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Group-Washington

December 9, 1996

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Federal Communications Commission
Office of Secretary

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: Telecommunications Inside Wiring, CS Docket No. 95-184;
Over-the-Air Reception Devices, CS Docket No. 96-83;
Cable Home Wiring, MM Docket No. 92-260

We are submitting the attached material in response to questions from the staff. Please associate it with the above-referenced dockets. We are submitting two copies of this notice, in accordance with Section 1.206(a)(1) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely yours,

Attachment

cc: Rich Chessen
Jackie Chorney
Alex Johns
JoAnn Lucanik

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PACIFIC TELESIS
Group-Washington

December 9, 1996

JoAnn Lucanik
Chief, Policy and Rules Division
Cable Services Bureau
2033 M Street, N.W., Room 406
Washington, D.C. 20554

Re: *Telecommunications Services Inside Wiring, Customer Premises Equipment*, CS Docket No. 95-184, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring*, MM Docket No. 92-260

Dear Ms. Lucanik:

We submit this additional ex parte letter in the context of the pending cable inside wire dockets referenced above. You asked in our last ex parte meeting whether there is statutory authority in the Cable Home Wiring rules for the Commission to change the cable inside wire demarcation point. You also what the process should be for resolving disputes over the amount of compensation due for existing inside wiring.

We believe the Cable Home Wiring docket *does* provide the Commission with authority to change the demarcation point. When the Commission first set the cable inside wire demarc at twelve inches outside an individual unit in an MDU, it relied on the Cable Act's preference for competition as its authority to do so. *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring*, MM Docket No. 92-260, *Report and Order*, 8 FCC Rcd 1435, ¶ 12 (1993). There, the Commission noted that commenters had "argued that, in order to meet the legislative goal of fostering competition among providers, the demarcation point should be outside the unit where the dedicated wring for the unit begins." *Id.* The Commission then decided to set the demarcation point for MDUs at or about twelve inches outside of where the cable wire enters the outside wall of the subscriber's individual dwelling unit. *Id.* It reasoned that the demarc "*should give alternative providers adequate access to the cable home wiring* so that they may connect the wiring to their systems without disrupting the subscriber's premises." *Id.*, ¶ 11 (emphasis added).

Thus, the Commission set the demarc in such a way as to enhance competition -- to "give alternative providers adequate access to cable home wiring." However, since that decision, it has become clear that the current demarc is *not* adequate to give alternative providers such access. Indeed, the current MDU demarc freezes out competitors. Building owners do not want to give alternative providers access to the demarc because it requires tearing open walls. Thus, for the same reason -- competitive access -- that the Commission originally set the demarc, it should now reset it to actually advance the cause of competition. The Commission may derive its authority to enhance competition from both 47 U.S.C. Section 543(a)(2) ("Preference for

Competition") and 47 U.S.C. Section 548 ("Development of Competition and Diversity in Video Programming Distribution").

In addition, you asked what would happen if the parties are unable to reach agreement as to the amount of compensation. As you recall, we suggested the following procedure for securing compensation for wiring transferred from the existing cable provider to the building owner:

- Day 1: Alternate video provider gives incumbent provider notice of its intent to connect to existing wiring.

- Day 7 or earlier: Incumbent provider gives alternate provider statement of amount of compensation owed for the inside wiring. Failure to do so constitutes conclusive evidence that the cable provider has abandoned the wiring in place to the MDU owner.

- Day 8 or later: Alternate provider may connect to existing wiring.

- Day 97 or earlier: Alternate provider must pay compensation to incumbent provider, unless wiring has been abandoned in place. Alternate provider may arrange by contract or otherwise for a third party (e.g., the MDU owner) to make such payment to the incumbent.

If the parties cannot agree upon compensation, we make three proposals. First, the Commission should encourage Alternative Dispute Resolution for situations, or groups of situations, in which the parties cannot agree. Second, the party responsible for paying the compensation -- whether, as we suggest above, it is the alternate provider, or it is the landlord -- should be required to make a deposit into a trust/escrow account pending the outcome of the dispute. The deposit should reflect the per-foot charge for the wiring, and no less than 75% of the incumbent's estimated cost of labor for installing the wiring. We suggest that the Commission set per-hour and per-foot reimbursement rates for labor and wiring and labor to eliminate the more obvious disputes.

Thank you for your attention to our concerns.

Sincerely,

Sarah R. Thomas
Senior Counsel
Pacific Telesis Legal Group
140 New Montgomery Street, Room 1522A
San Francisco, CA 94105
(415) 542-7649