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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
American Cablesystems of Florida, Ltd.,)	CC Docket No. 95-95
d/b/a Continental Cablevision of)	
Broward County, and)	
)	
Continental Cablevision of)	PA 91-0012
Jacksonville, Inc.)	
)	
Complainants,)	
)	
v.)	DOCKET FILE COPY ORIGINAL
)	
Florida Power and Light Company)	
)	
Respondent)	

To: The Honorable Edward Luton, Administrative Law Judge

**COMMON CARRIER BUREAU COMMENTS ON SETTLEMENT AGREEMENT
AND MOTION TO VACATE**

1. On August 15, 1995, Complainants and Respondent jointly filed a "Settlement Agreement" (Settlement) and requested that your Honor grant their "Motion to Vacate" (Joint Motion) the Hearing Designation Order (HDO) in the captioned proceeding. The Chief, Common Carrier Bureau, through her attorneys, recommends that your Honor approve the Settlement contingent on vacation of the HDO and dismissal of the complaints with prejudice by the Commission, deny the Joint Motion on procedural grounds, and direct the parties to file with the Commission a Motion to Vacate the HDO and Dismiss the Complaints with Prejudice.

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2. In full and final settlement of Complainants' claims regarding Respondent's pole attachment rates at issue, the parties agreed as follows. First, Respondent will apply its rate of \$6.38 from July 1, 1995 to July 1, 1997 unless the rate it routinely calculates for cable pole attachments next year is less (in which case the lower rate will apply). Either party however has the option to terminate this provision if the Commission changes the formula for such rates. Second, the parties shall deem each of the Complainants' licensing agreements for pole attachments amended to reflect their Settlement. Third, the parties will jointly file a motion to vacate the HDO. Lastly, Respondent agrees to refund \$27,822.86 to Complainants within thirty (30) days after an order vacating the HDO. The Settlement further states that it cannot be construed as an admission of liability because it represents a compromise settlement of disputed claims. Pursuant to the Settlement, the parties also agreed not to file any pole attachment complaints with respect to the rates agreed upon in the Settlement, but stipulated that it does not affect their present or future participation in any rulemaking or other similar non-complaint proceedings.

3. The Chief, Common Carrier Bureau, through her attorneys, recommends approval of the Settlement. After careful review of the Settlement, the Bureau finds that no issues remain in controversy, the rates are just and reasonable, and approval of the Settlement will serve the public interest. The Commission has a policy of encouraging negotiations and mutually agreeable settlements in complaint cases to extent that they serve the public interest by eliminating the need for further litigation and concomitant expenditure of time and

resources by the Commission and other parties to the proceeding. See, e.g., Longview Cable

TV Company, Inc., et al. v. Southwestern Electric Power Company, 5 FCC Rcd 686 (1990); Warner Amex Cable Communications, Inc. v. Southwestern Electric Power Company, 5 FCC Rcd 578 (1990).

4. In the Joint Motion, the Complainants and Respondent request that your Honor vacate the HDO released by the Common Carrier Bureau under delegated authority from the Commission. Only the Commission, or the Bureau acting pursuant to its delegated authority, can vacate the HDO. See Frank H. Yemn, 39 RR 2d 1657 (1977); Anax Broadcasting Inc., 87 FCC 2d 483 (1981). See also UACC Midwest, Inc., et al. v. South Central Bell Telephone Co., FCC 95M-184 (released August 24, 1995). Because the parties made the Settlement contingent only upon "an order" vacating the HDO, not specifically an order from the Presiding Judge, your Honor may approve the Settlement contingent upon vacation of the HDO and dismissal of the complaints with prejudice by the Commission.

5. Accordingly, the Chief, Common Carrier Bureau, through her attorneys, requests that your Honor approve the Settlement contingent on the vacation of the HDO and dismissal of the complaints with prejudice by the Commission, deny the Joint Motion, and direct the parties to file with the Commission a Motion to Vacate the HDO and Dismiss the Complaints with Prejudice. At this time the Bureau takes no position on the Motion to Vacate the HDO that the parties would file with the Commission. In the past, the Commission has vacated orders for good cause shown when parties have reached settlement in a dispute. See, e.g., GTE Telenet Communications Corp. v. AT & T, File No. E-81-32, Mimeo No. 4755 (Com.

Car. Bur.) (released May 29, 1986), vacated as a condition of settlement where order dealt with rates no longer in effect, Mimeo No. 5670 (released July 10, 1986), part. recon. denied, 1 FCC Rcd 367 (Com. Car. Bur.). The motion however must be considered on its own merits when it comes before the Commission.

Respectfully submitted,

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

August 24, 1995

By: 
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Federal Communications Commission
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CERTIFICATE OF SERVICE

I, Ernestine Creech, hereby certify that I have, this 24th day of August, 1995, served a copy of the foregoing Notice of Appearance by First Class mail, postage prepaid, except as otherwise noted, on the following parties:

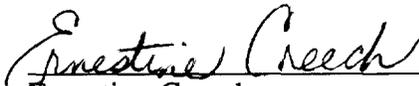
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