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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 6, 1998

**EX PARTE**

Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

Re: CS Docket No. 97-248; MM Docket No. 92-266

Dear Ms. Salas:

On January 6, 1998, the attached letter was sent to Meredith Jones and John Logan of Cable Services Bureau regarding the above referenced proceeding.

Sincerely,

W. Kenneth Ferree
Attorney for OpTel, Inc.

OpTel℠
The choice is clear.

January 6, 1998

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JAN - 6 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Meredith Jones
Chief, Cable Services Bureau
Federal Communications Commission
2001 M Street NW, Room 822
Washington, D.C. 20554

Re: MM Docket No. 92-266; CS Docket No. 97-248

Dear Ms. Jones:

As Vice-President and General Counsel of OpTel, Inc., a competing franchised and private cable operator, I was interested to read about the Commission's *en banc* hearing on December 18, 1997, regarding competition in the video services industries. Although the hearing covered a wide range of issues, one point came through with particular force: the root cause of many, if not most, of the distortions in the multichannel video programming market is the lack of competition to incumbent franchised cable operators. As Chairman Kennard put it in his opening remarks, "we need more competition, that's the bottom line."

The beneficial effect of competition on subscriber rates, for instance, is unmistakable. As Gene Kimmelman of Consumers Union noted in his remarks during the hearing, cable rates have "shot up" almost 14% (more than three times the rate of inflation) since the passage of the 1996 Act. These increases are due, in no small measure, to what the Commission itself found, in its most recent assessment of the market, to be excessive concentration at the distribution level. As the Commission's own analysis reveals, rates of cable operators that face competition are, on average, nearly 6% lower than the rates of those that do not.[1]

[1] In re Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-2266, Report on Cable Industry Prices (rel. Dec. 15, 1997) at 7 and Table 1.

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OpTel's experience supports this conclusion. The following chart illustrates this by comparing the rates for basic programming charged by OpTel with the rates charged by each of its two largest incumbent cable competitors in the following markets:

| Market | OpTel | Incumbent #1 | Incumbent #2 |
|---|---|---|---|
| Los Angeles, CA | $29.95 | $33.00 | $39.30 |
| San Diego, CA | $27.95 | $28.95 | $29.76 |
| San Francisco, CA | $20.95 | $25.86 | $30.64 |
| Phoenix, AZ | $25.95 | $30.95 | $21.95 |
| Houston, TX | $28.95 | $30.84 | $31.99 |
| Dallas, TX | $27.95 | $29.44 | $29.34 |
| Miami, FL | $25.95 | $28.08 | $30.75 |
| Tampa, FL | $17.95 | $31.62 | -- |
| Chicago, IL | $25.95 | $28.98 | $29.99 |
| Denver, CO | $24.95 | $24.88 | -- |

Of course, the incumbents' franchise markets in each of these regions do not at all overlap.

On average, OpTel's basic cable rate is 10% lower than that of its two largest franchised cable competitors in each market. Subscribers are twofold winners when competition is present; new entrants charge low rates in order to attract customers and incumbent operators lower their rates in order to meet competition.

I call these numbers to your attention because the market is today at a competitive cross-road. OpTel and other new entrants are struggling to gain a foothold while incumbents are using every tool at their disposal to thwart entry and stifle competition. The Commission should, therefore, renew its commitment to make real the promises of the 1996 Act and foster competition in the video programming distribution market. This effort will require action on all fronts – from the rigorous application of programming access rules to enforcement of the Commission's new inside wiring rules -- in order to succeed, but the potential benefit for American consumers makes this an effort fully worthy of the Commission's resources.

Very truly yours,

Michael E. Katzenstein
Vice President and General Counsel

MEK/dp