EX PARTE OR LATE FILED

ORIGINAL

# WILLKIE FARR & GALLAGHER

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384

202 328 8000
Fax: 202 887 8979

VIA HAND DELIVERY

RECEIVED
AUG 4 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 4, 2000

EX PARTE

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 CC Docket No. 96-98 and WT Docket No. 99-217

Dear Ms. Salas:

Please find attached a letter from the undersigned, on behalf of the Association for Local Telecommunications Services to Kathy Farroba, Deputy Chief, Policy and Planning Division of the Common Carrier Bureau delivered today that concerns 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 the Association for Local Telecommunications Services' written ex parte presentation.

Respectfully submitted,

Gunnar D. Halley

Counsel for
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

cc: Kathy Farroba (CCB)
Leon Jackler (WTB)
Jake Jennings (CCB)
Chris Libertelli (CCB)
Jon Reel (CCB)

No. of Copies rec'd 0+3
List ABCDE

Enclosure

WILLKIE FARR & GALLAGHER

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384

202 328 8000
Fax: 202 887 8979

VIA HAND DELIVERY

August 4, 2000

**EX PARTE**

Kathy Farroba
Deputy Chief
Policy & Planning Division, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 96-98 and WT Docket No. 99-217

Dear Ms. Farroba:

On behalf of the Association for Local Telecommunications Services, please permit me to clarify some issues concerning the inside wire subloop unbundled network element as it relates to the location of the demarcation point.

The Commission has identified the inside wire subloop as a network element that ILECs must offer to telecommunications carriers on an unbundled basis.[1] Where the demarcation point is at some point other than a building's Minimum Point of Entry ("MPOE") -- such as the customer premises -- the ILEC's subloop UNE obligation clearly extends from the entrance of the building to the demarcation point.

In the Commission's *Competitive Networks* rulemaking, commenters have expressed a desire to relocate the demarcation point to the MPOE to facilitate the provision of service by competitive carriers *where the building owner is required to provide nondiscriminatory access*. It is self-evident that where a building owner is *not* required to provide nondiscriminatory telecommunications carrier access, establishing the demarcation point at the MPOE may, in some instances (where the ILEC relinquishes ownership and control of the wire from the demarcation point to the customer) worsen the plight of CLECs by increasing the ability of the building owner to preclude competitive carrier

---

1 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.").

access. In such circumstances, without Commission intervention, the building owner could prohibit the carrier from reaching the customer through installation of the carrier's own wiring, and it could prohibit the carrier from reaching the customer through use of a subloop UNE strategy (because the ILEC has no ownership or control of the wiring). It becomes apparent, then, that sound competitive policy warrants simultaneous consideration and resolution of the nondiscriminatory access issue and the MPOE demarcation point issue.

Nevertheless, the Commission's actions with respect to the inside wire subloop UNE should remain largely unaffected by a relocation of the demarcation point. Where the demarcation point is located at the multi-tenant building's MPOE, the *ownership* of the building's inside wiring may, in some instances, remain with the ILEC. When deregulating inside wiring, the FCC initially considered ordering ILECs to relinquish all claims to ownership of inside wiring.[2] 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.[3] 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.[4] Consequently, even where the demarcation point is located at the MPOE, the ILEC may maintain ownership of the wiring from the MPOE to the customer premises. In this circumstance, the Commission should clarify that UNE obligations attach and the ILEC is still required to make this portion of the intra-building wiring available to telecommunications carriers as an unbundled network element.

The Commission appropriately is considering relocation of the demarcation point in conjunction with building owners' responsibilities with respect to carriers' provision of

---

2 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).

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

4 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 typically 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.

telecommunications services to tenants in its *Competitive Networks* rulemaking. Where the demarcation point is relocated to the MPOE, and the *building owner* owns the inside wiring, the building owner may deny competitive carrier access and tenants may still be unable to take service from their telecommunications carrier of choice, notwithstanding the ILECs' UNE obligations. However, if in its *Competitive Networks* rulemaking the Commission requires relocation of the demarcation point, it simultaneously can ensure that building owners provide telecommunications carriers with the functional equivalent of an ILEC inside wire UNE. As a result, it is imperative that the Commission contemplate nondiscriminatory telecommunications carrier access to tenants in multi-tenant environments coincident with relocation of the demarcation point through its *Competitive Networks* rulemaking.

Ultimately, the Commission can still achieve the goal of ensuring that carriers who construct facilities to a building's entrance facilities can serve the tenants therein efficiently. Depending on where the demarcation point is located, this goal can be accomplished through either the requirements placed on building owners, or the UNE requirements placed on ILECs. The interplay between the two efforts, though, emphasizes the critical importance of careful coordination among the *UNE Remand* proceeding and the *Competitive Networks* proceeding.

Very truly yours,

Gunnar D. Halley

Attorney for
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

cc: Leon Jackler (WTB)
Jake Jennings (CCB)
Chris Libertelli (CCB)
Jon Reel (CCB)