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JUL 22 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 22, 1997

EX PARTE OR LATE FILED

BY HAND DELIVERY

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

Re: CS Docket No.95-184
IB Docket No. 95-59/
CS Docket No. 96-83
Notice of Ex Parte Communication

Dear Mr. Caton:

On July 10, 1997, Merrill S. Spiegel of Hughes Electronics Corporation, the parent company of DIRECTV, Inc. and I, as counsel for DIRECTV, Inc. met with Gretchen Rubin, Counsel to the Chairman, to discuss issues in the Commission's inside wiring and over-the-air reception devices ("OTARD") proceedings. In addition to comments DIRECTV has previously made in this proceeding, we discussed elements of the proposed Commission action in these proceedings as reported in the trade press.

We expressed our concern that the Commission might retain the existing demarcation point, rather than moving it to the existing cable lockbox, as proposed in the Commission's NPRM. In our view, keeping the demarcation point at its present location means that there will be no competition within an MDU and makes the building owner, rather than the unit resident, the "gatekeeper" for the entry of competitive new video distribution services. As DIRECTV had previously stated, we believe that cable and a competitive service such as

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DIRECTV can share the "home run" wiring that extends from the cable lockbox to the individual subscriber unit without interference or impairment. In our view, the Commission should not force a model that mandates a single provider for each building. Instead, one that permits (indeed, requires) at least one competitive provider in addition to the incumbent cable provider in each MDU.

We also expressed our concern with the proposed 90-day negotiation procedure, which we do not believe would lead to fair results. As we understand it, the proposal would permit a building owner to tell the incumbent cable operator at the end of its contract term that it has 90 days to take out its cable wiring, abandon it, or negotiate a sale of the cable to the building owner's preferred new provider. In our view, incumbent cable operators could simply threaten to pull out the existing cable wiring in order to dissuade landlords—who frequently are unwilling to tolerate the disruption and tenant inconvenience that arise from the installation of wiring in an occupied building—from even initiating the 90-day process leading to the ejection of the incumbent. Even if the landlord were willing to go forward, such a threat (which would not need to be carried out more than once, if at all) could lead to a price to the newcomer that reflected the full replacement cost of an installed cable. Finally, if the Commission does not strike down cable's exclusive contracts, the landlord will be contractually precluded from even initiating the process.

As to the question of revenue-sharing with building owners, we stated that it is important for competitive providers to be able to offer revenue sharing in order to give building owners an incentive to allow new providers to serve the building.

Finally, with respect to the OTARD proceeding, we expressed our support of the extension of the OTARD protection to residents who rent rather than own, but explained the importance of extending the protection to all residents, not merely those who have south-facing balconies or patios, by requiring that building owners provide at least one competitive service to their residents, as set forth in our previous submissions to the Commission.

Very truly yours,


James F. Rogers *by JFR*
of LATHAM & WATKINS

cc: Gretchen Rubin, Counsel to the Chairman