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WILLKIE FARR & GALLAGHER

VIA HAND DELIVERY

July 11, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
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Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

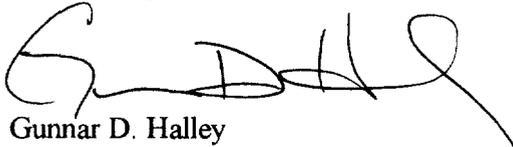
Re: Ex Parte Presentation in WT Docket No. 99-217 and CC Docket No. 96-98

Dear Ms. Salas:

Please find attached a letter from David S. Turetsky of Teligent, Inc. delivered today to Commissioner Michael K. Powell 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: Commissioner Powell
Jeffrey Steinberg (WTB)
Mark Rubin (WTB)
Paul Noone (WTB)
Cheryl King (CSB)
David Horowitz (OGC)

Peter Tenhula
Joel Taubenblatt (WTB)
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Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael K. Powell
Commissioner
Federal Communications Commission
The Portals
445 12th Street, S.W.
Suite 8A204A
Washington, DC 20554

Dear Commissioner Powell:

During the course of our meeting on June 29, you asked about the appropriate use and delineation of the principle of "ancillary jurisdiction"¹ in connection with the Commission's adoption of a nondiscriminatory building access requirement in the *Competitive Networks* rulemaking proceeding. Reasonable and sound application of existing jurisdictional bases as set forth below authorize the Commission to enhance consumer choice by providing for a nondiscriminatory building access rule.²

1. The Commission possesses unquestionable jurisdiction over interstate wire and radio communication³ and is responsible for ensuring that "[a]ll charges, practices,

¹ While often referred to as "ancillary jurisdiction" the jurisdictional bases to which the telecommunications industry refers when urging the adoption of a nondiscriminatory access rule are not really ancillary at all but rather conferred *directly* on the Commission through the Communications Act.

² As you have acknowledged, the courts recognize the validity of the Commission's "ancillary jurisdiction" in appropriate contexts. See Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) of the Communications Act of 1934, as amended, CC Docket No. 98-65, *Memorandum Opinion and Order*, 15 FCC Rcd 7066, Separate Statement of Commissioner Powell, Dissenting (1999) ("The Commission has also reached for 'ancillary jurisdiction' or other broad 'necessary and proper' delegations as a basis for regulating the cable industry and, more recently, asserted such plenary power in an unconstrained manner to extend coverage of section 255 to non-telecommunications services and the 1996 Act to private building owners and managers. I personally have never fully agreed with the courts' apparent sanctioning of such broad grants, but such decisions are the law. See, e.g., Texas Office of Public Utility Counsel v. FCC, 1999 WL 556461 (5th Cir. 1999) (holding that section 4(i) of the Act permits support of non-telecommunications carriers providing internet access and internal connections to schools and libraries as 'necessary to fulfill [the Act's] primary directives.').")

³ 47 U.S.C. § 152(a).

classifications, and regulations for and in connection with [interstate radio and wire] communication service, shall be just and reasonable.”⁴

2. Because the Commission retains jurisdiction over the transmission of interstate communication and all instrumentalities, facilities, apparatus, and services incidental thereto,⁵ the Commission unquestionably has jurisdiction over the use of in-building facilities which are essential to the provision of interstate communication. Moreover, when property owners choose to prohibit, restrict, sell or otherwise set the liens of access to interstate telecommunications facilities and services, the Commission, unquestionably, has jurisdiction over such activity.
3. The record in the *Competitive Networks* rulemaking demonstrates that unreasonable restrictions on telecommunications carrier access to tenants in multi-tenant buildings either prohibits altogether the provision of interstate wire and radio communication or imposes onerous costs necessitating an unreasonable increase in the charges therefore, in conflict with the goals of the Act. In order to maintain just and reasonable rates for interstate communication by wire and radio, the Commission possesses the authority to ensure that the component inputs of such communication -- inputs such as the rates for and requirements by which by carriers obtain access to customers in multi-tenant buildings -- remain reasonable.
4. The operation of Section 4(i)⁶ -- the Communications Act’s “necessary and proper” clause -- permits the Commission to accomplish its objectives. Barring express prohibition in the Act, the Commission determines whether its action is necessary to accomplish its statutory obligations, including, but not limited to, making available, “so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges
.....”⁷

⁴ 47 U.S.C. § 201(b). The Act goes on to explain that “[c]harges or services, whenever referred to in this Act, include charges for, or services in connection with, the use of common carrier lines of communication, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.” 47 U.S.C. § 202(b)(emphasis added).

⁵ See 47 U.S.C. §§ 152(a), 153(33) and 153(51).

⁶ 47 U.S.C. § 154(i)(“The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”).

⁷ 47 U.S.C. § 151.

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5. Importantly, the Commission's jurisdiction over building owners is not without limitation. Naturally, it extends only so far as the building owners' actions affect interstate wire and radio communication or otherwise threaten to interfere with the Commission's responsibility for ensuring that the charges, practices, classifications, and regulations for and in connection with interstate wire and radio communication remain just and reasonable.

We hope this brief analysis helps to clarify that the Commission does retain the necessary authority to ensure that consumers in multi-tenant buildings may obtain access to their facilities-based telecommunications carrier of choice. If you desire a more in-depth discussion of these parts, please let us know.

Very truly yours,



David S. Turetsky
Senior Vice President, Law & Regulatory

cc:	Peter Tenhula	Thomas Sugrue (WTB)	Jeffrey Steinberg (WTB)
	Joel Taubenblatt (WTB)	Leon Jackler (WTB)	David Furth (WTB)
	Mark Rubin (WTB)	Lauren Van Wazer (WTB)	Jim Swartz (WTB)
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