EX PARTE OR LATE FILED
DOCKET FILE COPY ORIGINAL

RECEIVED
MAR 16 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MILLER & HOLBROOKE
1225 NINETEENTH STREET, N. W.
WASHINGTON, D. C. 20036

TELEPHONE (202) 785-0600
FACSIMILE (202) 785-1234

TERESA D. BAER
FREDERICK E. ELLROD III
LISA S. GELB
LARRINE S. HOLBROOKE
ELDRED INGRAHAM**
TILLMAN L. LAY
NICHOLAS P. MILLER
JOSEPH VAN EATON

WILLIAM R. MALONE
OF COUNSEL

BETTY ANN KANE*
FEDERAL RELATIONS ADVISOR

*NOT ADMITTED TO THE BAR
**ADMITTED IN PENNSYLVANIA ONLY

March 16, 1993

VIA HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in MM Docket 92-266

Dear Ms. Searcy:

Pursuant to 47 C.F.R. § 1.1206, Miller & Holbrooke submits this original and one copy of a letter disclosing a written ex parte presentation.

On March 16, 1993, Nicholas P. Miller met on behalf of a coalition of municipalities with Maureen McConnell, as disclosed in a separate letter of this date. Attached are two copies of written ex parte comments which were given to Ms. McConnell in draft form at that meeting.

Sincerely yours,

MILLER & HOLBROOKE

By Frederick E. Ellrod III
Frederick E. Ellrod III

FEE\tme
Enclosure(s)

cc: Maureen McConnell

0365\3-16mtg.let

No. of Copies rec'd 0+1
List A B C D E

RECEIVED

MAR 1 6 1993

FEDERAL COMMUNICATIONS COMMISSION

MILLER & HOLBROOKE

1225 NINETEENTH STREET, N. W.

environment. Accordingly, the coalition spot-checked those responses by reviewing the information supplied in the database, then contacting the franchising authorities and inquiring as to cable service competition. The anomalies and apparent errors in the database revealed by this verification are described below.

Certain general problems with the database are suggested by this review. In particular, for at least three of the responses checked, local authorities state that there is no competition, despite the database coding. In addition, a number of the responses in question reflect very small sets of subscribers (less than 700) served by competition. The cable operators appear to be serving a small competitive region embedded in a much larger monopoly region. In those cases, the operators might simply ignore competitive prices to avoid the trouble of adjusting rates in the overbuild area and facing dissatisfied customers in the monopoly area. Such a response may thus indicate a price higher than a truly competitive market would produce.

In the brief summary below, the franchising authority, the legal name of the operator, and the number of the system's subscribers in the franchise area are listed first.[3] Per-channel charges are shown for individual tiers, and for all tiers taken together, based on the monthly subscription charge divided by the number of channels. Competition code B indicates that according to the database, the system faces a private competitor (§ 623(*l*)(1)(B)); code C indicates that there is a competing system owned by the franchising authority (§ 623(*l*)(1)(C)).

1. **Wicomico County, MD: Storer Communications**
(10,665 subscribers, competition code B)
Per channel: basic $1.41, 2d tier $0.36, all tiers $0.73

According to the County, there is no competition. The franchises are non-exclusive, but the companies do not in fact serve overlapping areas; there is no location served by both companies. In fact, according to the data entered for Schedule 4 of the survey form, the operator did not say there was competition; yet the Commission has coded this record type B.

[3] Note that the franchise area may be a small town, even though the franchising authority is a county.

2. **Delmar, MD: Storer Communications of Delmarva**
(494 subscribers, competition code B)
Per channel: basic $1.41, 2d tier $0.36, all tiers $0.73

According to the Town Manager, there is no competition. The nearest alternative cable provider is twelve miles away and does not serve Delmar.

3. **Washington County, PA: Raystay Co.**
(293 subscribers, competition code B)
Per channel: basic $1.12, all tiers $0.61

The office of the Borough Manager states that there is no competition: there is no other cable company competing with Raystay. In fact, according to the data entered for Schedule 4 of the survey form, the operator did not say there was competition; yet the Commission has coded this record type B.

4. **NJ BRC (Hillsdale): Cablevision of New Jersey, Inc. (1)**
(2,762 subscribers, competition code B)
Per channel: basic $0.77, all tiers $0.77

5. **NJ BRC (Hillsdale): TCI (d/b/a "Micro-Cable")**
(1,283 subscribers, competition code B)
Per channel: basic $0.83, 2d tier $0.34, all tiers $0.62

6. **NJ BRC (Paramus): Cablevision of New Jersey, Inc. (2)**
(1,227 subscribers, competition code B)
Per channel: basic $0.77, all tiers $0.77

Both the Cablevision and the TCI franchises are part of much larger local systems (76,618 for Cablevision, 322,639 for TCI, according to the survey data). There appears to be little direct competition either in Hillsdale (reported as 3300 or 3585 households) or in Paramus (reported as 7832). In addition, Cablevision's information for Paramus does not show any response

inside the City than it does outside the City, where there is no competition. TCI's survey form may be reporting the higher monopoly price (as in Kenton/Boone) and not the lower competitive price.

8. **Town of West Bend, WI** **Star Cablevision Group**
(669 subscribers, competition code B)
Per channel: basic $0.68, all tiers $0.68

It is unclear how much overlap in service area there is between Star and competitor Crown Cable, or whether the prices in the competitive areas differ from those elsewhere. The area of competition is small compared to the entire system (16,988 households), which is ten times the size of the competitive franchise area (1690). Moreover, the database contains no answers to the questions on Schedule 4.

9. **Sumter County, GA** **Rigel CSSF Joint Venture**
(141 subscribers, competition code B)
Per channel: basic $0.84, all tiers $0.84

The franchise area is the town of Cobb only (500 households); the sample is very small.

10. **City of Negaunee, MI** **Bresnan Communications Co.**
(374 subscribers, competition code C)
Per channel: basic $0.61, 2d $0.57, 3d $0.81, all $0.68

It is unclear whether Bresnan serves a surrounding area larger than the small competitive region. The City's municipal system serves only within the City limits. The City appears to have about 1440 subscribers, over three and one-half times Bresnan's subscribership.

11. **City of Westbrook, MN** **Mark Twain Cablevision**
(40 subscribers, competition code C)
Per channel: basic $0.75, 2d tier $0.78, all tiers $0.76

The City's municipal system appears to have begun operations only in 1991. However, it already has 90% of the customers, according to the City. The subscriber group for Mark Twain is extremely small.