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RECEIVED
AUG 24 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

JAY S. NEWMAN
ASSOCIATE
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[redacted]

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August 24, 1994

HAND DELIVERED

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Notice -- MM Docket No. 92-259; MM Docket No. 92-260; RM 8380; MM Docket No. 92-264; MM Docket No. 92-265; MM Docket No. 92-266; CS Docket No. 94-48; CC Docket No. 87-266; Application of N.Y. Telephone Co. for Video Dialtone (File No. W-P-C 6836)

Dear Mr. Caton:

In accordance with Section 1.1200 et. seq. of the Commission's rules, this is to advise that on Wednesday, August 24, 1994, Edward Milstein, Vice Chairman, and Peter Price, President, Liberty Cable Company, Inc., and Henry M. Rivera, Esq. and Jay S. Newman, Esq., Ginsburg, Feldman and Bress, Chartered, met with James Olson, Chief, Competition Division, Cable Services Bureau, and Martin L. Stern, Nina M. Sandman and Paul F. Gallant of the Cable Services Bureau to discuss various issues in the above-captioned proceedings. The attachments to this Ex Parte Notice were used in that discussion. A total of nine copies of the Ex Parte Notice and the attachments are herewith provided to you, one copy for each proceeding.

An original and nine copies of this Ex Parte Notice and attachments were filed with the Commission and a copy was delivered to the above-named Commission personnel on August 24, 1994.

Sincerely,

Jay S. Newman

Jay S. Newman

Attachments
cc: James Olson
Martin L. Stern
Nina M. Sandman
Paul F. Gallant

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OFFICE OF SECRETARY

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August 24, 1994

TIME WARNER'S REPLY COMMENTS

- **OVERVIEW**

  * Contrary to Time Warner's claims, the cable industry is becoming increasingly concentrated.

- **PROGRAM ACCESS**

  * Court TV made available to MVPDs despite Time Warner's efforts.

  * WCAI Petition for Reconsideration granted.

  * Rationale for broadening the scope of § 19 of the 1992 Cable Act beyond "satellite-delivered programming" is sound.

- **BULK RATES**

  * According to Time Warner, "[t]he bulk rates that [it] offers in New York City have been approved by New York City and New York State cable regulatory authorities. And, those rates do not selectively discriminate from building to building".

  * Municipality's reluctance to enforce bulk rate rules.

  * Stuyvesant Town.

- **INSIDE WIRING**

  * Time Warner's practices in terminating a subscriber's service are designed to discourage a subscriber from switching to Liberty.

  * Liberty has never told subscribers that they no longer have the option to receive service from Time Warner.

  * The Commission has authority to locate the demarcation point in MDUs at an accessible location.

UNRESOLVED ISSUES

- **PROGRAM ACCESS**

  * There should be no distinction in the treatment of programming delivered by satellite and programming delivered by other means such as cable.

  * Statutory problem which FCC should lobby to change.

- **UNIFORM RATES**

  * Enforcement of uniform rate requirements is needed.

  * Predatory practices must be eliminated.

- **INSIDE WIRING**

  * Time Warner continues to engage in anti-competitive practices which hinder a subscriber's ability to switch from Time Warner's service to Liberty's service.

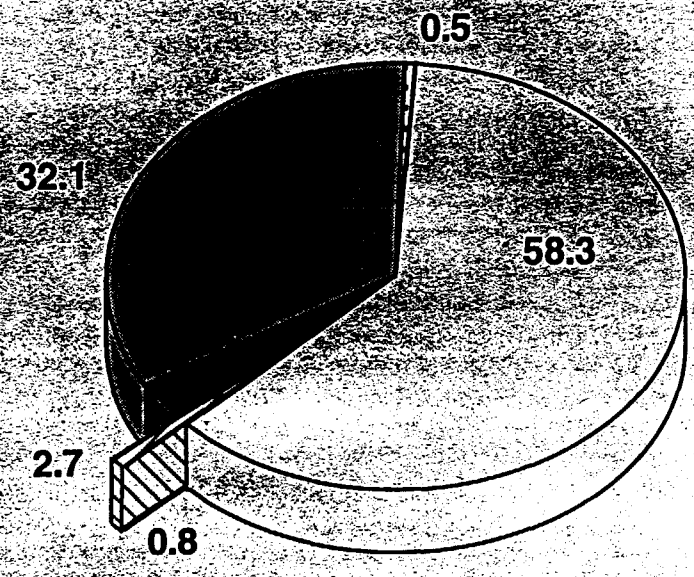
  * Various petitions which would affect the Commission's home wiring rules need to be resolved expeditiously.

- **VIDEO DIALTONE**

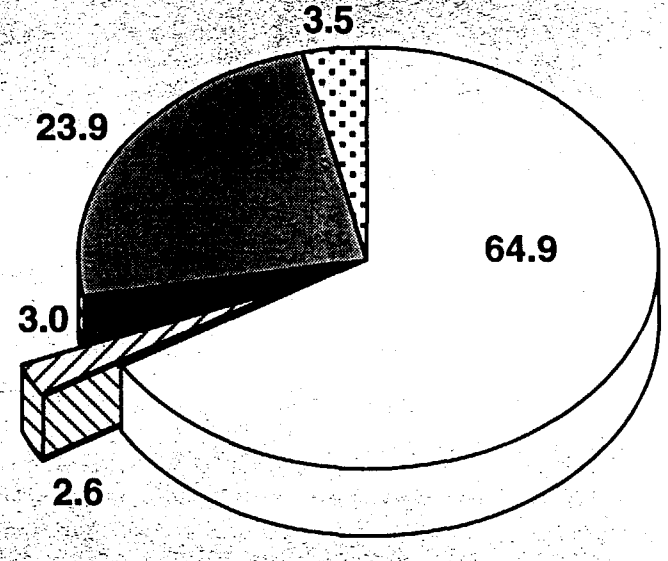
  * Expedited processing of VDT applications is needed.

▸ G:\HR\039\018\RESPONSE ◂

Multichannel Video Competition



Total TV Households, 1994 = 94.4 mil.



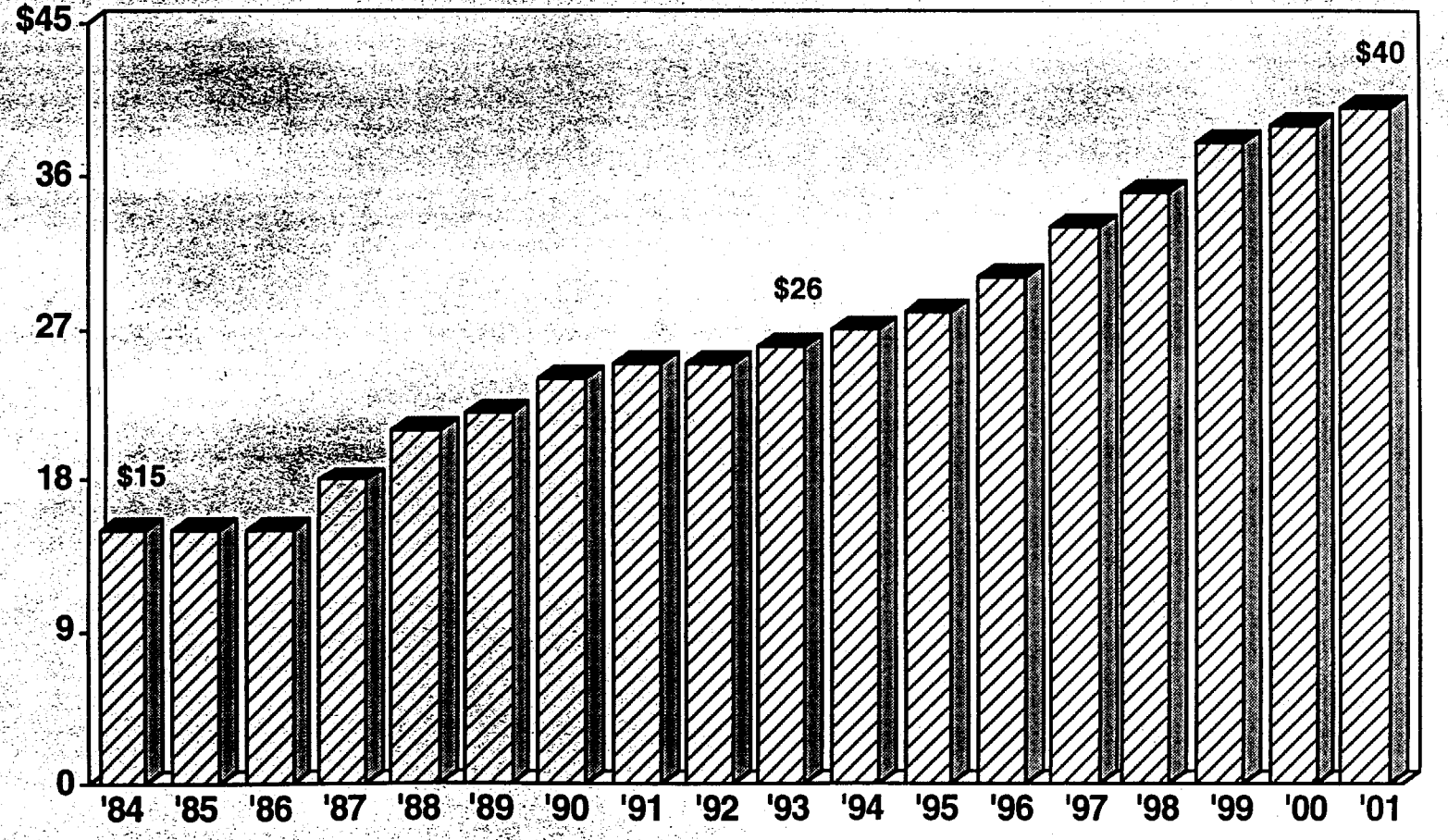
Total TV Households, 1998 = 97.9 mil.

Wired Cable
Non Subscribers
Wireless cable
DBS
Other

Note: Figures in millions of households.

© 1994 Paul Kagan Assoc., Inc., Carmel, CA estimates.

Monthly Revenue Per Wireless Cable Subscriber



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TIME WARNER
CABLE OF NEW YORK CITY

April 28, 1994

Mr. Love
860 United Nations Plaza
New York, NY 10017
Apt. 23A

Dear Mr. Love:

On April 25, 1994, we received the attached disconnection form from Liberty Cable. You should be aware that this is a form used by Liberty Cable without any authorization from Time Warner Cable of New York City. In order to avoid any confusion, we are writing to remind you of (a) your rights to retain your Time Warner cable television service, and (b) your obligations in the event that you choose to disconnect our service.

It is important for you to understand that it is your legal right to retain your Time Warner service in addition to, or instead of, Liberty's service. We would like to continue to serve you in the future as we continue to provide our customers with the best in cable programming and with the latest in technological innovations.

If you proceed with your disconnection request, you should be aware that your obligations to us cease only after you have notified us of your desire to disconnect, we have terminated our line and collected all of our equipment. It is at this point that you will no longer be a customer and that your monthly billing will stop.

Neither you nor any other third party, including Liberty Cable, is authorized to perform disconnection of our equipment. If you authorize Liberty to act as your agent to arrange for your disconnection, Liberty employees may represent you at your apartment for the sole purpose of providing our technicians access to perform the disconnection and collect our equipment.

Please be assured that if you choose to disconnect your Time Warner service, we will take all steps within our control to ensure that this will be a smooth process.

Sincerely yours,

Alexis Merritt

Alexis Merritt
Coordinator Technical Operations

Enclosure

Time Warner Cable of New York City 120 East 23rd Street New York NY 10010 Tel 212.598.7200
A Division of Time Warner Entertainment L.P.

The Culture Business/Stephen Fenichell

NYNEX MARKS THE SPOT

BABY BELL EPOQUE: *Vernetti (left) and a neighbor try video dial tone.*

A TV TURF WAR ERUPTS

THE UPPER EAST SIDE APARTMENT COMPLEX Normandie Court is known to many by the snide sobriquet *Dorm*andie Court. Many of the tenants roaming its unhallowed halls are newly minted college alumni with predictable undergraduate habits. For NYNEX, that was the main attraction. The building is one of three demographically correct test sites for the phone company's new service, video dial tone.

It is raining outside, and Normandie Court residents have settled in for an evening parked on the couch with Chinese takeout—the urge to barhop extinguished by the downpour. Julie Vernetti, a blonde annuities consultant, sits in a living room dominated by a large-screen Sony Trinitron. In her lime-green silk suit, pert pumps, and demure string of pearls, she is an ideal market sample: a single, college-educated female in her mid-thirties, employed, and a head of household.

WELCOME TO NYNEX VIDEO DIAL TONE, a legend blazes across the Trinitron's 27-inch screen, a prelude to what promises to be a major on-ramp to New York's incipient information highway. But in a town where the term *infrastructure* is invariably preceded by the adjective *crumbling*, what sort of information highway can we expect? Something sleek and state of the art, a virtual version of the reconstructed Santa Monica Freeway? A spiritual descendant of the Pulaski Skyway—potholed and second-rate? Or an unconsummated Westway, a road not taken because it never got built?

With video dial tone, the phone companies have fired the opening salvo at the cable industry in a turf war over the Infobahn. Approved by the FCC in 1992 as a trial noncommercial venture, video dial tone permits phone companies to act as common carriers, each providing a full menu of services, including home shopping and "video on demand," which means that you can order a movie to appear on your TV screen whenever you want. But when Julie reaches for her remote to demand *The Firm*, nothing happens. Frowning at the converter box blinking cryptically on top of her set, she strolls over to the wall phone in her kitchenette, punches in a NYNEX number for technical assistance, and plunks herself back down on the cream-colored sectional to wait for the repairman.

"I still go to lots of movies in the neighborhood," she says. "I don't think video dial tone will lead to the decline of cinema as we know it." But with the certainty of a convert, she agrees that the service spells trouble for her local video-rental shop.

The downstairs buzzer rings, bringing Roy from NYNEX to the rescue. After swiftly diagnosing the problem—dead batteries in the remote—he apologizes for getting stuck in traffic on his way uptown. Roy's technical finesse is considerable, but making repair calls by truck does seem low-tech. Video dial tone is also less futuristic than it could be: *The Firm* is being transmitted from a video jukebox at NYNEX's central office. Robotic arms feed tapes into VCRs, and a signal is sent to Julie's apartment. If too many people had dialed for *The Firm* at the same time, Julie would have received a message on her screen: NOT AVAILABLE AT THE PRESENT TIME.

Digital video on demand—the more desirable technology—is, strictly speaking, not available at the present time. But this fall, when NYNEX upgrades from analog to a digital system, video dial tone will feature such goodies as bridge-and-tunnel-traffic reports siphoned off direct feeds from the Port Authority and home shopping at Bergdorf Goodman. Also coming this fall is *NBC Nightly News*, which viewers will be able to call up at any hour.

Julie says she's "looking forward to the interactive phase of the trial." Richard Aurelio, who runs Time Warner's cable systems in New York, is not. Video dial tone is the most significant threat to Time Warner's historic hegemony in New York's cable-TV empire. Yet Aurelio dismisses the threat with a wave of his hand.

"What is video dial tone anyway?" says Aurelio, his voice larded with disdain. "If it's a technology trial, why isn't it digital? If it's a content trial, they're just feeding people what every other cable company has. And if it's a market trial, why are they delivering enhanced services to just 50 people? I don't get it."

But if it's so insignificant, why is Time Warner, New York's No. 1 cable operator, now offering its programs on the upstart service? Aurelio mumbles something innocuous about wanting to participate in the experiment anyway. Peter O. Price, president of Liberty Cable Television, NYNEX's primary video-dial-tone programmer and Time Warner's most virulent competitor, explains Aurelio's newfound generosity bluntly: "Time Warner did all they could to kill video dial tone. When they couldn't beat it, they joined it."

Time Warner's answer to video dial tone, the much-ballyhooed digital Full Service Network, will be launched in Orlando later this year, roughly six months behind schedule. Ever since the delay was announced this spring, rumor has run amok concerning Time Warner's need for what it calls "additional refinements of the underlying software and set-top terminal." One source insists that software glitches caused the system to suffer something called lockup. "They were asking the system to do too

Photograph by Sandor Acs.

much," the source contends. "It couldn't handle all the data it was being asked to sort at the same time." But Time Warner still insists that 1,000 households—roughly one quarter of the Orlando trial pool—will be able to order movies simultaneously without any customer's receiving a busy signal.

Technical difficulties aside, financial constraints have also been cited as factors figuring into the delay. Outside experts have questioned the company's decision to locate a large percentage of the system's brains in a set-top converter, reported to cost $3,000 to $5,000 per unit. With the cost of digitally storing *Jurassic Park* now $3,000 per copy, one expert estimates that Time Warner and its partner, US West, will be spending a minimum of $7,000 per home on each of its 4,000 projected households. At that rate, every subscriber would have to order a minimum of five films a week to offset the sums Time Warner has invested in hardware and software.

Though Time Warner chairman Gerald Levin trumpets the network as "elegant in its design and historic in its implications," the fact remains that his superhighway will not be all that technically different from the other guy's. Time Warner needed a feature to help its highway break from the pack. To compete with NYNEX's news on demand, Time Warner has announced its own more sophisticated News on Demand service, which promises to deliver news as it taps into the fabled Time Warner synergies.

Two of Time Warner's fairest-haired younger executives—Walter Isaacson, former assistant managing editor of *Time*, and Paul Sagan, the programming wiz behind New York 1—are developing News on Demand. Isaacson grandly hails the project as nothing less than "a rethinking of the whole method of mass media that came into play after World War II." The idea is to give control back to the viewer by dividing news into categories.

"We're the only company developing a news product specifically designed for use on the information highway," Isaacson boasts. "It will be customizable, allowing you to create a specific portfolio of interests defined by a set of personal search rules." And, Isaacson is quick to point out, none of the competitors has 70 years of experience in building a news organization. "News on Demand may be a great unknown, but it's going to be a lot more interesting than just a more convenient Blockbuster Video," adds Isaacson. "If you're watching the Knicks game, the system will cut in to announce 'O. J.'s on the lam' or 'Clinton has just bombed North Korea.' "

But when, oh when, will all this great stuff find its way to the big city? That's the question that makes Time Warner's brass squirm in their padded chairs. Despite a clause in its agreement with New York City specifically requiring that the city be one of the first major metropolitan systems upgraded after the Full Service Network is formally in operation, Time Warner has stated, "We have not announced when or where the next FSN area will be, but 85 percent of Time Warner Cable's operations nationwide will be FSN–capable by the end of 1998." In plain English, stay tuned, but don't hold your breath.

Peter Price, self-styled liberator of buildings from Time Warner's cable monopoly, insists that "both cable and phone companies are going to build separate superhighways here. Like Willie Sutton, they're going to go where the money is." Price sees New York as a place "where the low-hanging fruit grows"—the lowest-hanging fruit being the banks and brokerage houses destined to become high-volume users of the data highway.

Tom Dunleavy is the deputy commissioner of a little-known municipal agency known as the Department of Information Technology and Telecommunications. His agency's task is to juggle the juggernauts so they don't roll right over the rest of us in their eagerness to go after "low-hanging fruit." Dunleavy is not so concerned about Wall Street and Rockefeller Center getting on the superhighway as he is that the folks over at the low-income East River Houses at 102nd Street not be denied access.

IN AN EFFORT TO LINK ELECTRONIC HAVES and have-nots, NYNEX, in conjunction with Lincoln Center and the Board of Education, has been experimenting with "distance learning." Conceived as a way to serve isolated kids in rural areas, New York's distance learning aims to bridge both social and physical distances.

On NYClassNet, a network linking three public high schools with the Borough of Manhattan Community College and Lincoln Center Institute, teacher Bette Kalash is conducting a class in "Critical Thinking." The screen is divided into four quadrants: Kalash in the upper left, the others assigned to students at the three "learning sites." The kids are thinking critically about a family-court case involving an unfit mother.

Ronald: "I feel that she's guilty because if she loved her child so much she wouldn't have left her alone."

Damon: "I feel that her testimony is too abstract, that her memory of events was too hazy for her to be credible."

Kalash: "Freddie, at High School for the Humanities?"

Freddie: "I think the strongest argument in her defense was the postpartum depression and alcoholism and loss of all financial support. But how could she fly to Chicago and not remember her own phone number? I don't care about postpartum depression, she could have picked up the phone. You know, 'reach out and touch somebody.' "

In its own way, a decade after Ma Bell's demise, NYNEX is taking the old AT&T slogan to heart.

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Massapequa
INFINITI OF MASSAPEQUA
(516) 797-5200

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ABLE INFINITI
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