Gina Harrison
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MAR 17 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

March 17, 1997

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: Over-the-Air Reception, IB Docket No. 95-59/CS Docket No. 96-83; Cable Inside Wire, CS Docket. No. 95-184, MM Docket No. 92-260

Friday, March 14, Lea L. Jones, Regulatory Director, Pacific Telesis Enhanced Service,. Sarah Thomas, Senior Counsel, Pacific Telesis Legal Group, Julie Dodd Thomas, Executive Director, Pacific Bell Video Services, Dale Hemmie, Vice President, Engineering, Conifer Corporation, and I met with Anita Wallgren, Legal Advisor to Commissioner Ness, Julius Genachowski, Counsel to Chairman Hundt, Marsha MacBride, Legal Advisor to Commissioner Quello, Suzanne Toller, Legal Advisor to Commissioner Chong, William H. Johnson, Deputy Chief, Cable Services Bureau, and Rick Chessen, Deputy Chief, Policy Division, Cable Services Bureau, to discuss the issues summarized in Attachment A. In addition, copies of the materials in Attachment B were distributed.

We are submitting two copies of this notice and included materials, 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,

Enclosures

cc: R. Chessen
J. Genachowski
W. Johnson
M. MacBride
S. Toller
A. Wallgren

No. of Copies rec'd 0+2
List A B C D E

1400 N Roosevelt
Burlington, Iowa 52601
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www.conifercorp.com • e-mail: conifer@conifercorp.com

Attachment B

PACIFIC BELL DIGITAL TELEVISION℠

TECHNOLOGY

History

Pacific Bell Digital TV is based on technology that has been used by local educational institutions for more than 25 years. It is called "Multi-Channel, Multi-Point Distribution System," or MMDS. A recent regulatory ruling permits the educational institutions to make the system available for private use.

Pacific Bell Digital TV has reached agreements by which the broadcast bandwidths from many educational institutions are aggregated and digitized (which creates greater capacity). Each educational institution retains a share of the increased capacity that is equivalent to its original bandwidth. Pacific Bell Digital TV makes lease and royalty payments to the educational institutions.

How Does It Work?

Programming is beamed to homes from existing transmitters on Mt. Wilson and Modjeska Peak. Passive antennas on the homes of customers pick up the signal. Because the signal is digital, it carries more information, provides clearer reception, and is more efficient than traditional broadcast television. The amount of energy received by a Pacific Bell Digital TV antennas is 100 times smaller than that received by AM/FM radio, broadcast television, and other media, yet the technology is extremely reliable.

Why Is Pacific Bell Digital TV Better than Cable or Satellite?

Pacific Bell Digital TV offers digital-quality video and CD-quality sound. In addition to national broadcasts, it includes local broadcast stations that are unavailable on satellite television. It provides premium channels and 31 channels of commercial free CD-quality sound. Together, these features meet consumers' demands for quality and competition in the television and music marketplace.

PACIFIC BELL DIGITAL TELEVISION℠

PROGRAMMING

Pacific Bell will launch Digital TV in the Los Angeles and Orange County areas in Spring of 1997.

What Makes Pacific Bell Digital TV Better?

Pacific Bell Digital TV is unlike cable or satellite products. It combines pure digital picture and sound, and 150 channels of sports, entertainment, music, and education. It incorporates the best features of traditional cable and satellite television for residents of Southern California.

Networks, Local Stations, Premium Channels, Music and More

Pacific Bell Digital TV offers local broadcast stations, network affiliates, and traditional cable programs such as A&E, Lifetime, HBO, Discovery Channel, MTV, and VH1. In addition, it offers 31 channels of commercial-free, CD-quality music.

Movies and Special Events

Pacific Bell Digital TV offers a greater choice of movies and special events at more frequent and more convenient intervals.

What About Price?

Pacific Bell Digital TV provides the superior value you expect from Pacific Bell. While prices vary by choice of programming, Pacific Bell Digital TV is available at monthly rates and installation fees that are competitive with cable. Unlike customers of satellite services, Pacific Bell Digital TV viewers will not have to buy or install antennas or set-top units.

What About Parental Control?

Pacific Bell Digital TV leads the industry in offering the ability for parents to "lock out" adult-content and other programming. The system is activated by a Personal Identification Number (PIN).

Value, Choice, and Competition

Pacific Bell Digital TV provides choice to viewers. It improves the video marketplace in your community. It satisfies consumer demand for competitive options.
Pacific Bell Digital TV combines excellent customer service and greater choice. The result is superior value for residents.

PACIFIC BELL
Video Services

PACIFIC BELL DIGITAL TELEVISION℠

EDUCATIONAL BENEFITS

Educational Partnerships

Pacific Bell Digital TV helps local educational institutions which are Instructional Television Fixed Services (ITFS) licensees. Pacific Bell Digital TV aggregates the frequency bandwidth from several institutions, digitizes it (which increases its capacity), and rebroadcasts the signal in a higher-quality format to a larger viewing audience. In addition, Pacific Bell Video Services pays the local educational institutions for the use of their bandwidth.

In exchange for these benefits, Pacific Bell Video Services is permitted to use excess bandwidth capacity for commercial programming.

Educational Programming

Pacific Bell Digital TV carries educational programming for local educational institutions. This unique cooperation far exceeds the educational programming commitment of any satellite or cable operator that we know of, anywhere.

Learning Applications

By digitizing and rebroadcasting educational institutions' programs, Pacific Bell Digital TV greatly increases the ability of these institutions to offer distance-learning and home-learning applications.

Listed below are ITFs in LA & Orange counties participating with Pacific Bell Video Services:

Anaheim City School District
California State University Fullerton
California State University Dominguez Hills
California State University Los Angeles
Diocese of Orange
Long Beach Unified School District
Pasadena Unified School District
University of Southern California
California State Polytechnic University
California State University Long Beach
California State University Northridge
Archdiocese of Los Angeles
Intelecom
Santa Ana Unified School District

PACIFIC BELL DIGITAL TELEVISION℠

CUSTOMER SERVICE

PACIFIC BELL VIDEO SERVICES MISSION

[redacted]

Pacific Bell Video Services is committed to providing the most memorable, responsive and reliable service to our customers. Our goal is to distinguish ourselves — not only among the telecommunications industry, but among all companies — by our outstanding attention to the needs of our customers. It's working.

J.D. Powers and Associates of Agoura recently rated Pacific Bell telephone customer service 2nd among all telephone companies in the nation, and more than 30 index points higher than any other California provider.

In areas where Pacific Bell Video Services is already providing video services to households, praise for the quality of the product and for the attentive customer service is almost universal.

"Very knowledgable about their service! They showed me how to use it."

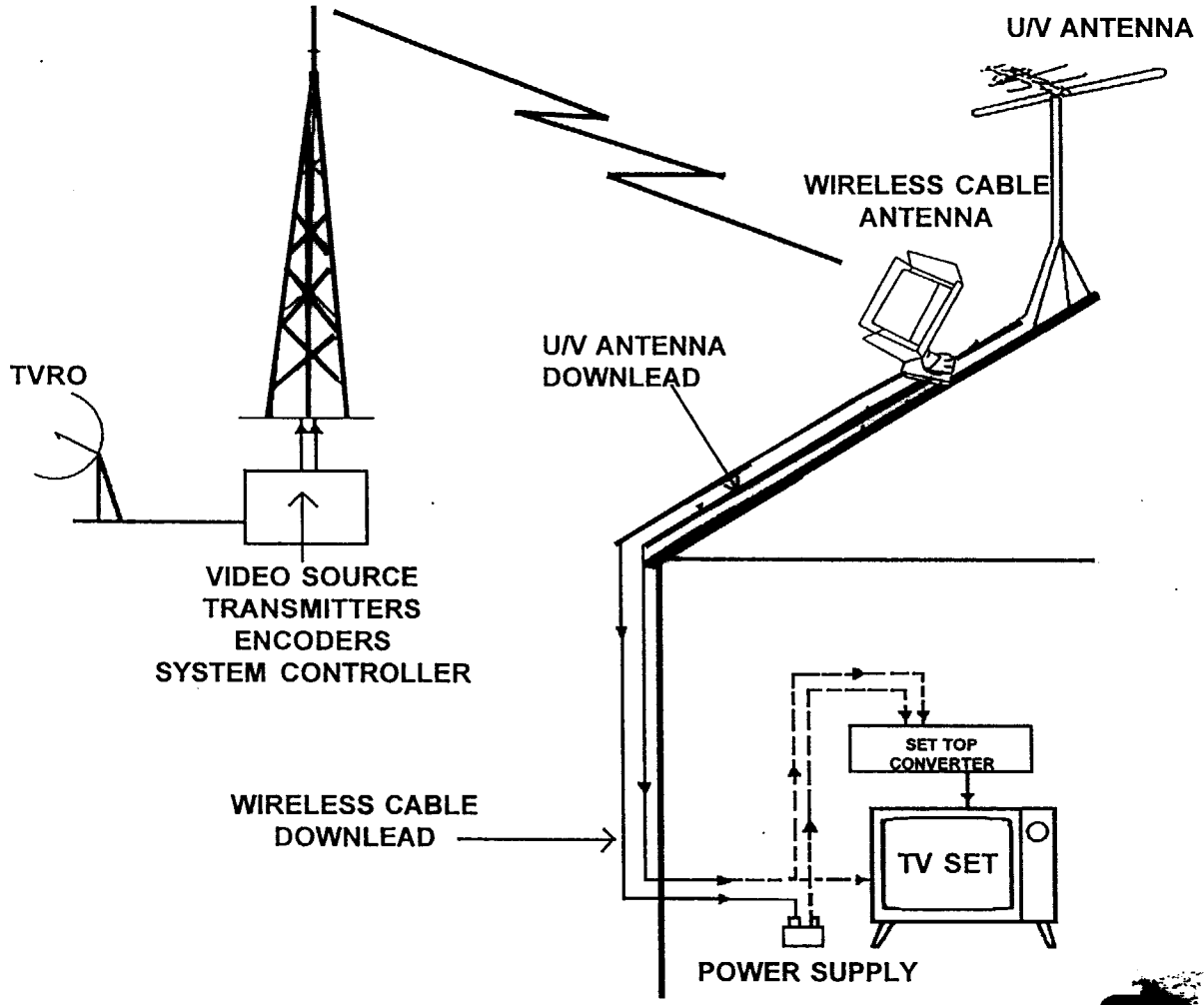
"Everything was perfect! They came exactly when they were supposed to and they were very friendly and courteous."

"They told me exactly what they were going to do and they did it efficiently."

"They cared a lot about customer satisfaction and I really appreciate that."

PACIFIC BELL
Video Services

WIRELESS CABLE/MMDS SYSTEM



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PACIFIC BELL DIGITAL TELEVISION℠

ANTENNA & SET TOP EQUIPMENT INSTALLATION

What Equipment Do Customers Need?

Pacific Bell Digital TV requires two pieces of equipment: an antenna and a set-top unit, and customers are not required to buy them. The equipment is included in the installation and monthly service fees.

How Is It Installed?

A Pacific Bell Digital TV technician installs the antenna on the roof, eave or chimney. The antenna is connected to the set-top unit by coaxial cable. The entire installation takes about two and one-half hours. Unlike the installation of a satellite service (which typically requires the homeowner to buy, install, and maintain the antenna), the entire installation is handled by Pacific Bell and is included in the initial fee.

How Does the Antenna Work?

The antenna receives the digital signal from transmitters on Mt. Wilson or Modjeska Peak. The technician ensures that the antenna is positioned for the best signal strength and the highest-quality service.

What About the Set-Top Unit?

Like satellite television and most cable services, Pacific Bell Digital TV requires a digital set-top unit (with remote control). This box serves several purposes. First, it is a digital tuner. Second, it provides the "Interactive Onscreen Program Guide" which offers detailed information about programming schedules. Finally, it allows the customer to receive pay-per-view movies.

PACIFIC BELL DIGITAL TELEVISION℠

CABLE COMPETITION

Elected officials, voters, television viewers, and consumer advocates are vocal and adamant in their desire to promote competition in the cable and broadcast-television industry. Congress and the President responded by enacting the Telecommunications Act of 1996. The Federal Communications Commission (FCC) responded with regulations that permit the installation of antennas for services such as Pacific Bell Digital TV.

To encourage competition, the new FCC regulations specifically allow installation of residential antennas on single-family homes in all areas except those eligible for listing in the National Historic Register. This grants Pacific Bell the ability to install antennas region-wide and offer high-quality service to cities and counties.

Cable World Magazine, an industry trade journal, recently reported that 55% of cable customers would switch providers right away for similar programming and price packages. Pacific Bell Digital TV is meeting this demand for choice and competition in the television marketplace. In additional, unlike satellite services, Pacific Bell Digital TV offers a full complement of local news programming and network affiliates.

Pacific Bell Digital TV offers a superior product for television viewers. More importantly, it offers consumers the freedom of choice.

CABLE COMPETITION

PACIFIC BELL.
Video Services

NEWS RELEASE

CONIFER CORPORATION
P.O. BOX 1025
BURLINGTON, IA 52601

RELEASE: February 3, 1997

CONIFER CORPORATION, the leading manufacturer of wireless cable MMDS reception equipment, introduces the New digital compatible **Microceptor™ Series** integrated antenna line to the marketplace.

With excellent side lobe and cross pole performance, the flat panel style Microceptor™ is an innovative compact design that is superior to most larger parabolics. PCS, Microwave, and Radar filtering, wide-band performance, lightweight, low profile and easy-to-install are all reasons the Microceptor™ is fast becoming the #1 choice in the industry!

The optional Universal Micro-Mount permits installers to mount the Microceptor™ just about anywhere there is line-of-sight. Mount it to a wall, a vent, roof, chimney and even most rain gutters. The Microceptor™ is available in a 13 or 16 dBi gain unit.

For further information, contact CONIFER's sales department at 800-843-5419 (U.S.), 319-752-3607 (International), or fax 319-753-5508.

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ATTACHMENT A

Over the Air Reception Devices
Cable Inside Wiring

IB Docket 95-59 and CS Docket 96-83
CS Docket 95-184 and MM Docket 92-260

March 14, 1997

Antenna Installations Are Focused on Customer Needs

- The industry is moving toward smaller, not larger antennas.
- Most MMDS antennas used today are small, and do not detract from the aesthetics of the location.
- It is in a video provider's best interest to work with customers to determine the best placement of the antenna. Things that are considered include:
  - The best location for receipt of the signal.
  - The least obtrusive location.

The Commission has Authority to Prohibit Non-Governmental Restrictions

- A rule prohibiting restrictions on antenna installations on common property is not a taking.
  - No taking occurs when the Commission gives tenants and other non-owners the right to install antennas on common property.
  - The FNPRM correctly stated that "preemption of nongovernmental restrictions does not conflict with the Fifth Amendment".
- The 1996 Telecommunications Act grants the Commission the power to "prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception".
  - The Telecommunications Act does not make any distinction between owners of property or tenants.

The Loretto Case Supports Tenants Rights

- The Loretto decision does not prevent the Commission from adopting a rule requiring landlords or owners of common property to provide antenna installation if a tenant so desires.
  - The Loretto case did not rule out the possibility that a tenant might have property rights to have their choice of video providers.
- The Loretto decision does not preclude a Commission rule requiring that the landlord install video antennas where the tenant requests them.

Second Restatement of Property Supports Tenants Rights

- The Second Restatement of Property gives tenants the right to:
  - "make changes in the physical condition of the leased property which are reasonably necessary in order for the tenant to use the leased property in a manner that is reasonable under all circumstances."
- The Restatement finds that "implicit in letting out of premises are certain vested rights which are conveyed to [the] tenant as to use and enjoyment thereof which are of a reasonable and usual nature and which may not be alienated by unilateral fiat."

First Amendment Rights

- Alternative video providers have a First Amendment right to deliver their message to customers.
- Landlords or condominium associations that use their property as a barrier to receipt of video programming may violate the First Amendment rights of the video provider.
- In PruneYard Shopping Center v. Robins the Supreme Court rejected a takings claim by shopping center owners in favor of the rights of free expression of students who sought signatures on a petition on the center's property.

The Cable Industry Should Not Be Permitted to Delay Decisions in the Cable Inside Wire Dockets

- The Cable Industry is attempting to delay a decision in a critical proceeding.

- The Commission should be familiar by now with these tactics as they were also used in previous proceedings.
  - Video Dialtone
  - Open Video Systems

Proper Implementation of Over-the-Air Reception Device Rules Requires the Cable Inside Wire Demarcation Point be Changed

- The 1996 Telecommunications Act grants the Commission the power to "prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of...multichannel multipoint distribution service".
  - The Telecommunications Act refers to "viewers" and does not make any distinction between owners of property or tenants.
- Appropriate rules are required in the cable inside wire docket in order for consumers to get the signal from the antenna to their premises. Without these, the "viewer's ability to receive video programming service" will be impaired.

The Commission has Authority to Change the Existing Demarcation Point

- Preference for competition is 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).
    - » The Commission originally relied on its preference for competition for setting the current demarcation point.
    - » For the same reasons the Commission originally set the demarcation point, it 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 user's 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. This should not include any "lost opportunity" costs, because cable incumbents loss of a customer is a market issue.

- Burden should be on incumbent to prove it has unrecovered cost.

Exclusive Contracts Should Be Prohibited, Except for Limited Exceptions

- Exclusive contracts for multiple dwelling units (MDUs) should be prohibited, unless related to new wiring.
  - An exclusive contract bars competitive entry.
- New installations where a video provider has newly installed at least 75% of the inside wiring in a MDU should be allowed to enter into an exclusive contract for a limited period of not more than 3 to 5 years.
- 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.

Attachment B

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TECHNOLOGY

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Pasadena Unified School District
University of Southern California
California State Polytechnic University
California State University Long Beach
California State University Northbridge
Archdiocese of Los Angeles
Intelecom
Santa Ana Unified School District

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PACIFIC BELL DIGITAL TELEVISION℠

CUSTOMER SERVICE

PACIFIC BELL VIDEO SERVICES MISSION

[redacted]

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CUSTOMER SERVICE