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United States Telephone Association

1401 H Street, N.W., Suite 600
Washington, D.C. 20005-2136
(202) 326-7300
(202) 326-7333 FAX

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December 7, 1995

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DEC - 7 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street NW - Room 222
Washington, DC 20554

Ex Parte:
MM Docket No. 92-260
And RM-8380

Dear Mr. Caton:

On December 7, 1995, the attached letter was provided to Ms. Lauren "Pete" Belvin of Commissioner Quello's office in response to a question posed during USTA's meeting with Ms. Belvin on December 5, 1995.

An original and a copy of this ex parte correspondence are being filed in the Office of the Secretary. Please include them in the public record of this proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary McDermott".

Mary McDermott
Vice President
Legal & Regulatory Affairs

Attachment



United States Telephone Association

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December 7, 1995

Ms. Lauren "Pete" Belvin
Senior Legal Advisor
Office of Commissioner James Quello
1919 M Street NW - Room 802
Washington, DC 20554

Re: MM Docket No. 92-260
and RM-8380

Dear Ms. Belvin:

During our meeting on December 5, 1995, you had asked a question about proposed federal legislation as it relates to cable inside wiring. Enclosed is a copy of the section of S. 652 which addresses joint use of cable facilities. As you will read, the language refers to "...transmission facilities of such a cable system extending from the last multiuser terminal to the premises of the end user..." USTA does not believe that this language resolves any of the issues associated with cable inside wiring. USTA believes that this language refers to facilities that are under the control of the cable company and is more analogous to the telco loop (i.e., a part of the "network"). Inside cable wiring goes beyond "to the premises" because it extends into the premises. Inside wire is, or at least should be, under the control of the customer.

Thank you for the opportunity to meet with you and discuss the Joint Petition for Rulemaking to Establish Rules for Subscriber Access to Cable Home Wiring. If you should have any other questions, please feel free to call me at 326-7254.

Sincerely yours,

Kathy Woods

Kathleen M. Woods
Director
Legal & Regulatory Affairs

H.R. 1555

conditions, the use of that part of the transmission facilities of such a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission; or

"(4) obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as 'the subject cable system'), if—

"(A) the subject cable system operates in a television market that is not in the top 25 markets, and that has more than 1 cable system operator, and the subject cable system is not the largest cable system in such television market;

"(B) the subject cable system and the largest cable system in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

"(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 largest cable system operators as existed on May 1, 1995; and

"(D) the largest system in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as existed on May 1, 1995.

"(c) WAIVER.—

"(1) CRITERIA FOR WAIVER.—The Commission may waive the restrictions in subsection (a) of this section only upon a showing by the applicant that—

"(A) because of the nature of the market served by the cable system concerned—

"(i) the incumbent cable operator would be subjected to undue economic distress by the enforcement of such subsection; or

"(ii) the cable system would not be economically viable if such subsection were enforced, and

"(B) the local franchising authority approves of such waiver.

S. 652

venture or partnership with such system or facilities to the extent that such system or facilities only serve incorporated or unincorporated—

"(i) places or territories that have fewer than 50,000 inhabitants; and

"(ii) are outside an urbanized area, as defined by the Bureau of the Census.

"(E) WAIVER.—The Commission may waive the restrictions of subparagraph (A), (B), or (C) only if the Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service—

"(i) the incumbent cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions,

"(ii) the system or facilities would not be economically viable if such provisions were enforced, or

"(iii) the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

"(F) JOINT USE.—Notwithstanding subparagraphs (A), (B), and (C), a telecommunications carrier may obtain within such carrier's telephone service area, with the concurrence of the cable operator on the rates, terms and conditions, the use of that portion of the transmission facilities of such a cable system extending from the last multiuser terminal to the premises of the end user in excess of the capacity that the cable operator uses to provide its own cable services. A cable operator that provides access to such portion of its transmission facilities to one telecommunications carrier shall provide nondiscriminatory access to such portion of its transmission facilities to any other telecommunications carrier requesting such access.