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March 4, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

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

DOCKET FILE COPY ORIGINAL

Re: **Ex Parte Presentation in MM Docket No. 92-260
and CS Docket No. 95-184**

Dear Mr. Caton:

I am submitting the original and two copies of a memorandum summarizing ex parte presentations to John Nakahata, Suzanne Toller, Mary McManus and staff of the Cable Services Bureau, including Richard Chessen, Larry Walker and Lynn Crakes on Wednesday, February 21 and Thursday, February 22, 1996, with respect to the *First Order on Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92-260 (In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring), FCC 95-503, and the *Notice of Proposed Rulemaking* in CS Docket No. 95-184 (In the Matter of Telecommunications Services Inside Wiring: Customer Premises Equipment), FCC 95-504. We respectfully request that a copy of the memorandum be placed in both proceedings.

Sincerely,


Deborah C. Costlow

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Enclosure
DCC:mtk

To: William F. Caton
From: Deborah C. Costlow
Subject: Ex Parte Presentations In MM Docket No. 92-260 and
CS Docket No. 95-184
Date: March 4, 1996

EX PARTE OR

MEMORANDUM

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FEDERAL COMMUNICATIONS COMMISSION
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The following summarizes ex parte presentations to John Nakahata, Suzanne Toller, Mary McManus and staff of the Cable Services Bureau, including Richard Chessen, Larry Walke and Lynn Crakes on Wednesday, February 21 and Thursday, February 22, 1996, with respect to the *First Order on Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92-260 (In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring), FCC 95-503, and the *Notice of Proposed Rulemaking* in CS Docket No. 95-184 (In the Matter of Telecommunications Services Inside Wiring: Customer Premises Equipment), FCC 95-504. The presentations were on behalf of Mid-Atlantic Cable, Inc., the fourth largest private cable (SMATV) operator in the United States. Meeting participants included myself, John Norcutt and John Lubetkin.

The presentations focused on Mid-Atlantic's view that the proper demarcation point for cable inside wiring in multiple dwelling units ("MDUs") is at the point where the wire is solely dedicated to an individual residential unit as opposed to the current rule setting demarcation at 12 inches outside of where the wiring enters the subscriber's dwelling unit. Mid-Atlantic's experience has been that the 12 inch rule is impractical in operation for numerous reasons, including a MDU owner's reluctance to allow rewiring of the building up to the 12 inch demarcation point for fear of property damage and loss of aesthetic control; the fact that certain buildings cannot be easily rewired due to architectural barriers or historical concerns; and the burden of piecemeal construction on a per unit basis as individual tenants switch providers.

Mid-Atlantic also expressed the view that the option to purchase the inside wiring should always belong to the MDU owner. The current rules allowing the tenant to purchase unit wiring have proved confusing at best. For example, there is no way to keep track of individual dwelling unit wiring purchases. Cable operators are conceivably being paid over and over for the same wiring and neither competitors nor tenants can be sure whether the wiring within a particular unit has or has not been purchased in the past. Tenants are also reluctant to purchase the wiring within their units given that tenants do not remove the wiring upon departure and such wiring is not useable at their next rental residence. Indeed, tenants who switch apartment buildings will be repeatedly required to purchase inside wiring every time they wish to select a nonfranchised cable provider. Allowing the option to purchase to reside with the MDU owner not only achieves the most practical result, but it also appears to be a prerequisite to any movement of the demarcation point outside of the individual dwelling units in light of constitutional requirements and the scope of the Commission's statutory authority. Any regulation which mandates that a MDU owner allow a tenant to install or retain wiring within the common areas of the MDU owner's property constitutes a taking of property without just compensation. Moreover, the Commission's statutory

William F. Caton

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directive only allows the premises owner, i.e., the MDU owner, to purchase wiring within the premises.

Finally, Mid-Atlantic opposes any regulations mandating access to private property by broadband providers. Mandatory access has been proven to lessen competition rather than increase it. Given the economics of the MDU marketplace, and the historical monopoly status of the franchised cable industry, competitors will be unable in the face of mandatory access regulations to offer tenants the reduced rates and customized services that are the hallmark of the private cable business. Thus, tenant welfare will be harmed rather than advanced by excessive overbuilding.