

EX PARTE OR LATE FILED

WILLKIE FARR & GALLAGHER

VIA HAND DELIVERY

September 1, 2000

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
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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:

I discussed this morning with Joel Taubenblatt and Leon Jackler of the Wireless Telecommunications Bureau issues concerning the location of the demarcation point in multi-tenant buildings, the effect of a relocation of the demarcation point to the minimum point of entry ("MPOE") on the availability of inside wire subloop UNEs and the ability of CLECs to serve tenants in buildings, and the FCC's authority to require multi-tenant building owners to provide nondiscriminatory telecommunications carrier access.

I emphasized that the Commission clearly has jurisdiction over communication by wire "between the points of origin and reception of such transmission."<sup>1</sup> Because reception quite obviously does not occur at the MPOE, but rather occurs at some point beyond that (*i.e.*, the end user's CPE), the Commission's jurisdiction extends beyond the MPOE to the end user's CPE *regardless* of whether an ILEC, a CLEC, a building owner, or some other entity owns or controls the wiring from the MPOE to the end user's CPE. This much the Communications Act makes clear.

Several facilities-based carriers have emphasized the need for a uniform relocation of the demarcation point at the MPOE in all multi-tenant buildings. Where Commission oversight of building owner activity does not occur, carriers relying more heavily on use of unbundled network elements have taken differing positions, desiring to keep the demarcation point as close to the customer as possible in order to enhance their ability to reach the customer through UNEs. In this regard, it is worth noting the very precarious position of ILEC subloop UNEs. Under the Commission's current rules, building owners are permitted to relocate the demarcation point to the MPOE where the ILEC has not done so. In this regard, through unilateral building owner action of relocating the demarcation point to the MPOE, inside wire subloop UNEs could be eliminated in all multi-tenant buildings. Absent some Commission exercise of jurisdiction over the building owner control of that wiring, carriers relying on subloop UNEs to serve customers would remain completely at the mercy of the building owner's willingness to permit use of the building's wiring on reasonable terms.

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<sup>1</sup> 47 U.S.C. § 153(51).

Washington, DC  
New York  
Paris  
London

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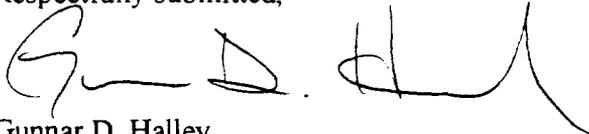
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Nevertheless, if the Commission refrains from using its jurisdiction to ensure that control of inside wiring is not used to harm consumer choice, to discriminate against certain carriers, or otherwise to harm the growth of competition, then although some facilities-based carriers may continue to prefer relocation of the demarcation point to the MPOE, this preference becomes much less intense. In these circumstances, other mechanisms available to the Commission may promote facilities-based carrier use of a building's inside wiring in an almost equally effective manner.

Specifically, if the Commission retains its current demarcation point rules, it should clarify that the building owner has the right to require the ILEC to relocate the demarcation point to the MPOE. It should also require the ILEC to identify the precise location of the demarcation point in every multi-tenant building upon inquiry, so that lack of clarity as to the location of the demarcation point may not be used in a manner to preclude or delay competitive carrier entry. With respect to its existing subloop UNE requirements, the Commission could clarify inside wiring subloop UNE provisioning requirements. For example, it could require provisioning within 15 calendar days of a request. If an ILEC fails to provision the inside wire subloop UNE within this period of time, the requesting carrier should be permitted to self-provision. The Commission may further facilitate effective use of inside wire subloop UNEs by establishing presumptively reasonable proxy rates that requesting carriers can pay ILECs in exchange for the subloop UNEs subject, of course, to true-up and eventual compliance with negotiated or arbitrated rates.

Because these topics concern 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 Willkie Farr & Gallagher's ex parte presentation.

Respectfully submitted,



Gunnar D. Halley

cc: Thomas Sugrue (WTB)      Joel Taubenblatt (WTB)      Leon Jackler (WTB)  
Kathy Farroba (CCB)      Christopher Libertelli (CCB)      Jonathan Reel (CCB)  
Lauren Van Wazer (WTB)