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June 14, 1996

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VIA HAND DELIVERY

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: *Implementation of Section 207 of the Telecommunications Act of 1996:
Restrictions on Over-the-Air Reception Devices: Television Broadcast and
Multichannel Multipoint Distribution Service -- CS Docket No 96-83
EX PARTE COMMUNICATION*

Dear Mr. Caton:

Yesterday afternoon, Todd Rowley, Executive Vice President of People's Choice TV Corp. ("PCTV"), Andrew Kreig, Vice President of the Wireless Cable Association International, Inc. ("WCA"), and the undersigned met with William H. Johnson, Deputy Chief of the Cable Services Bureau, Jacqueline Spindler, Deputy Chief of the Consumer Protection and Competition Division, and members of their staffs to discuss WCA's positions regarding the issues raised in the *Notice of Proposed Rulemaking* in the above-referenced proceeding. The presentation made by WCA largely tracked its formal comments and reply comments. In addition, however, certain issues not previously addressed by WCA were discussed.

Specifically, additional information was provided regarding the height at which wireless cable antennas generally are mounted. WCA reiterated that wireless cable operators have every incentive to mount antennas as close to the roofline as possible, but are constrained by the line-of-sight nature of the service. It was pointed out that the average height of an antenna mount varies greatly from market to market, depending upon terrain and, even more importantly, the height and density of foliage. Mr. Rowley stated that, to his knowledge, the tallest push-up mast generally used by PCTV extended forty feet. While he noted that this sort of mast is not used in all installations, it is not atypical. Mr. Rowley added, moreover, that where masts of this height are used, they are generally need to gain line of sight over dense tree canopies. As a

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result, the antenna mast tends to be hidden within the foliage, minimizing any aesthetic concerns.

During the meeting, WCA corrected a serious mis-impression created by reply comments submitted by the law firm of Varnum, Riddering, Schmidt & Howlett, LLP on behalf of several communities in Michigan, Illinois and Texas (the "MIT Communities"). In their reply comments, the MIT Communities suggest that the wireless cable industry does not find objectionable provisions of the Building Officials and Code Administrators International ("BOCA") model building code that require building permits for the installation of antennas extending more than 12 feet high and that bar the installation of antenna masts closer to the lot line than the height of the antenna. That is simply not true. WCA finds both provisions objectionable and inconsistent with Section 207.

First, it was noted that the ban on antennas mounted closer to the lot line than the height of the antenna can and does prevent consumers from receiving wireless cable service. Again, the height of a wireless cable antenna installation is dictated by the laws of physics -- the reception antenna must be high enough to have a relatively unimpeded direct line to the transmission antenna. Often, there is no place on the rooftop where an antenna can be mounted that complies with the BOCA requirement cited by the MIT Communities. For example, in a community of attached town homes of 20 foot width (certainly not an unusual size), reception antennas of more than 10 feet in height are effectively banned by the BOCA code.

As Congress implicitly recognized when it adopted Section 207 of the Telecommunications Act of 1996, this sort of provision is totally inappropriate. While the MIT Communities assert this restriction is necessary to prevent antennas from collapsing onto adjoining buildings, they ignore the fact that wireless cable antennas rarely fall and are of such light weight that they pose little threat of serious damage when they do fall. The risk of damage from a falling wireless cable antenna is minuscule compared to the risk posed by falling tree limbs -- which are more likely to fall and, when they do fall, cause far more damage due to their greater weight. Mr. Rowley noted that during PCTV's ten years of experience in the wireless cable industry, he was unaware of any damage caused by a falling antenna. Indeed, Mr. Rowley pointed to a hurricane that hit Tucson, AZ several years ago that caused massive damage, but did not topple a single wireless cable antenna.

It was pointed out that since wireless cable antennas are expensive, since they must remain standing in order to avoid outages, and since maintenance calls cause additional costs and are frustrating to consumers, wireless cable operators have every incentive to assure that antennas are mounted in a way to minimize safety risks. It was noted that there is not one piece of anecdotal evidence in the record of any damage being caused by a falling wireless cable antenna. As a society, we routinely accept the risk of falling tree limbs; with Section 207

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Congress has now said we will also accept the relatively small additional risk of falling antennas in order to promote consumer choice in telecommunications providers.

Second, it was reiterated that a permit requirement, with its attendant delays, is as anathema to consumer choice as an outright ban on wireless cable antennas. Wireless cable operators have consistently found that potential subscribers are often unwilling to wait for service while local authorities consider whether to permit the installation of reception equipment. Moreover, WCA noted that there is nothing in WCA's experience or the record in this proceeding to suggest that local authorities have any legitimate reason for requiring approval of wireless cable antennas prior to installation. To the contrary, it was pointed out that local authorities can serve their legitimate interests, without imposing undue burden on potential wireless cable subscribers, by adopting appropriate standards and permitting the installation of antennas without prior approval, so long as they comport with the appropriate standards. WCA offered to cooperate with BOCA in the development of model standards that will permit installation of wireless cable antennas without prior approval, so long as the installation meets measures necessary to protect public safety.

Please contact the undersigned should you have any questions regarding this *ex parte* presentation.

Respectfully submitted,



Paul J. Sinderbrand

Counsel to the Wireless Cable Association
International, Inc.

cc: William Johnson
Jacqueline Spindler
Randi Albert