

July 28, 1995

JUL 28 1995

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

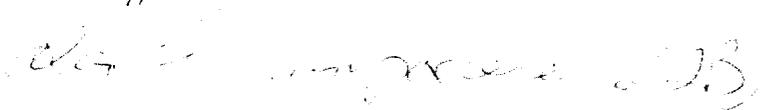
Dear Mr. Caton:

Re: *CS Docket No. 95-61 - Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*

On behalf of Pacific Bell and Pacific Telesis Video Services, please find enclosed an original and six copies of their "Reply Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

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

0+5

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

1995

In the Matter of

Annual Assessment of the Status of Competition in
the Market for the Delivery of Video Programming

CS Docket No. 95-61

DOCKET FILE COPY ORIGINAL

**REPLY COMMENTS OF PACIFIC BELL AND
PACIFIC TELESIS VIDEO SERVICES**

1. SUMMARY

Pacific Bell and Pacific Telesis Video Services ("the Pacific Companies") submit reply comments in response to the FCC's Notice of Inquiry ("NOI") on the status of competition in the market for the delivery of video programming. We discuss video dialtone ("VDT"), Tele-TV (a joint venture of the Pacific Telesis Group, Bell Atlantic and NYNEX) and Multichannel Multipoint Digital System ("MMDS") wireless cable service. Each service ultimately will add to the mix of competition in video programming in California. However, we are just in the process of entering the video services market, and the cable incumbents face virtually no competition here.

- VDT The Commission's delays in issuing VDT channel and cost allocation rules, and deciding upon the applicability of Title II/Title VI¹ to telco video programming, have caused us uncertainty about the prudence of our current pace of network investment.
- Tele-TV Last year, Pacific Telesis Group, Bell Atlantic and NYNEX entered into a joint venture -- Tele-TV -- to manage the delivery of one-way and interactive video services, and develop video programming. Tele-TV's effectiveness will depend on how fast the venturers' video distribution systems gain market share from cable incumbents.
- MMDS We are enthusiastic about the positive effects of MMDS on video competition in California. However, MMDS expansion depends upon three critical factors: 1) FCC encouragement of the rapid introduction of digital transmission for MMDS, 2) technological advances in digital compression, and 3) lower equipment costs.

There is virtually no wireline cable competition in California. We believe California has no more than one or two cable "overbuilders"-- companies offering head to head competition with cable franchisees. These companies appear to serve no more than a few thousand customers each.² With these distressing facts in mind, we discuss our attempts to make inroads into the video services market in California, and the rules and other factors we believe are necessary to our success.

¹ Title II of the Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.* (governing common carrier service) & Cable Communications Policy Act of 1934, 47 U.S.C. §§ 521 *et seq.* (governing cable service).

² As of 1992, only three overbuilders were in operation in California. When we checked with these companies in mid-1995, we learned only one still offers service which overlaps with the local cable franchise. While it may be that new overbuilders have emerged, we are not aware of any.

2. VDT: THE LACK OF CLEAR RULES HAMPERS VIDEO COMPETITION IN CALIFORNIA

The NOI asks whether VDT has enhanced competition in the market for video programming. See NOI, ¶¶ 51, 52 & 53(d). Unfortunately, the FCC's delays in resolving issues raised in the Third and Fourth Further Notices of Proposed Rulemaking on VDT³ have in fact hampered video competition in California.

The FCC should reform its VDT channel allocation rules. Without changes, we may not be able to offer channel lineups with the kind of consumer appeal that will allow us to compete with cable. We also should be allowed to offer video programming through an affiliate, with safeguards to prevent cross subsidies between video services and telephony.

If we are to compete with cable incumbents, the VDT cost allocation rules must allow us to use a long run incremental cost approach as a price floor for VDT. We may find no market for VDT if we are required to price at or above fully distributed cost ("FDC"); if the FCC mandates an FDC approach, we must not be required to over-allocate common costs to video services.

Finally, we believe VDT providers who offer video programming through an affiliate must not be subject to dual regulation as common carriers under Title II and cable operators under Title VI. In addition, VDT providers who offer video programming over the VDT network must not be required to obtain a cable franchise.

³ *Telephone Co.-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, CC Docket No. 87-266, 10 FCC Rcd 244 (1994); Telephone Co.-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 87-266, (FCC 95-20 Jan. 20, 1995).*

3. TELE-TV: SUCCESS DEPENDS ON OBTAINING MARKET SHARE FROM CABLE INCUMBENTS

The NOI seeks comment on the competitive implications of the October 1994 announcement by Pacific Telesis Group, Bell Atlantic and NYNEX of the formation of a joint venture in the area of interactive video networks. NOI, ¶ 55.

Last year, Pacific Telesis Group, Bell Atlantic and NYNEX entered into a joint venture to support their entry into video markets. The venture, called Tele-TV, will develop common systems to manage the delivery of one-way and interactive video services. It will also acquire and develop programming for delivery on the VDT and other distribution networks. The three companies will conduct jointly through Tele-TV activities each is currently permitted to perform.

Since the joint venturers have virtually no presence in video markets, their joint efforts will enable them to compete against entrenched vertically integrated cable operators/programmers. Overall, the effectiveness of Tele-TV depends on how fast the venture gains market share from cable incumbents.

4. MMDS - PROGRESS DEPENDS ON FCC RULES FOR DIGITAL TRANSMISSION, TECHNOLOGICAL ADVANCES, AND LOWER COSTS

We believe the success of MMDS depends upon three critical factors: 1) FCC encouragement of the rapid introduction of digital transmission for MMDS, 2) technological advances in digital compression, and 3) lower equipment costs:

Until now, MMDS competition has been limited primarily to price competition, because of the limited nature of the service offering, i.e., the system provides a maximum of only 33 channels. However, the advent of digital transmission for MMDS will allow competition along either price or product lines because channel offerings will compare with

cable. In order to enable this stronger level of competition, it is important for the FCC to foster transition of MMDS from analog to digital by quickly approving rules for digital transmission.

Cross Country Wireless, an MMDS provider and subsidiary of Pacific Telesis Group, plans to deploy digital compression technology in its Southern California markets to offer in excess of 100 channels for video programming as soon as Commission rules allow and digital technology is commercially available. The ability of an MMDS system operator to justify economically the use of digital compression technology is very dependent on the size of the market served and how quickly digital equipment costs drop.

Pacific's purchase of Cross Country Wireless, Inc. ("CCW") will hasten the delivery of video services to consumers. We estimate Pacific will be able to serve 300,000 more customers by the end of 1997 than wireline based delivery system would have allowed. This will be pro competitive and gives the consumer an alternative to the incumbent cable company. Pacific's investment in CCW will enable CCW to have access to the capital necessary to build out its Southern California markets. As increased concentration of MMDS systems covers larger market areas, these systems will provide more viable competition to incumbent cable companies.

Most MMDS operators are paying between 4-10% of their revenues to Instructional Television Fixed Service ("ITFS") license holders for leasing of ITFS channels. The trend by state and local governments to impose taxes and fees on MMDS providers poses an additional financial burden that will work to the advantage of incumbent cable companies.

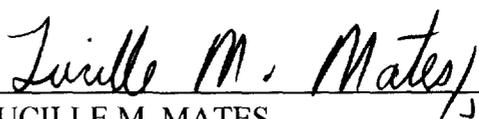
5. CONCLUSION

Cable incumbents face virtually no competition in California today. We believe VDT, Tele-TV and MMDS ultimately will contribute to the diversity of cable offerings

available to consumers. The success of each requires that the FCC establish fair rules for telephone companies attempting to enter the video marketplace so that video competition may soon become a reality for Californians.

Respectfully submitted,

PACIFIC BELL



LUCILLE M. MATES *JLW*
SARAH RUBENSTEIN

140 New Montgomery Street, Rm. 1522A
San Francisco, California 94105
(415) 542-7649

CHRISTOPHER L. RASMUSSEN
2600 Camino Ramon, Rm. 2W901
San Ramon, California 94583
(510) 823-8387

JAMES L. WURTZ
MARGARET E. GARBER

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

PACIFIC TELESIS VIDEO SERVICES

Kristin A. Ohlson

KRISTIN A. OHLSON /JLW

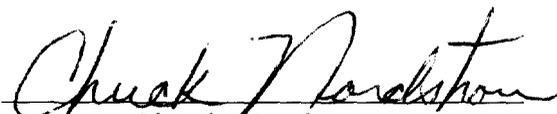
2410 Camino Ramon Suite 100
San Ramon, California 94583

Their Attorneys

Date: July 28, 1995

CERTIFICATE OF SERVICE

I, Chuck Nordstrom, hereby certify that a copy of the foregoing "REPLY COMMENTS OF PACIFIC BELL AND PACIFIC TELESIS VIDEO SERVICES" concerning Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming - CC Docket No. 95-61, was served by hand or by United States first-class mail, postage prepaid, on this 28th day of July, 1995 to the parties named on the attached service list.


Chuck Nordstrom

PACIFIC BELL
140 New Montgomery Street
San Francisco, CA 94105

SERVICE LIST - CC DOCKET NO. 95-61

INTERNATIONAL TRANSCRIPTION*
SERVICE, INC. (ITS)
1919 M Street, N. W.
Room 246
Washington, D. C. 20554

Betsy L. Anderson
Attorney for BELL ATLANTIC
1320 N. Court House Road
Arlington, VA 22201

David Cosson
L. Marie Guillory
Attorneys for NATIONAL TELEPHONE
COOPERATIVE ASSOCIATION
2626 Pennsylvania Avenue, N. W.
Washington, D. C. 20037

David R. Charles
Chairman & C.E.O.
SATELLITE RECEIVERS, LTD.
Corporate Office
1740 Cofrin Drive
Green Bay, WI 54302

Andrew R. Paul
Senior Vice President
Government Affairs
SATELLITE BROADCASTING
AND COMMUNICATIONS
ASSOCIATION OF AMERICA
225 Reinekers Lane, Suite 600
Alexandria, VA 22314

Samuel A. Simon, Esq.
Counsel for
METS Fans United/Virginia Consumers
for Cable Choice
901 15th Street, N. W.
Suite 230
Washington, D. C. 20005

Burt A. Braverman
John C. Dodge
COLE, RAYWID &
BRAVERMAN, L.L.P.
Attorneys for JAMES CABLE
PARTNERS, L.P.
1919 Pennsylvania Ave., N. W.
Suite 200
Washington, D. C. 20006

Daniel L. Brenner
Neal M. Goldberg
Loretta P. Polk
Counsel for the NATIONAL CABLE
TELEVISION ASSOCIATION, INC.
1724 Massachusetts Avenue, N. W.
Washington, D. C. 20036

* BY HAND

Henry M. Rivera
Jay S. Newman
GINSBURG, FELDMAN
AND BRESS CHARTERED
Attorneys for LIBERTY
CABLE COMPANY, INC.
1250 Connecticut Ave., N. W.
Suite 800
Washington, D. C. 20036

Michael H. Hammer
Francis M. Buono
Michael G. Jones
WILLKIE FARR & GALLAGHER
Attorneys for GENERAL INSTRUMENT
CORPORATION
Three Lafayette Centre
1155 21st Street, N. W.
Suite 600
Washington, D. C. 20036-3384

Paul J. Sinderbrand
William W. Huber
SINDERBRAND & ALEXANDER
Attorneys for WIRELESS CABLE
ASSOCIATION INTERNATIONAL
888 Sixteenth Street, N. W.
Fifth Floor
Washington, D. C. 20006-4103

Stuart W. Gold
CRAVATH, SWAINE & MOORE
Attorneys for TIME WARNER
ENTERTAINMENT CO., L.P.
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

David J. Gudino
Attorney for GTE SERVICE
CORPORATION
1850 M Street, N. W.
Suite 1200
Washington, D. C. 20036

John F. Raposa, HQE03J27
Attorney for GTE SERVICE
CORPORATION
P. O. Box 152092
Irving, TX 75015-2092

Barry S. Abrams
Campbell L. Ayling
Robert A. Lewis
Attorneys for NEW ENGLAND
TELEPHONE AND TELEGRAPH
COMPANY AND NEW YORK
TELEPHONE COMPANY
1111 Westchester Avenue
White Plains, NY 10604

John B. Richards
John Reardon
KELLER AND HECKMAN
Attorneys for the NATIONAL RURAL
TELECOMMUNICATIONS COOP.
1001 G Street, N. W.
Suite 500 West
Washington, D. C. 20001

Henry Goldberg
W. Kenneth Ferree
GOLDBERG, GODLES,
WIENER & WRIGHT
Attorneys for OPTEL, INC.
1229 Nineteenth Street, N. W.
Washington, D. C. 20036

Benjamin J. Griffin
Kathleen A. Kirby
REED SMITH SHAW & MCCLAY
Counsel for HOME BOX OFFICE
1301 K Street, N. W.
Suite 1100 - East Tower
Washington, D. C. 20005-3317

M. Robert Sutherland
Michael A. Tanner
Theodore R. Kingsley
Attorneys for BELLSOUTH
TELECOMMUNICATIONS, INC.
4300 Southern Bell Center
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375

Lawrence W. Secrest
Peter D. Ross
Wayne D. Johnsen
WILEY, REIN & FIELDING
Attorneys for VIACOM INC.
and LIFETIME TELEVISION
1776 K Street, N. W.
Washington, D. C. 20006

Robert M. Lynch
Paula J. Fulks
SBC COMMUNICATIONS INC.
175 E. Houston
Room 1212
San Antonio, Texas 78205

Benjamin J. Griffin
James J. Freeman
REED SMITH SHAW & MCCLAY
Attorneys for PEY-PER-VIEW
NETWORK, INC.
d/b/a/ VIEWER'S CHOICE
1301 K Street, N. W.
Suite 1100 - East Tower
Washington, D. C. 20005

Gerald Stevens-Kittner
Paula Argento
ARTER & HADDEN
Attorney for CAI WIRELESS
SYSTEMS, INC.
1801 K Street, N. W.
Suite 400K
Washington, D. C. 20006

Frank M. Sahlman, Sr.
President
VERMONT WIRELESS COOP
5 Fairground Road
P. O. Box 268
East Corinth, Vermont 05040

Adrian Cronauer
MALONEY & BURCH
Attorneys for PRIMETIME 24
1100 Connecticut Avenue, N. W.
Washington, D. C. 20036-4101

Charles S. Walsh, Esq.
Seth A. Davidson, Esq.
FLEISCHMAN AND WALSH, L.L.P.
Attorneys for CNBC, AMERICA'S
TALKING AND CANAL DE NOTICIAS
1400 16th Street, N. W.
Suite 600
Washington, D. C. 20036

Benjamin J. Griffin
James J. Freeman
REED SMITH SHAW & MCCLAY
Attorneys for PRIMESTAR
PARTNERS L.P.
1301 K Street, N. W.
Suite 1100 - East Tower
Washington, D. C. 20005

Edwin M. Durso
Executive Vice President
& General Counsel
Michael J. Pierce
Counsel
ESPN, INC.
ESPN Plaza
Bristol, Connecticut 06010-7454

Gerald Stevens-Kittner
Paula Argento
ARTER & HADDEN
Attorneys for HEATLAND WIRELESS
COMMUNICATIONS, INC.
1801 K Street, N. W.
Suite 400K
Washington, D. C. 20006

Gary M. Epstein
James H. Barker
LATHAM & WATKINS
Attorneys for DIRECTV, INC.
1001 Pennsylvania Ave., N. W.
Suite 1300
Washington, D. C. 20004

Mark Melnick, Esq.
Assistant General Counsel
GROUP W SATELLITE
COMMUNICATIONS
250 Harbor Drive
Stamford, CT 06904-2210

Stephen A. Hildebrandt, Esq.
Chief Counsel
WESTINGHOUSE BROADCASTING
COMPANY
1025 Connecticut Ave., N. W.
Suite 506
Washington, D. C. 20036-5405

Peter O. Price
Chairman

Henry M. Rivera
Jay S. Newman
Gregg A. Rothschild
GINSBURG, FELDMAN
AND BRESS, CHARTERED
Attorneys for the VIDEO
DIALTONE ASSOCIATION
1250 Connecticut Avenue, N. W.
Suite 800
Washington, D. C. 20036

Bonnie J. K. Richardson

Michael D. Berg
Sari Zimmerman
VERNER, LIIPFERT, BERNHARD,
MCPHERSON AND HAND
Attorneys for MOTION PICTURE
ASSOCIATION OF AMERICA
901 15th Street, N. W.
Washington, D. C. 20005-2301