EX PARTE OR LATE FILED

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July 29, 1996

EX PARTE

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FEDERAL COMMUNICATIONS COMMISSION

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

Re: CS Docket No. 96-46, Open Video Systems

The Joint Parties[2] met today with Anita Wallgren, Legal Advisor to Commissioner Ness to discuss its pending petition for clarification or reconsideration of the Commission's Open Video Systems (OVS) Order. The Joint Parties were represented by Karen Possner-BellSouth, Kathy Rehmer-SBC, Al Shuldiner-Lincoln Telephone and the undersigned.

Please include this correspondence as part of the public record in the above-captioned proceeding. Please call me if you have any questions concerning the meeting.

Sincerely,

Marie Breslin

Attachment

cc: A. Wallgren

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[2]The Joint Parties are the Bell Atlantic Telephone Companies and Bell Atlantic Video Services Company; BellSouth Corporation and BellSouth Telecommunications, Inc.; GTE Service Corporation and its affiliated domestic telephone operating companies and GTE Media Ventures, Inc.; Lincoln Telephone and Telegraph Company; Pacific Bell; and SBC Communications Inc. and Southwestern Bell Telephone Company.

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OVS Ex Parte Issues

NAVIGATIONAL DEVICES

- The Commission should clarify that the nondiscriminatory provision for navigational devices applies solely to the OVS operator and does not extend to the OVS operator's affiliate.
- Program providers and consumers should determine the features and functions they desire in the set-top and associated software; a single navigational device should not be mandated nor should the rules force or drive that result.
- If programmers can provide their own navigational devices, the OVS operator should be permitted to offer a system-wide program guide to all end users to fulfill its nondiscriminatory obligations.

REASONABLENESS OF RATES

- The FCC correctly determined that if OVS operator's carriage rates are within a safe harbor it does not hold the burden of proof for reasonable rates.
- The safe harbor condition for a minimum occupancy for unaffiliated providers is illogical and would penalize OVS operators for using more advanced technology; this is inconsistent with public interest.
- The FCC should modify its presumption of reasonableness test so that if two unaffiliated programmers purchase carriage on OVS, without specifying any level of capacity, rates are presumed reasonable.
- The FCC should clarify that the presumption applies whether or not the unaffiliated programmers market their programming in cooperation with the OVS operator.
- In the context where LECs are new entrants offering a competitive service, the ECPR should not be used to determine just & reasonable rates. If the FCC does apply ECPR, it should clarify the description of the rule to ensure OVS operators can recover both incremental cost <u>and</u> their opportunity cost

PEG REQUIREMENTS

- Section 611 imposes only the obligation to provide capacity for PEG programming equivalent to what the incumbent cable operator provides; the FCC should eliminate the requirement for OVS operators to share in the costs of facilities or equipment for PEG.
- Cable operators should be required to cooperate in providing access to existing PEG programming feeds.
- The default mechanism of "match or negotiate" positions the local franchsing authority to extract other concessions for OVS operators: there should be a third alternative which is arbitration.

NON TITLE VI FRANCHISE REQUIREMENTS

- The FCC need and and should not adopt non-Title VI rights of way requirements for OVS, as suggested by NLC.
- Existing telephone franchises are a matter for the LECs and state and local government and should not become part of the FCC's OVS rules.

FRANCHISE FEE CALCULATIONS

- "Carriage revenues" are not revenues from the provision of cable service and therefore the Act does not permit fees on such revenues.
- If the FCC does apply fees on subscriber revenues, then it must do so on a nondiscriminatory basis so that affiliated programmers are not disadvantaged.