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PACIFIC TELESIS
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February 19, 1997

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

The attached letter was sent today to Anita Wallgren, Legal Advisor to Commissioner Ness, Marsha MacBride, Legal Advisor to Commissioner Quello, Julius Genachowski, Chief Counsel to Chairman Hundt, and Suzanne Toller, Legal Advisor to Commissioner Chong, in response to questions asked of us during ex parte visits on February 7, 1997. Please associate this material with the above referenced proceeding.

We are submitting two copies of this notice in accordance with Section 1.1206(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 or require additional information concerning this matter.

Sincerely,

cc: Julius Genachowski
Marsha J. MacBride
Suzanne Toller
Anita L. Wallgren

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List ABCDE

Sarah R. Thomas

PACIFIC TELESIS
Legal Group

February 18, 1997

Anita L. Wallgren
Legal Advisor
Office of Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

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FEB 19 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Office of Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
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 Counsel:

We write to follow up on questions posed to us during *ex parte* visits we had with you on February 7, 1997 in connection with the pending *Cable Home Wiring* dockets.

First, we were asked how often Pacific Bell's video business is denied access to a multiple dwelling unit ("MDU") for purposes of placing inside wire. Pacific Bell Video Services is engaged or soon will be engaged in providing video services in San Jose, California (wireline, over our Advanced Communications Network), in Riverside, California (wireless cable or

MMDS), and in Los Angeles and Orange Counties. We are currently and have been for some time approaching MDU owners seeking the right to serve their buildings. As you know, we contend that the practice of signing exclusive contracts for long terms, and the current cable inside wire demarcation point, both impede competition in video markets.

We provide the following data with the caution that they are very rough estimates. We estimate that we are only allowed to install wiring in MDUs in approximately 10% of MDUs whose owners we approach. We believe we have approached 50 building owners, and been denied access by approximately 90% of them. The key reasons we have been turned down are

> 1) because the owner already has an exclusive contract with the incumbent cable company (MDU owners give us this response in approximately 30% of the cases in which they turn us down),
>
> 2) because the owner does not want to enter into an exclusive agreement with a new provider which calls for the owner to switch all of his/her tenants to a new video provider (approximately 25% of the cases)
>
> 3) because the owner does not want us to tear open the MDU's walls (this is the reason in approximately 25% of the cases), and
>
> 4) because the owner does not understand his/her rights *vis-a-vis* the cable incumbent and is concerned s/he may disturb his/her relationship with the cable incumbent if s/he lets us serve the building (this occurs approximately 20% of the time).

Second, the Cable Services Bureau staff asked us our views on Time Warner's recent proposal regarding exclusive contracts. Time Warner submitted its proposal to the Commission in a January 16, 1997 *ex parte* filing. Time Warner proposed that "[w]here a landlord seeks to allow one or more MVPDs to serve an MDU, an existing exclusive contract may not be enforced and the new MVPD may access internal wiring . . . where the 'homerun' is configured to deliver service to the particular unit requesting service . . . *but only if the existing MVPD is allowed to maintain access* for its network to reach such demarcation point." (Emphasis added.) Time Warner further proposed that "[i]n these circumstances, the existing MVPD shall be entitled to a *reasonable monthly homerun lease fee*." (Emphasis added.)

We are not opposed to Time Warner's proposal to the extent it anticipates that the incumbent MVPD will receive *lease fees* for use of its homeruns, rather than allowing the MDU owner to *purchase* the homerun wiring outright. Of course, we would only support such an approach if

> 1) the lease fees were reasonable (*i.e.,* based solely on the *depreciated or otherwise unrecovered* value of the *wiring* itself and the *labor cost* to install the wiring, and not on "lost opportunity" or "future lost profits),
>
> 2) the lease fees could not be charged once the incumbent had recovered the cost of its wiring and labor, and

3) the competing video provider could pass through the lease fees to the MDU owner or the video viewer at its discretion.

Finally, we reiterate our three key concerns about this docket:

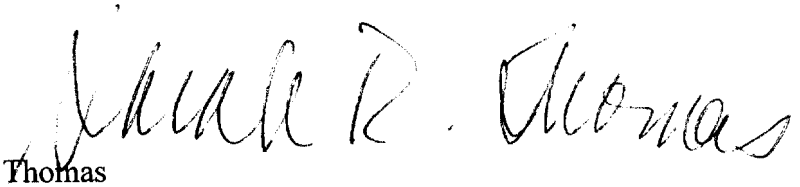
1) The Commission should decide the issues in this docket as soon as possible. It should not allow 11th hour proposals from the cable industry to delay its decision; such delays will simply repeat the failures of the Video Dialtone docket.

2) The Commission should move the cable demarc to the point where common feeder cable meets homeruns -- *i.e.,* runs dedicated to individual viewers.

3) The Commission should prohibit exclusive contracts except where they are necessary for a video provider to recoup its costs of installing new wiring, where the "new" installation consists of at least 75% of an MDU's total wiring (feeder, homeruns and electronics). The duration of exclusive contracts under this exception should not, in our view, exceed 3-5 years.

Thank you for your attention to our concerns.

Sincerely,



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cc: JoAnn Lucanik, Cable Services Bureau
Rick Chessen, Cable Services Bureau
John E. Logan, Cable Services Bureau
Alexis D. Johns, Cable Services Bureau

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