Gina Harrison
Director
Federal Regulatory Relations

1275 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20004
(202) 383-6423

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February 10, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

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

On Friday, February 7, Sarah R. Thomas, Senior Counsel, Pacific Telesis Legal Group, Lea L. Jones, Regulatory Director, Pacific Telesis Enhanced Services, and Kevin Carbone, Director, Strategic Markets, Pacific Bell Video Services, and I met with Julius Genachowski, Chief Counsel, Office of the Chairman; Anita L. Wallgren, Legal Advisor to Commissioner Ness; Marsha J. MacBride, Legal Advisor to Commissioner Quello; Suzanne Toller, Legal Advisor to Commissioner Chong; John E. Logan, Deputy Chief, Cable Services Bureau, JoAnn Lucanik, Chief, Rick Chessen, Deputy Chief, and Alexis D. Johns, Policy and Rules Division, Cable Services Bureau, to discuss issues summarized in the attached materials. 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,

Gina Harrison

Attachment

cc: Rick Chessen
Julius Genachowski
Alexis D. Johns
John E. Logan
JoAnn Lucanik
Marsha J. MacBride
Suzanne Toller
Anita L. Wallgren

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Cable Inside Wire
Multiple Dwelling Units

February 7, 1997

The Commission has Received Adequate Comments to Issue a Ruling in This Proceeding.

- It has been over a year since these proceedings were opened by the Commission

– January 26, 1996	Notices of Proposed Rulemaking issued in dockets MM 92-260 and CS 95-184
– March 18, 1996	Comments filed in both dockets
– April 17, 1996	Reply Comments filed in both dockets
– April 1996 through January 1997	Ex Partes by multiple parties on issues raised in these dockets.

- With competition developing for video services, it is time for the Commission to rule on the issues raised in these dockets.

The Cable Inside Wiring Demarcation Point Should Be Changed

- The current demarc is anti-competitive because it is located in the wall or other inaccessible spot.
- Property owners often do not allow second sets of wiring drops to be run.
- The demarcation point should be changed to a place where the common feeder wire meets lines dedicated to individual users to optimize customer choice
  - Demarcation should be at a point where individual tenant's wires can be detached without damage to MDU and without interfering with other residents' service.
  - Should be at a point beyond any powered coax, where there are active electronics.

Customer Choice is Enhanced by a Change in the Cable Inside Wiring Demarcation Point

- Customers should have the flexibility to change to different video providers, without undue expense or delay in receiving service.
  - In order for customers to have a real choice, each provider needs physical access to the customer's dwelling.
  - Each provider should be given equal access to private rights of way to connect feeder cable to the resident's inside wire at the demarcation point.
- Change of the current demarcation point provides tenants with greater control over the video services, and the video provider they want to receive service from.

The Commission has Statutory Authority to Change the Existing Demarcation Point

- The Commission first set the cable inside wire demarcation at twelve inches outside an individual unit in an MDU and relied on the Cable Act's preference for competition as its authority to do so.
  - Thus, preference for competition is an adequate basis for changing the demarcation point.
  - Commission noted that in order to meet the legislative goal of fostering competition, the demarcation point should be moved.
  - Commission reasoned that the demarcation point should give alternative providers adequate access to the cable home wiring so that they could connect the wiring without disrupting the subscriber's premises.

The Commission has Statutory Authority to Change the Existing Demarcation Point

- Preference for competition is still a basis for Commission authority to change the demarcation point.
  - Commission authority is derived from its authority to enhance competition under 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).
    - » For the same reasons the Commission originally set the demarcation point, they should now reset it to actually advance the cause of competition.
- In CS Docket 96-83, Report and Order Adopted August 5, 1996, the Commission established Section 1.4000, which addresses restrictions that impair reception of Multichannel Multipoint Distribution Services.
  - Found that restrictions that impair a <u>user's</u> ability to receive such service are prohibited, except for some safety and historical site exceptions.
    - » The current demarcation point is a restriction that impairs a user's ability to receive service because inside wiring is necessary to receive an over-the-air signal.

Compensation For Existing Wiring Can Be Accomplished Through An Easily Managed Process

- Parties should be permitted to negotiate the amount of compensation for existing wiring based upon the per-foot value of the wiring and the per-hour labor rate for installing it, less any accumulated depreciation or other past cost recovery. Burden should be on incumbent to prove it has unrecovered cost.
- The following timetable should apply:
  - Day 1: Alternate video provider or landlord give incumbent provider notice of intent to connect to existing wiring
  - Day 7 or earlier: Incumbent gives alternate provider statement of amount of compensation owed for inside wiring. Failure to do so constitutes conclusive evidence of abandonment of wiring.
  - Day 8 or later: Alternative provider may connect to existing wiring.
  - Day 97 or earlier: Alternate provider or landlord, where negotiated, must pay compensation to incumbent, unless the wiring was abandoned. Alternative provider may arrange by contract or otherwise for a third party(e.g., the MDU owner) to make such payment to the incumbent.

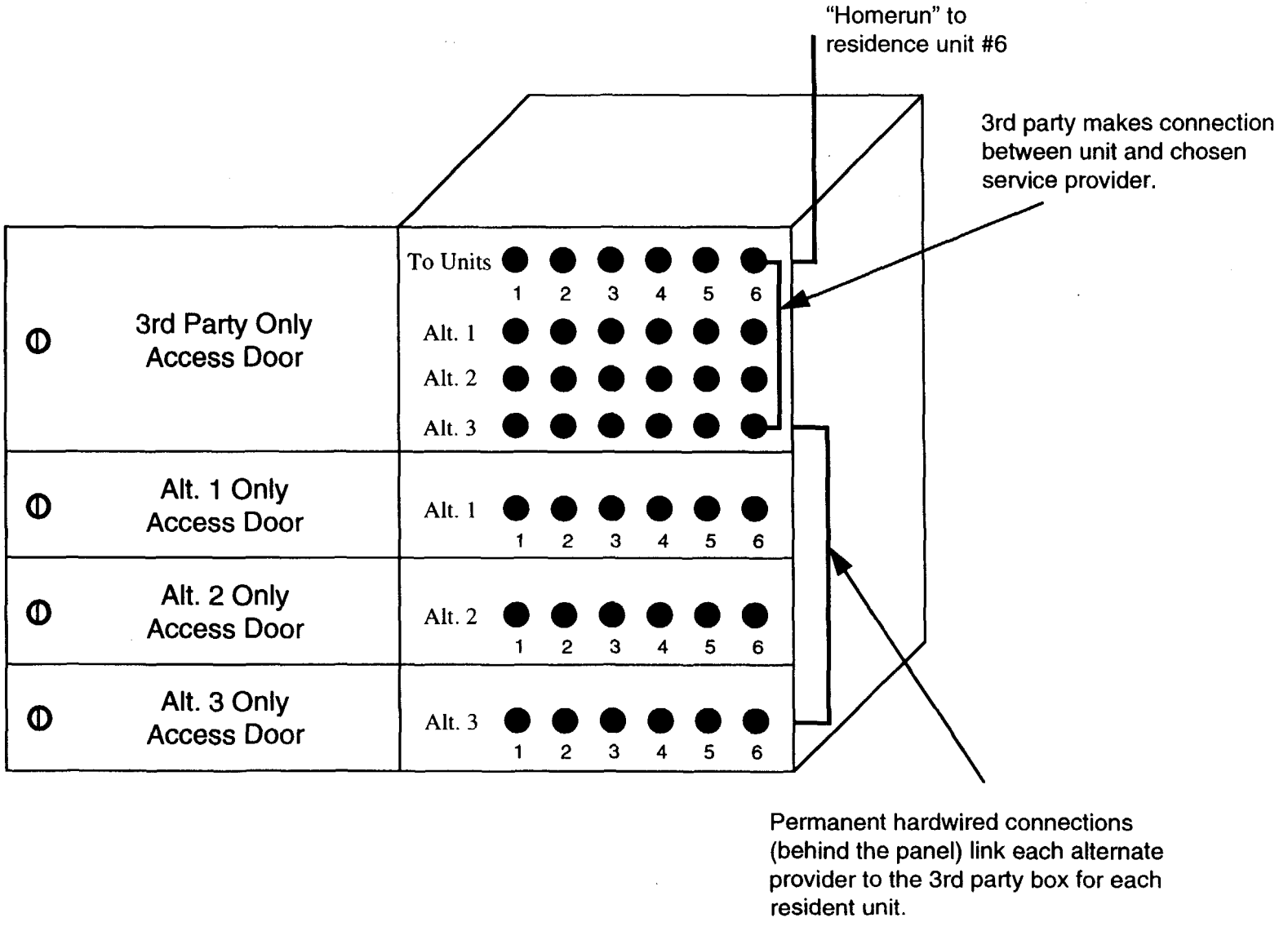
A Process Could Be Established For Any Compensation Disputes That Do Arise

- If the parties cannot agree upon compensation, Pacific proposes:
  - The Commission should encourage Alternative Dispute Resolution for situations in which the parties cannot agree.
  - The party responsible for paying the compensation could 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
  - The Commission should set the per-hour and per-foot reimbursement rates for labor and wiring and labor to eliminate the more obvious disputes.

Exclusive Contracts Should Be Limited

- Exclusive contracts should be prohibited, unless related to new wiring.
  - There is no cost recovery basis for retaining exclusivity.
  - An exclusive contract simply bars competitive entry.
- New installations where a video provider has newly installed at least 75% of the inside wiring in a Multiple Dwelling Unit should be allowed to enter into an exclusive contract for a <u>limited</u> period of not more than 3 to 5 years.
  - The inside wire should include feeder cable and other components on the network or provider side of the demarc and the homerun or drop wiring to individual units.
  - This would permit the provider to recoup the cost of installing the new wiring, but not of such a long duration as to permanently shut out competitors.
- Contrary to several parties positions, there was no true competition at the time exclusive contracts were signed.
- Pacific's proposal preserves exclusive contracts in a narrow range of situations in which they are necessary to allow a provider to recoup the often significant investment to wire a building, while not freezing out competition.

Neutral Lockbox



Neutral Lockboxes Provide a Means to Enhance Competition

- Neutral lockboxes should be established at the new demarcation point.
- For existing wiring installations:
  - The new provider(s) should be permitted to install the lockbox to ensure it meets their needs.
  - Homeruns should be rerouted by the incumbent within 7 to 10 days of new provider or landlord request.
  - Costs for the lockbox and running of the homeruns to the lockbox should be split between the incumbent and the new provider.
- For new wiring installations:
  - A neutral lockbox should be established at the time of the new wiring installation.
  - If the lockbox does not meet alternative providers' needs, the cost of modifications and any rerouting of homeruns would be split between the party that installed the wiring and the alternative provider(s).
- Administration of the lockboxes should be left to the incumbent, new video provider and property owner to determine.

There Are No Takings Issues

- Giving alternate video providers access to MDUs in order to connect new video services is not a taking of property of the MDU owner, nor does it constitute a uncompensated taking of the cable incumbent's property
  - It is not a taking of real property owners' property to allow alternative video providers access to cable already installed on the premises
    - » No taking involved in temporary occupation necessary for alternative video provider installers to place new feeder cable.
    - » No taking involved in allowing tenants access to alternative video providers. Exception in Loretto. Warranty of habitability/mailbox analogy.
  - It is not an actionable taking of cable company's property to give property owners the right to purchase inside cable wire. The cable companies will receive compensation for their wiring .

Summary

- The Commission should not allow incumbents to delay competition and should decide the issues in this proceeding now.
- The demarc needs to be set at the location where the common feeder meets individual homerun wiring with access via a neutral lockbox.
- The Commission should permit customer choice by limiting exclusive contracts to a period necessary to recover investments.