S.W., Room 4-A260
Washington, DC 20554

Vincent M. Paladini, Esq.
Policy & Planning Division, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-C315
Washington, DC 20554

Dear Messrs. Steinberg, Taubenblatt, and Paladini:

Thank you for meeting with Terri Natoli, Gunnar Halley and me in December to discuss inside wiring access issues resolved by the UNE Remand Order as well as those issues that remain pending for resolution in the FCC's *Competitive Networks* rulemaking. During that meeting, we told you that we would provide you a detailed written piece that reflects some of the inside wire access issues that Teligent has encountered with the ILECs and some proposals for rectifying those problems.

Teligent has encountered many situations in which a building owner has granted Teligent access to the building and grants Teligent permission to use the building's existing inside wiring only to have the ILEC assert ownership and control over the inside wiring and prohibit Teligent's use thereof. Not only is it difficult to ascertain precisely which entity owns the wiring, it is difficult to determine what, if any, restrictions an ILEC may impose on CLEC use of inside wiring. A review of the relevant FCC regulations indicates that where building owners have granted permission to a telecommunications carrier to serve the tenants in a multi-tenant building, the ILEC has no lawful ability to prohibit or impair that access even when the ILEC continues to "own" the wire. The following discusses the

various scenarios a CLEC may encounter with respect to in-building wiring and how the Commission can assist in each of these scenarios:

- **The demarcation point is located at the MPOE and the ILEC owns the wiring.** Where the demarcation point is located at the multi-tenant building's MPOE, the *ownership* of the building's inside wiring nevertheless may remain with the ILEC. When deregulating inside wiring, the FCC initially considered ordering ILECs to relinquish all claims to ownership of inside wiring.¹ Ultimately, the FCC declined to pursue this strategy. Instead, it opted for an approach that permitted ILECs to maintain ownership of inside wiring, but prohibited that ownership from being used in a manner that would justify conduct in conflict with the FCC's goals. Specifically, where the ILEC owns the inside wiring, the FCC's rules prohibit the ILEC from imposing restrictions on the removal, replacement, rearrangement, or maintenance of inside wiring that had ever been installed or maintained under tariff.² In addition, the FCC held that carriers could not require customers to purchase inside wiring nor could they impose a charge for the use of such wiring.³ Consequently, even where the demarcation point is located at the MPOE and the ILEC maintains ownership of the inside wiring, it cannot use that incident of ownership to prevent the building owner from permitting other carriers to use that wiring. The FCC should clarify that where the demarcation point is located at the MPOE, ILECs may not interfere with a building owner's right to permit other telecommunications carriers to use the multi-tenant building's inside wiring and may not demand payment for use of such wiring, even where the ILEC owns that wiring.
- **The demarcation point is located at the MPOE and the building owner owns the wiring.** Similarly, where the demarcation point is located at the MPOE and the building owner has taken ownership of the inside wiring, as the building owner is able to do either because the building owner paid for the installation of the wiring or entered into an ownership transfer agreement with

¹ Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, *Second Report and Order*, 51 Fed. Reg. 8498 at ¶¶ 20-24 (1986).

² Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, *Memorandum Opinion and Order*, 1 FCC Rcd 1190 at ¶ 35 (1986).

³ Id. Just because wiring is located on the non-network side of the demarcation point does not necessarily mean it is owned by the customer. Indeed, that portion of a multi-tenant building's inside wiring extending from the building's entrance facilities to the customer premises may be owned by the ILEC or the building owner, but it is not owned by the end user (who owns the inside wiring within his/her own individual apartment or office). Consequently, it bears confirmation from the Commission that the rules which prohibit ILECs from forcing end users to purchase inside wiring and which prohibit ILECs from imposing charges for the use of such wiring also prohibit ILECs from forcing the building owner to purchase the wiring or otherwise imposing use charges on the building owner, even if the building owner is not the end user customer.

the ILEC, the ILEC cannot prohibit access to that inside wiring by a competitive telecommunications carrier as it has no claim whatsoever to the wire. Therefore, the FCC should clarify that where the building owner owns a building's inside wiring, the ILEC may not interfere with the building owner's right to permit other telecommunications carriers to use the multi-tenant building's inside wiring and may not demand payment for the use of such wiring.

- **The demarcation point is not located at the MPOE.** Where the demarcation point is located somewhere other than the MPOE of the multi-tenant building (e.g., the end user customer premises), the building's inside wiring remains a part of the ILEC's network up to the demarcation point. In this instance, the *Local Competition Third Report and Order* requires ILECs to permit telecommunications carriers unbundled access to that inside wiring as a subloop.⁴ As a result, where the demarcation point is located somewhere other than the building's MPOE, the ILEC cannot prohibit use of the building's inside wiring by a telecommunications carrier because the inside wiring has been classified as a subloop UNE. The FCC should clarify that where the demarcation point is not located at a multi-tenant building's MPOE, an ILEC must permit a telecommunications carrier to lease the building's inside wire on the network side of the demarcation point as a subloop UNE. In addition, the FCC should require ILECs to provision access to the inside wire subloop in a timely unburdensome manner and to require that it be provided on an interim rate basis subject to true-up pending a determination by the States as to what final inside wire subloop rate should apply. Moreover, the FCC should clarify that where a telecommunications carrier already is using that wiring without an agreement in place with the ILEC, the ILEC may not resort to self-help (i.e., tearing out the CLEC's facilities) as a means of resolving any disputes.

In sum, the Commission should clarify that under its existing rules, an ILEC may not restrict, condition, or prohibit the use of inside wiring by CLECs under any circumstances, and only in those situations where the inside wire is properly classified as a subloop UNE pursuant to the FCC's UNE Remand Order may the ILEC charge a telecommunications carrier for the use of that wire.

Finally, the scenarios set forth above presuppose that a building owner has granted a telecommunications carrier access to the building in the first place. Where that grant of permission from the building owner has not occurred, tenants may still be unable to take service from their telecommunications carrier of choice, notwithstanding the regulations that apply to ILECs that give CLECs access to the inside wire. As a result, it is imperative that the Commission provide for

⁴ 47 C.F.R. § 51.319(a)(2)(A) ("Inside wire is defined as all loop plant owned by the incumbent LEC on end-user customer-premises as far as the point of demarcation as defined in § 68.3, including the loop plant near the end-user customer premises. Carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole.").

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nondiscriminatory telecommunications carrier access to tenants in multi-tenant environments through its *Competitive Networks* rulemaking.

As can clearly be seen from the above discussion, even though the UNE Remand Order gives CLECs the ability to use the ILEC's inside wire, the ILEC still can become a bottleneck and delay or hinder the CLEC's access to its prospective customer's premises. As a result, the *Competitive Networks* rulemaking should order that the demarcation point be located at the MPOE in all buildings resulting in the need for CLECs to negotiate only with building owners for access to and within MTEs.

Again, thank you for your attention to this matter. Please do not hesitate to call me at (703) 762-5230 or Terri Natoli at (703) 762-5183 should you have any questions or need additional information.

Very truly yours,


David S. Turetsky /GDH
Senior Vice President, Law and Regulatory