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Federal Communications Commission
Office of Secretary

April 16, 1997

VIA HAND DELIVERY

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

Re: *Ex parte* Presentation in CS Dkt. No. 95-184.

Dear Mr. Caton:

I am hereby submitting an original and three copies of this notice of the Independent Cable & Telecommunications Association ("ICTA") of three *ex parte* presentations in the above-referenced docket.

On April 8, 1997, Bill Burhop, Executive Director of ICTA, and Deborah Costlow, ICTA's outside General Counsel, met with Meredith Jones and John Logan, Chief and Acting Deputy Chief respectively of the Cable Services Bureau, JoAnn Lucanik and Rick Chessen, Chief and Deputy Division Chief respectively of the Policy & Rules Division of the Cable Services Bureau, Meryl Icove, Legal Advisor to the Chief of the Cable Services Bureau, Lawrence Walke, an attorney with the Policy & Rules Division of the Cable Services Bureau and Edward Gallick, an economist with the Cable Services Bureau. On April 10, 1997 Ms. Costlow, again in her capacity as ICTA's outside General Counsel, met with Suzanne Toller, Legal Advisor to Commissioner Chong, and on April 14, 1997 met with Julius Genachowski, Legal Advisor to Chairman Hundt.

In these meetings, the parties discussed the jurisdictional and policy issues surrounding movement of the demarcation point for MDUs. ICTA stated its strong belief that the Commission possesses the statutory authority to move the demarcation point to that point where the wire is dedicated to an individual unit in a multiple dwelling building or complex. In order to address the possibility that the Commission may decide that it does not have this authority, ICTA also set forth

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an alternative procedural mechanism which it urged the Commission to adopt should the Commission decline to move the demarcation point.

The proposed model would apply to MDUs where the building is switched to the service of a new provider *in toto* and where the MDU owner does not already own the wiring in the building by law or pursuant to private contractual arrangements. In such a case, the MDU owner provides written notice of the conversion to the incumbent provider at least 90 days prior to the date of the conversion. Within 30 days of the receipt of notice, the incumbent provider in turn gives written notice to the owner that it has elected one of the following three options: (1) removal of the inside wiring, except the wiring within each individual unit and that portion extending twelve inches outside thereof, which either the tenant (as empowered under the existing rules) or the owner (as would also be empowered under this model) will have purchased; (2) abandonment of this wiring without disabling it; or (3) sale of the wiring to the owner or the new provider. If the incumbent chooses to sell the wiring, it has 30 days to negotiate the sale with the owner or new provider. If the parties are unable to agree to terms for the sale, the incumbent must choose between the other two options set forth above and disconnect its feeder lines (without disabling the wiring) at the end of the failed negotiation period or complete the removal of the wiring within 30 days from that date. ICTA stated that this model will only work if the Commission establishes an enforcement mechanism to ensure that the incumbent provider adheres to its initial election, acts within the specified timeframes and abides by whatever terms may be negotiated for a sale of the wiring. ICTA declined to present a specific form for such an enforcement mechanism.

A modified version of the above model would apply in those situations where there are two providers serving an MDU and a tenant desires to switch from its current provider to the second provider, such as might arise in an access state or where an MDU owner has determined that there should be two providers. In that instance, the tenant notifies the second provider of its desire to receive that provider's service, either orally or in writing. Within seven days of that notice, the second provider must notify the tenant's current provider of the request. The current provider then has seven days in which to negotiate a sale, with the tenant or owner, of that portion of the inside wiring dedicated to that tenant's unit, excluding the wiring within the unit and extending twelve inches outside thereof, which either the tenant will already have purchased pursuant to the existing rules or which the owner will have purchased as empowered by this model. If the parties are unable to reach agreement on the terms of the sale, the current provider must either formally abandon and disconnect this wiring (without disabling it) at the end of the failed negotiation period, or remove the wiring

within seven days. The current provider must notify the second provider in writing of which election it has chosen. ICTA stated that it has no preference as to whether the tenant or the owner is given the right to purchase the wiring, although ICTA did indicate that it is skeptical that a tenant would want to purchase this wiring.

Sincerely,

Treg Tremont

Treg Tremont

cc: Rick Chessen
Edward Gallick
Julius Genachowski
Meryl Icove
Meredith Jones
John Logan
JoAnn Lucanik
Suzanne Toller
Lawrence Walke