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VIA HAND DELIVERY  
July 24, 2000

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

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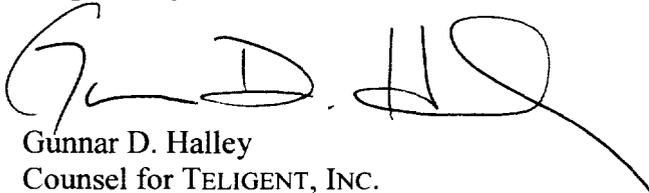
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

Dear Ms. Salas:

Philip Verveer and myself, on behalf of Teligent, Inc., and Winstar Communications, Inc. met Friday afternoon (July 21<sup>st</sup>) with Kathryn Brown, the Chief of Staff in the Chairman's Office to discuss the Commission's jurisdiction to assure nondiscriminatory telecommunications carrier access to multi-tenant environments. During the course of that meeting, we provided Ms. Brown with a copy of the Supreme Court decision Ambassador, Inc. v. U.S., 325 U.S. 317 (1945) and a two-page summary of the position that demonstrates FCC jurisdiction (attached hereto). Because our meeting concerned a pending rulemaking at the Commission, 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 and Winstar's joint ex parte presentation.

Respectfully submitted,

  
Gunnar D. Halley  
Counsel for TELIGENT, INC.

Enclosure

cc: Kathryn Brown (Office of the Chairman)

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Non-discrimination has been a critical element of economic regulation in the United States since before the passage of the Interstate Commerce Act. It has been one of the foundational principles of federal communications regulation as evidenced by the inclusion of Section 202 in the Communications Act at the time of its passage in 1934.

At the time the Communications Act was passed, common carriers had end-to-end responsibility. Thus, the jurisdiction of the FCC extended to the subscriber's handset and covered all communications facilities, including all instrumentalities, to and including that point.

The Communications Act also accorded ultimate rights to subscribers to make use of telecommunications services and facilities in ways that are "privately beneficial without being publicly detrimental."

The primacy accorded consumer preference by the Act and the insight that consumer sovereignty corresponded with a competitive milieu and maximization of consumer welfare led to a dramatic and successful evolution from monopoly end-to-end service to competition. [Of course, on the supply side, technological advances that decreased minimum efficient scale also were critically important to the introduction and success of telecom competition as was the acceptance of neo-classical (free market) economic theory pointing to the superiority of competition to regulation wherever there was a basis for the belief that markets would function efficiently.]

The changes in circumstance brought about by the adoption of competition led to deregulation of terminal equipment, inside wire, and, ultimately, most telecom services. It is very important to understand, however, that at the time of the deregulation of terminal equipment and inside wire there was no or virtually no expectation that local exchange/local service competition was feasible. As a result, the early deregulatory decisions did not anticipate that there was a danger that new types of essentially unregulated intermediaries might seek to monopolize telecom service and thus did not provide explicit safeguards to prevent this type of anticompetitive/anticonsumer result.

The 1990 Inside Wire Order (88-57) apparently gave the subscriber/property owner the right to move the demarc point to the MPOE on the theory that this permitted the subscriber to maximize its benefits--based explicitly on the Hush-A-Phone "privately beneficial" rationale.

This shows the primacy of subscriber choice (here, in the context particularly of terminal equipment), but the decision was made in a factual context of no retail local service competition. Thus, although the Order had the effect of positioning the property owner as a bottleneck vis a vis its tenants, it is very important that this occurred in an environment of bi-lateral monopoly, with the ILEC having vastly more leverage than the property owner. Thus, property owners were not in a position to act on their bottleneck status and the ILECs, of course, were regulated so could not fully exploit their monopolies vis a vis consumers.

What changed that is the onset of retail local service competition. This is merely the logical extension of the Communications Act's principles as construed over the last 45 years or so and as very strongly reinforced by the 1996 amendments.

As local competition has begun to emerge, the value of the property owners' bottleneck has increased materially. It has changed any potential negotiation from bi-lateral monopoly to one in which the bottleneck monopolist property owner is facing competitive transmission suppliers (with tenants hostage to the property owner's bottleneck).

And, in fact, as theory would predict, there has been a marketplace reaction to this changed state of affairs with the emergence of specialty firms (BLECs) to assist property owners in exploiting their presently unregulated monopoly.

The deregulation and the end to monopoly end-to-end service by a single carrier, however, did not lead to an elimination of the FCC's jurisdiction. Deregulation does not equal elimination of jurisdiction. And it could not, since only Congress can adjust the jurisdiction afforded regulatory agencies.

Thus, the FCC retains jurisdiction to continue to protect the fundamental right of subscribers to exercise preference, and to do so without being victimized by the exercise of market power or by acts of opportunism.

The building owners and various vendors that interpose themselves between building occupants and the occupants' preferred vendors of telecom service can just as readily make monopoly extractions as could the monopoly end-to-end carriers of the past. And the evils to be avoided in this circumstance are the same as in the past: the introduction of static and dynamic inefficiencies with attendant loss of allocative efficiency and consumer surplus.

Of course, the social cost is higher today because communications services have become even more important to commercial and private life with the introduction of the Internet and the growth of telecommuting.