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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

JOINT SURREPLY COMMENTS

Joint Commenters[1] submit these surreply comments in response to the *Second Further Notice of Proposed Rulemaking* (the "*Second FNPRM*") in the captioned proceeding.

I. SUMMARY

In this proceeding, the FCC is asked to skew the ground rules for competitors in perhaps the most vigorously competitive market for video services. The Commission recently affirmed what MDU owners and Congress, have acknowledged for more than 15 years: SMATV operators are strong competitors with franchised cable operators and each other in the market to serve MDUs. There is no basis in law, policy or practicality to tilt MDU video market conditions with regulations that favor any competitor.

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[1] Charter Communications, Inc., Greater Media, Inc., Jones Intercable, Inc., Marcus Cable Operating Company, L.P., Benchmark Communications, and Century Communications Corp.

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The Independent Cable & Telecommunications Association ("ICTA") and OpTel, Inc. promised to submit a "study of MVPD market conditions" that was to be conducted by their economist. As filed, however, the report of Michael D. Whinston ("ICTA Report") cannot be viewed as a "study" in any respect. Mr. Whinston's report fails to satisfy long-established FCC standards for any survey or study offered as evidence, supplies no data to support its conclusions, and otherwise lacks any indicia of reliability.

In addition, the ICTA Report assumes its conclusions without accounting for publicly-available facts that undermine those conclusions. Mr. Whinston assumes that SMATV operators "were not on the scene" when franchised cable operators entered into MDU agreements, yet both Congress and news reports have acknowledged SMATV as a strong competitor since the early 1980's. The Report assumes that the MDU market is broader than any particular building, when in fact the residential real estate industry itself views each building as a gateway to the market. The ICTA Report assumes that SMATV service "is likely to be able to provide a higher value product," but does not explain why, if its assumption is true, the Commission should tilt the market to favor that product. And Mr. Whinston does not reconcile his statement that ICTA members are reluctant to invest in states with access-to-MDU laws with OpTel's recent announcement of a deal to invest tens of millions of dollars to acquire properties in states which have access statutes.

Apart from its flaws with respect to factual assertions, the logic of the ICTA Report is surface-deep, and does not stand up to careful analysis. If low economies of scale for SMATV operators prevent efficiencies, then why should the Commission allow MDU owners to limit tenants to such an inefficient service? If these small economies of scale warrant exclusive

contracts for SMATVs, then don't small cable systems deserve the same? If small economies of scale protect the public from harm by SMATV exclusive contracts, then why would the FCC even consider allowing SMATVs to grow using leased telephone lines, in the manner sought by ICTA and Entertainment Connections, Inc.? Indeed, the logic of the ICTA Report supports exclusive franchises in general, where at least the elected members of the franchising authority are likely to represent the best interests of residents. Finally, if the ICTA Report is correct that MDU consumers suffer where contracts were signed before competition was available, then the same rule should apply to any new competitor to a building, regardless of whether the technology used is "cable" or "SMATV".

The ICTA Report is seriously flawed and does not support any regulatory action by the Commission that would alter a fundamentally sound competitive market for video services to MDU buildings.

II. THE FCC SHOULD NOT SKEW THE COMPETITIVE MDU MARKET FOR VIDEO SERVICES WITH A RULE THAT FAVORS ANY COMPETITOR

Whatever the Commission makes of ICTA's Report and exclusivity of MDU contracts in general, it should apply any rules affecting MDU competition equally to all MVPDs. No competitor in this market should have any regulatory advantage.

The Commission's recent *Fourth Competition Report* acknowledges "the emergence of a distinct MDU market, which is more competitive than other MVPD markets."[2] This steady

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[2] *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Fourth Annual Report, FCC 97-423, CS Docket No. 97-141 (released January 13, 1998)("*Fourth Competition Report*") at ¶ 129, p. 76.

expansion of SMATV subscribership has been documented in each of the Commission's three previous *Competition Reports.*[3] In fact, SMATVs were recognized by Congress in 1983 as competitive to franchised operators. In the legislative history of the Cable Act, Congress noted:

> Today cable faces major competition from such sources as MDS, MATV, SMATV, DBS, STV, television, radio, movie screens, video-cassettes and videodiscs, LPTV, and other media. These services are by and large free from State and local intrusion into their business affairs. . . . [4]

Indeed, in a 1982 article from *Business Week* magazine (distributed by the Congressional Research Service during debate on the 1984 Cable Act), SMATV service was described as a "low-cost alternative delivery system . . . giving cable companies their first strong competition, threatening the value of their franchises, and creating industry turmoil."[5] Other reports confirm that this early SMATV success in competing with franchised cable continued unabated through the present day.[6]

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[3] *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Dkt. No. 96-133, Third Annual Report , 12 FCC Rcd 4358 (1997) at ¶¶ 80-85 & App. E; *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Dkt. No. 95-61, Second Annual Report , 11 FCC Rcd 2060 (1996) at ¶¶ 104-111 & App. F; *Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*), CS Dkt. No. 94-48, First Report , 9 FCC Rcd 7442 (1994) at ¶¶ 91-96.

[4] *Cable Telecommunications Act of 1983*, S. Rep. No. 98-67, 98th Cong., 1st Sess., at 30.

[5] *"A David-Goliath Threat to Cable,"* Business Week, August 16, 1982 at 23 (attachment A to these comments).

[6] *See, e.g., Paul Kagan Associates, Inc.*, SMATV News, Dec. 31, 1990 at 5 (total SMATV subscribers are 810,187); Paul Kagan Associates, Inc. SMATV News, Jun. 29, 1987 at 2 (SMATV universe is up to 600,000 from approximately 575,000 at year end 1986) (Attachment B.).

The recent growth documented by the Commission's *Fourth Competition Report* simply continues a trend that began at least fifteen years ago. Thus, SMATV systems have experienced steady growth for a period as long as the term of a typical cable franchise of the early 1980's without any special rule favoring them in MDU contracts. The Commission should not interfere with this functioning market by favoring one competitor over any other.

III. ICTA'S REPORT LACKS RELIABLE DATA AND EMPLOYS FLAWED LOGIC

ICTA and OpTel obtained additional time to file reply comments in this proceeding in order to "study current market conditions in the multichannel video programming distributor (MVPD) market and to comment on the short-term and long-term effects of exclusive contracts between various types of MVPDs."[7] The report ultimately filed, however, fails to satisfy any objective standards for any such study.

The ICTA Report falls short of accepted standards for surveys and statistical reports, including the FCC's own standards. FCC Rule 1.353 sets out the FCC's view of what is required of a survey or study.[8] Among other deficiencies in Mr. Whinston's report, it fails to:

- identify the methodology employed

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[7] *Order Extending Time Period for Filing Reply Comments*, DA 98-87, CS Docket NO. 95-184, MM Docket No. 92-260 (released Jan. 16, 1998); *see also Joint Motion of ICTA and OpTel for Extension of Time*, filed Jan. 14, 1998 (expert engaged "to study current market conditions in the MVPD market. . . "

[8] This rule exists for use in common carrier hearings. Although this is a rulemaking, it is ICTA that seeks to engraft the common carrier "fresh look" doctrine on the MDU market for video. Moreover, regardless of the technical application of Rule 1.363, its requirements simply incorporate the basic principle that material offered as a "study" or "survey," implying statistical reliability, should include sufficient raw data to permit verification of results.

- describe the survey design
- explain the method of selecting the sample and the characteristics measured
- describe relevant assumptions
- identify techniques of data collection
- weigh the various factors considered in each conclusion, and
- indicate alternative courses of action considered.

Based on the information disclosed by Mr. Whinston, it would not be possible to repeat the process to assess the reliability of his conclusions.[9] It is impossible to tell who was surveyed, what questions were posed, how the questions were framed, what information was revealed, whether the polled entities were representative of the industry in terms of number of subscribers, geographic location, financial backing, etc. The absence of this type of information renders the conclusions of the ICTA Report unreliable.

Apart from this inherent lack of support, Mr. Whinston assumes his conclusions in the face of contradictory facts. For example, he assumes that perpetual agreements were entered into by cable operators "well before any alternative providers were on the scene." ICTA Report at ¶ 24. Yet, as demonstrated above, private cable operators have posed a substantial competitive threat to franchised cable for more than fifteen years.

The ICTA Report incorrectly assumes that the market for MDU services is not the building, when in fact many MDU owners — backed by investors hungry for cash flow —

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[9] The Commission has recognized that conclusions offered from a survey without backup data preclude critical examination and verification of the conclusions drawn. *See, e.g., Georgia Power Co. v. Columbus Cablevision, Inc.* 55 R.R.2d 940 at ¶ 6 & n. 3 (1984)(rejecting affiant's "professional judgment" offered without raw data or supporting data).

believe that the competition is for access to the customer gateway under the MDU owner's control.[10] Likewise, Mr. Whinston asserts, without any support, that private cable operators offer more channels and higher quality programming packages than franchised cable operators.[11] ICTA Report at ¶ 29. If, as Mr. Whinston suggests, private cable offers a better product than franchised cable, and MDU owners truly represent the viewing interests of their subscribers, than the marketplace will ensure that private cable is selected over franchised cable. Under this premise, there is no need for government intervention.

Finally, the ICTA Report concludes that SMATV operators "are much less likely to be active in states that have [access to MDU] statutes." ICTA Report at ¶ 34. Yet OpTel has committed to invest over $140 million to acquire SMATV properties that include buildings in Illinois, Florida, and the greater District of Columbia area, all of which have some form of access statute on the books.[12] Neither ICTA nor Mr. Whinston reconciles these contradictory facts with the ICTA Report's conclusions.

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[10] *See, e.g.,* Kent Wadsworth, "Telecommunications Invasion: Defending Your Role As Gatekeeper," *Journal of Property Management* Jan 11, 1997 at 30 (LEXIS printout attached as Attachment C); *see also* Comments of Cablevision et.al. in CS Docket No. 95-184 and MM Docket No. 92-260, filed September 25, 2997 at App. at Tabs 1 - 20 (collecting articles from 1993 - 1997 describing MDU owners' interests as gatekeeper).

[11] Mr. Whinston alludes to regulations that restrict the ability of franchised cable operators to tailor their channel lineups. Yet, Congress and the Commission have concluded that there is a significant public interest in requiring cable operators to carry local broadcast stations and commercial leased access programming, raising the question of what could justify any FCC action that views these program content regulations as a hinderance to cable.

[12] *See* Communications Daily, March 9, 1998 at 11; CABLEFAX, March 9, 1998 at 2. The statutes in these jurisdictions are: 65 Ill. L.C.S. § 5/11-42-11.1; 55 Ill. L.C.S. § 5/5-1096.; Va. Code Ann. § 55-248.13:2 (1993); Fla. Stat. Ann. § 718.1232; D.C. Code § 43-1844.1(a)(1).

Apart from these factual omissions, the logic of the ICTA Report is similarly incomplete and lacking in depth. Mr. Whinston's reasoning raises, and ignores, the following questions:

- If the low economies of scale of SMATV prevent efficient operation, then why should the FCC allow MDU owners to grant exclusivity only for the least-efficient provider of video service to consumers?

- If the small economies of scale justify exclusive SMATV contracts in MDUs, doesn't the same rationale justify similar deals for small cable operators? Indeed, Mr. Whinston's discussion of economies of scale considers only signal reception and distribution costs, and fails to account for other prominent costs, such as programming, marketing, and personnel.

- If limited economies of scale protect the public from any potential harm to MDU competition, then why would the FCC even consider allowing SMATV growth through the leasing of telephone plant, as requested by Entertainment Connections, Inc.?[13]

- Doesn't the ICTA Report favor exclusive franchises? At least city councils, unlike MDU owners, are elected, and are more likely to protect the interests of consumers. If the residents are dissatisfied with the service, they could vote with their feet, in the same way ICTA suggests that MDU residents relocate to secure better video service.

- If the basis of Mr. Whinston's conclusions is that consumers are harmed by the absence of SMATV competitors at the bargaining table for MDU contracts, then doesn't the same rationale apply to any newcomer, regardless of technology? If a SMATV locks up an MDU building before a franchised operator has built to the area, doesn't the SMATV have the same advantage, and consumers the same disadvantage, as ICTA claims exist every time a franchised operator enters a contract with no SMATV bidder? Why would Mr. Whinston exclude all future technologies?

ICTA offers no answers for these and similar questions that spring from the logic of its economist's report. The Commission should not take any action without considering for itself the implications of any policy that would favor one competitor in the MDU video market.

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[13] *Entertainment Connections, Inc. Request for Declaratory Ruling*, DA 97-753 (released Feb. 18, 1998)(setting comment cycles). ICTA filed comments supporting ECI's request.

IV. CONCLUSION

For the foregoing reasons, Joint Commenters respectfully request that the Commission treat all MVPDs equally with respect to MDU video competition.

Respectfully submitted,

CHARTER COMMUNICATIONS, INC.
GREATER MEDIA, INC.
JONES INTERCABLE, INC.
MARCUS CABLE OPERATING COMPANY, L.P.
BENCHMARK COMMUNICATIONS
CENTURY COMMUNICATIONS CORP.

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March 16, 1998

Attachment A

A David-Goliath threat to cable

Even as the Chicago City Council begins to study proposals from cable companies on Aug. 31 to wire the nation's second-largest city, thousands of residents will already be receiving cable programming through satellite master antenna television (SMATV). This low-cost alternative delivery system is giving cable companies their first strong competition, threatening the value of their franchises, and creating industry turmoil.

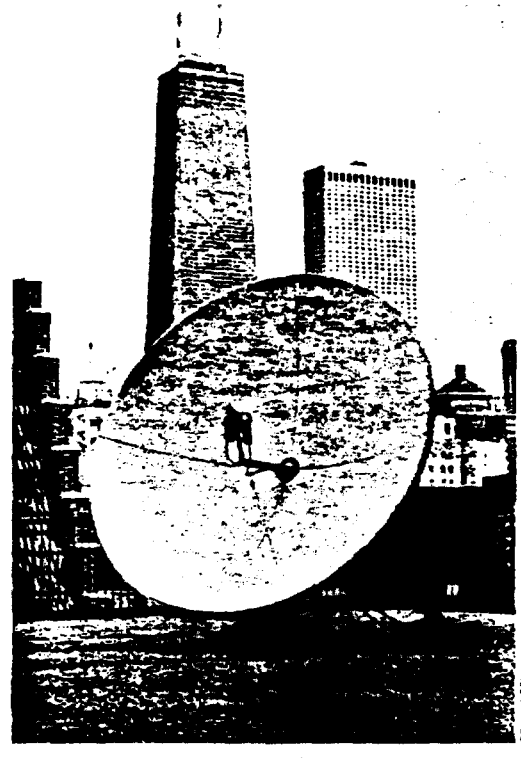
To set up SMATV service, an operator simply negotiates a contract with an individual building owner. He delivers programming by wiring the building for cable and putting an earth station, which can receive cable services from a satellite, either on the roof of an apartment building or adjacent to garden apartments. Although SMATV services generally do not offer the dozens of channels typical of new cable systems, they provide three to five services, including the "superstations" and pay-television offerings that are cable's main lure.

SMATV, with only 500,000 subscribers, still worries the giant cable operators

SMATV is still a fledgling industry boasting no more than 500,000 subscribers, while cable reaches 27.5 million homes. Experts agree that there is almost no chance that the newcomer will ever replace cable, but cable companies, which have functioned as virtual monopolies in their markets, are frantic over losing market share. Just as serious, the new service has helped make Wall Street more dubious about the potential for cable TV stocks. "At a time when difficult franchise terms have increased costs, the cable industry is nervously racing to tie up subscribers," says Dennis Leibowitz, first vice-president at Donaldson, Lufkin & Jenrette Inc. "Competitors such as SMATV can skim off part of the market."

No franchise needed. Thus far the new industry has attracted small entrepreneurs because the capital requirements for launching SMATV are relatively low. Service can be started in a 400-unit housing complex, for example, for about $80,000 and can be fully operational in 90 to 120 days. Most companies claim no more than 2,000 subscribers. Consumer rates are generally competitive with cable. Bob Dunlap, president of North Carolina-based Private Satellite Television Inc., competes with 11 cable companies in the Atlanta market. "We charge about $8.95 for the basic service and $8.95 for each pay-TV service," he says.

Like all SMATV operators, Dunlap pays the building owner a small percentage of revenues, in this case 3% to 10% of gross revenues. But because SMATV companies do not use municipally owned streets as cable companies do, they are not required to make the costly franchising agreements with city councils that often force cable operators to make huge capital investments in nonincome-producing local production facilities and programming. The National Cable Television Assn. estimates that 22% of a consumer's monthly cable fee goes for regulatory requirements and that cable operators have to give up about 5% of their revenues to cities for the right to operate. "We like to think of ourselves as private cable companies," claims John Raines, chairman of the National Satellite Cable Assn., an SMATV trade group.



An earth station in Chicago: The new services have met some resistance in obtaining programming.

Predictably, as these "private cable companies" proliferate, they meet resistance from cable operators. When the 15,000-apartment Co-Op City in the Bronx attempted to contract for private SMATV operations, the New York State Commission on Cable Television threatened to enjoin the contract, saying the operator would need a franchise. "We convinced the governor that our proposal stimulated competition and the commission that their legal position was shaky. The service did not use city streets and thus would not require a franchise. We also said that the Federal Communications Commission, in an analogous situation, said the state could not regulate," says Matthew Lifflander, the general counsel for Co-op City. The commission has indicated it will not get involved in the situation.

Lawsuits over microwaves. Nowhere has the battle over "private cable" been more intense than in Dallas, where, to curb traditional complaints about cable operators' refusing to wire the poorer parts of the city, Warner Amex Cable Communications Inc. agreed to work on the inner city areas before going into the affluent neighborhoods of north Dallas. It got the franchise but may have lost market share as SMATV operators moved in to wire some lucrative north Dallas apartment buildings.

In May, Video International Productions, an SMATV operator, took delivery a step further by getting an FCC license for microwave transmission—a strategy that made its service more competitive with Warner's. Microwave permits VIP to offer as many as 60 channels and cut costs because the company is able to buy only one central earth station and relay the signal to other buildings using microwave antennas. Dallas claimed that VIP was violating a local law, and the company, which filed an antitrust suit against the city and Warner, was forced off the air. "They tried to put us out of business. They viewed us as a great threat to Warner's franchise," fumes Frank Parrish, VIP's former president. Subsequently, the assets of VIP were sold to Cable Dallas Inc., which put the service back on the air. The city sued Cable Dallas, then dropped the suit without explanation.

Although Dallas is allowing Warner to offer an interim microwave service while the company completes its wiring, Warner feels put upon. "Our franchise contract forbids us from paying building owners a percentage of our revenues," complains Ann L. Halle, senior vice-president for corporate affairs, who is in charge of the Dallas franchise.

A conspiracy? Warner is not alone in starting a competing "private cable service." In fact, the lines between cable and SMATV are blurring as more companies attempt both services. In Tucson, where Cox Cable Communications Inc. has the franchise, there are already six

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SMATV operators, and Cox has just set up a company to build some SMATV services. "It's our method of providing service to potential subscribers," says a Cox spokesman. "This betters our chances of delivering the revenue stream we promised."

The most serious struggle SMATV now faces is over programming. In the past few months, Showtime, the pay-TV service owned jointly by Viacom International Inc. and Teleprompter Corp., said it would sell only in areas where there is no cable franchise, and Warner Amex Satellite Entertainment Corp.'s The Movie Channel announced that it would not sell programming to any SMATV operator. Pay-TV executives say that dealing with the franchised operators is simply the most efficient way of doing business, and they claim that too many

At a time of rising costs, cable companies are frantic over losing market share

SMATV operators are unreliable business people. Private Satellite's Dunlap agrees that his industry has its share of marginal operators. But he is convinced, as are most SMATV executives, that the pay-TV services are coming under heavy pressure from cable operators not to sell to the competition. In fact, Mehl Cable Systems Inc., a Phoenix-based SMATV company, has filed an antitrust suit against several pay-TV programmers and cable companies, alleging that they had conspired to put private cable operators out of business. Although the judge refused to grant preliminary injunctive relief, Gary Davidson, president of Mehl, says the company will not drop the case.

Home Box Office, the Time Inc. subsidiary that is the nation's largest pay-TV programmer, has never sold to SMATV. One industry expert believes that the company is hungrily eying those revenues but that executives are worried about cable operators' reactions. Indeed, an SMATV operator reports that an HBO representative came to visit him several weeks ago, talking about doing business. When the operator called HBO to follow up, however, his calls were not returned.

Still paying. NSC Chairman Raines says that his organization is now negotiating to license programming from Telstar Corp., a pay-TV service that deals with hotels and motels. One frustrated SMATV operator has simply continued to take a pay-TV service and send in his payment.

Despite the hassles, SMATV executives are convinced that their operations will find room. "I'm sure we'll get programming. There is a niche for our services, and we'll survive," says Cable Dallas President Thomas A. Campbell. ■

Attachment B

PRIVATE CABLE MSO's

The list below provides estimates of subscribers and passings for the 20 largest private cable operators. The figures include only residential private cable systems owned by the operator.

Together, the top-20 account for 243,056 subs out of 562,132 homes passed, about 30% of all private cable subs excluding hotels and hospitals.

The average top-20 operator has 11,574 subs out of 26,768 passings. Private cable's top-4 operators account for 113,400 subs out of 260,000 passings, or 14% of SMATV subscribership.

TOP-20 PRIVATE CABLE OPERATORS (by sub count)

Company	*Subs*	*HP*	*Company*	*Subs*	*HP*
MaxTel	40,000	100,000	Tri-Star Cablevision	7,000	13,000
Nationwide Cable	30,000	85,000	Futuresat	7,000	24,000
Telesat	26,856	41,932	Cable Plus	7,000	17,500
ACS	16,500	33,000	People's Choice TV	6,500	25,000
Amsat	15,500	36,500	Sunshine TV Enter.	6,500	6,500
Beach Communications	12,000	34,500	Hettler Cable	6,300	18,000
Western Cable D	10,000	21,000	R&R Technologies	5,200	11,000
Tele-Media	10,000	16,000	Premier Cable	5,000	13,000
Gulf American	8,000	20,000	US/A	4,500	10,000
Pacific Cablevision	7,500	13,000	Coaxial Comm.	4,500	8,600
MSE Cable Systems	7,200	14,600	*Total*	243,056	562,132

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WIRELESS CABLE FREQUENCY SALES

The most recent SMATV transaction is the acquisition of Microband's 11,132 Washington, DC-area private cable passings. Initially, Millisat was expected to be the buyer.

When Fort Wayne Telsat pres. James Simon objected, however, the New York City Bankruptcy Court held a hearing in late December and ordered Microband to contact area cable operators and large private cable firms.

The result: Instead of Millisat acquiring the 3,000 subs, Hauser Communications quickly came up with the cash to make the acquisition for $1.245 mil., a fire-sale price of $110/unit. Some 26 properties, including several with multiple headends, were involved in the deal.

Hauser owns cable systems with a combined 145,000+ subs in Montgomery County, MD, and Arlington, VA, both suburbs of Washington, DC. A number of Microband's SMATV systems are in Montgomery County.

Other Microband frequencies have been recently sold, too. Los Angeles-based Technology Research, headed by Earl Kim, paid $650,000 for MDS frequencies, equipment and site-access agreements in the Los Angeles area. He acquired MDS-1 in Anaheim and San Pedro, plus OFS-H3 in Anaheim.

In Chicago, People's Choice TV paid $325,000 for OFS-H2 and OFS-H3. Tribune paid $437,000 for MDS-1, which will likely be used to transport the firm's planned Chicago-land service to cable operators.

SYSTEM SALE SHORTS

Telesat is negotiating to sell 12,000 Florida subs for the bargain basement price of $7.5 mil., only $333/passing. TCI and Storer are being sued by Telesat for allegedly backing out of a deal to acquire the same five-dozen properties for $24.2 mil. Recently Jones Intercable acquired a half-dozen of Telesat's Tampa SMATV properties and Vision Cable acquired a half-dozen Telesat systems in Pinellas County...Daniels has been retained to sell People's Choice TV's Chicago SMATV interests, some 6,500 subs out of 2,500 passings...Telecom Satellite Systems is no longer listed for sale by CEA.

NETWORK SMATV COUNTS UP 4% IN 1987

Based on sub count reports from several basic networks, the SMATV multiple-dwelling-unit universe has grown approximately 4% in the first six months of 1987.

CNN's counts are up 3.8% in the past six months, WTBS is up 3% and Headline News (which is carried in far fewer properties) is up 14.4%.

United Video has lowered its SMATV universe counts by 121,000 subs since our last census (SMATV #80, 1/22/87) as a result of audits, and the reclassification of some small systems to franchised cable instead of SMATV.

Based on the latest counts, the SMATV universe is approximately 600,000 units, up from approximately 575,000 units at year-end 1986. The estimates may have to be revised upward when post-scrambling figures become available from ESPN.

The problem of separating SMATV systems that are buying programming from local cable operators, and then are included in the franchised cable figures, is also complicating the counts.

One of the fastest-growing private cable segments is providing service to hospitals, with 5,000 new rooms added in the past six months:

		Subscribers		
Network	*Service*	*12/86*	*6/87*	*% change*
Cable News Network	SMATV	558,129	579,100	+ 3.8%
	Hotels/Motels	235,014	260,522	+10.9%
	Hospitals	30,062	34,707	+15.5%
	Total	823,205	874,329	+ 6.2%
Headline News	SMATV	71,480	81,780	+14.4%
	Hotels/Motels	397,143	408,511	+ 2.9%
	Hospitals	3,742	4,059	+ 8.5%
	Total	472,365	494,350	+ 4.7%
WTBS	SMATV	491,042	505,829	+ 3.0%
	Hotels/Motels	275,884	290,664	+ 5.4%
	Hospitals	30,675	35,185	+14.7%
	Total	797,601	831,678	+ 4.3%
WGN	Total	681,686	560,608	-17.8%
USA	Total	125,000-150,000	150,000-175,000	+18.2%

c 1987 SMATV NEWS, Paul Kagan Associates, Inc., Carmel, CA.

SMATV SMATTERINGS

Satellite Auction Network reported record sales of approximately $2 mil. from its first satellite auction of construction equipment, held 6/11. The auction originated in Detroit and was telecast, via satellite, to bidders in nine other cities: Atlanta, Miami, Kansas City, Dallas, Los Angeles, Baltimore, Cincinnati, Boston and Denver.

National College Television, a service of the Campus Network, reports it now has more than 250 campus affiliates, representing a reach of more than 2.2 mil. students, and expects to hit 325 by Jan. 1988...On 6/17, VideoRated noted the installation of video cassette players and cassette vending machines in hotel/motel properties at the rate of 4,000 rooms per month.

A private network, installed by Atlanta, GA-based Video Star Connections, launched 6/23, has linked Domino's Pizza headquarters in Ann Arbor, MI, with 10 Domino's Pizza Distribution commissaries that prepare ingredients for the chain's 4,000 pizza stores. This system will allow regional managers to communicate in person with headquarters, without having to fly to Ann Arbor, and will assist in delivering standardized training.

Attachment C

70TH STORY of Level 1 printed in FULL format.

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January 11, 1997

SECTION: No. 1, Vol. 62; Pg. 30; ISSN: 0022-3905

IAC-ACC-NO: 19180407

LENGTH: 3326 words

HEADLINE: Telecommunications invasion: defending your role as gatekeeper; property management

BYLINE: Wadsworth, Kent Hansen

BODY:

It's an apartment manager's nightmare: A white van lumbers over the flower bed to get around another van that has parked in your space to get access to a cable feed. All the lines on your phone are lighting up, red as the faces of the enraged residents who are calling to complain about the chaos in the common areas. They want to know why their pay-per view got disconnected. Why an army of cable guys in polo shirts is poking about in the bushes, extruding spaghetti helpings of wiring from the building.

By the end of the day, the grounds are a minefield, and the roofs and cedar siding are covered with so many satellite dishes that the property looks like the Death Star.

If you think this scene is just hype and hysteria, may the Force be with you. Soon, this year perhaps, you may find yourself in the middle of the telecom tug o' war aggravated by the Telecommunications Act of 1996 and the deregulation laws preceding it. As copper wire; cable; fiber optics; and wireless transmission of voice, data, and video converge, and as telecommunications law gets defined, one thing is certain: confusion awaits on the bumpy, open-competition road to 21st-century communication.

"Consumers will feel confusion over the next year as local competition is introduced," says attorney Jim Tobin, whose San Francisco firm, Morrison and Foerster, represented SBC Communications (parent of Southwestern Bell) in its recent merger with Pacific Telesis. "People will be hit with barrages of advertising over the next year or two about one-stop shopping."

If confusion is the theme, it is up to the property owners and managers to explain it away, to make residents' lives easier, while they still hold the key to accessing those residents.

"Property owners are gatekeepers, like the city government is the gatekeeper to a city," says Greg Heifner, president of Heifner Communications Inc., a

Columbia, Mo., private cable system designer and programming distributor. For many years, providers of cable, telephone, and Internet service have been willing to pay the price of admission, unloading a share of their revenue at what the industry calls a property's gateway.

Now that long distance carriers and other well-heeled companies are able to offer each others' services, more managers and owners are finding it pays to be the keeper of that gateway. As long as the FCC doesn't change the locks with its proposed rulings (see sidebar, "Gatekeepers without Keys"), opportunities to provide telecommunications services to residents exist, and in several flavors.

Who Goes There?

George Orwell had it wrong. In 1984, it wasn't Big Brother watching, it was Ma Bell listening. The break up that year of AT&T (Ma Bell) into seven Baby Bells, or regional Bell operating companies (RBOCs), allowed apartment owners to start sharing in telecommunication revenues. Now, thanks in part to the 1996 Act, the field is crowded with contenders. And the list of potential providers, from AT&T to Z Music TV, is growing.

"If you move to San Francisco in 1999, you won't automatically think of the local telephone company as your only choice for hooking up your apartment to the information network of the world," says Tobin. "Your options will be PacBell; AT&T, MCI, Sprint, and who knows how many other long distance companies; three or four wireless companies; the local cable TV company; and other companies that will find synergy with what they do, their brand in the marketplace, and telecommunications."

Definitions and companies in the telecommunications world converge right along with the technology, making it a little difficult to keep up. (It might be worth visiting the FCC's Telecommunications Terms site on the Web at http://www.its.bldrdoc.gov:80/fs-1037.) Long distance carriers are among the competitive local exchange carriers (CLECs) who are now allowed to compete in the $ 90 billion local telephone market with the RBOCs and other local exchange carriers (LECs). Likewise, the local providers are allowed to compete in the $ 75 billion long distance market. In addition, companies that were known as competitive access providers (CAPs), such as Teleport Communication Group, Metro Fiber Systems, or Brooks Fiber, keep crossing the line to become CLECs. Add to that the cable and wireless companies, from Time Warner to hundreds of private cable and shared tenant service (STS) providers, that will offer voice as well as video service and there are plenty of players tripping over each other on the telecommunications front.

Whose Line Will You Haul?

There are basically three ways to haul the lines of communication to your residents and collect a revenue share: go private, go with a big cable franchise or incumbent carrier, or do it yourself through a joint venture or your own company.

It has been said that private cable and telephone service is "the amenity of the '90s" for apartment owners. Depending on who you get your numbers from, the industry has either taken off in the 1990s or has remained somewhat flat. The Independent Cable and Telephone Association (ICTA), which includes member

companies such as OpTel, GE ResCom, Castle Cable, and Cable Plus, estimates that independent companies servicing properties with 500 or more units account for about 1.25 million to 1.5 million "passings," or units both built and under construction with access for cable and telephony. But the number of actual subscribers serviced at multifamily properties by private cable companies was 847,380 in 1995, a slight easing off from 1991's 870,000 subscribers, according to Carmel, Calif., cable consultant Paul Kagan Associates Inc.

Despite lackluster cable subscriptions for the first half of the decade, private phone and cable service revenue sharing represents a significant portion of the STS industry's targeted 6 million apartments found in buildings with 200 or more units. OpTel, one of the largest independents, serves more than 100,000 customers at more than 700 multifamily properties. Several Lincoln Property Co. communities and Dallas-based Basic Capital Management, which owns nearly 20,000 units, are among those that have entered into agreements with OpTel for cable, phone, and security channel services.

Anne Walker, a principal with Santa Rosa, Calif.-based Castle Cable and a board member of ICTA, says the industry standard's range of property-owner royalties is 5 percent to 12 percent of gross revenues. Assuming residents spend, on average, $ 90 a month for phone and cable, owners could earn from $ 55 to $ 130 per unit, per year. In addition, these agreements allow owners to save on wiring costs, up to $ 1,000 per unit in some cases.

"The deregulation of the telephone industry is making the opportunities become a reality," says Steve Quist, vice president of product development for Insignia Financial Group's Compleat Resource Group (CRG) a resident products and services group-discount organization. "You don't have to install the costly premise gear at sites and can still offer the convenience and savings to residents."

CRG has rolled out 100,000 units in its program, which includes a revenue sharing agreement on telephone service through GE Capital ResCom, a General Electric unit. Residents of CRG's program receive 10 to 20 percent savings on local and long-distance services and can have service set up for move-in date when they fill out their application. CRG has also started to offer cable packages to some properties.

Private phone and cable used to be an amenity reserved for luxury apartments such as those owned and managed by Dallas-based Columbus Realty Trust, AMO[R]. Columbus Realty residents have been receiving private cable service since the '80s and independent telephone service switched via on-site private branch exchanges (PBXs) since 1992. Through services provided by Dallas-based MultiTechnology Services (MTS), tenants enjoy the amenities of wake-up calls, four-digit dialing, and a property channel.

"By participating in the process of providing telecommunications services, we can offer properties at lower rent while still making a yield that's attractive," says Tom Wilkes, senior vice president of management for the Dallas REIT's 22 apartment properties. Columbus Realty's typical property is around 300 units, making the venture feasible. "Below 150 units, if you don't have an adjacent property to share the switch with, it's just not practical," says Wilkes.

Not every deal with the independents has been rosy. Some hard lessons have been learned. "This is an industry in its infancy, and it has had some growing pains," says Wilkes. "There have been some real nightmares out there with private providers, companies that have put switches in and been unable to service the residents or have gone bankrupt during the installation."

Dallas-based ICS Communications, for example, grew too fast with properties that were too small. Backer MCI Communications may have written off a $ 100 million investment in ICS, according to Forbes magazine. "When ICS bellied up, more than 200,000 units across the country were in disarray," says Houston telecommunications and multimedia consultant Charley Bassler. "Owners couldn't make them perform and couldn't make them conduct a quick exit from the properties. There was damage to the properties and to the residents." Bassler stresses the importance of exit strategies in the agreement language if a provider needs to pull out because of poor performance.

"We look at the track record of service that [the independent] has provided," comments Wilkes. "We also look at the size of the company to see if they are going to be able to invest the money and then service the customer."

In addition to private cable and phone, there are a number of independent providers offering Internet access to multifamily properties with a revenue sharing program. Part of the game is keeping up with the technology needed to deliver higher-speed communications. Most existing wiring won't accommodate renters who want to hook up their lap tops using today's standard-speed modems. Perhaps a wiring retrofit is in order.

"In the old days, you had four wires in a building: red, green, yellow, and black. If you see that, you're in trouble," explains Bassler. The colors of upgraded wiring now run blue and white or orange and white. "If you see that, you're OK; you have twisted pairs. The tighter the twist, the higher the speed."

Wide-area network resellers (WNRs), like Gary Berzack, managing director of Manhattan-based Tribeca Technologies, analyze the profitability of telecommuting and Internet connections, install them, and also market their benefits to residents. Berzack says putting in a T1 line, a high-speed digital telephone line ideal for Internet data, is just like providing cable. The property manager can distribute the cost of the line and subscription through shared access. For $ 3,500 to $ 4,000 a month, says Berzack, an owner can economically put in a T1 line with a router that allows up to 100 simultaneous users.

"On a 500-unit property, property owners could realize a long-term return of $ 60,000 to $ 100,000 per year, if the telecommunication services are packaged correctly," says Berzack, assuming a $ 20 per-month, per-unit income and up-front costs ranging $ 50,000 to $ 100,000 to install an ethernet and other building wiring improvements.

The Bells Have Whistles, Too

"[Private providers] have awakened a sleeping giant in the form of the local franchise providers, and the LECs have come out firing," says Wilkes. The LEC response to the revenue-sharing programs of the private telecommunications providers is to offer signing bonuses or commissions. Because of the volatility

of the industry, owners have become cautious and have kept open discussions with the LECs, who are ardently attempting to retain their existing telephone customers.

"Every [local] phone company I know - U.S. West, Southwest Bell, Bell South, Ameritech - has a commission program and will train your leasing staff to sell its services," says Andy Bane, director of corporate service at Apartment Investment & Management Co., an apartment REIT based in Denver. "Their goal is to lock down existing customers and to eventually offer them bundled services." The LECs tout their ability to offer passive dial tones, where the line is always live for 911 or 811 calls. New residents can plug in the phone, dial 811, and have phone service hooked up remotely within two to four hours of the call. Many of the private providers cannot offer such a quick turnaround.

Another advantage the LECs offer is extended services through central office switching. Most private providers offer phone service through an on-site PBX that is limited to call waiting, three-way calling, and caller i.d. without names. The central office switch allows for caller i.d. naming, call trace, and other services.

But local telephone companies come with their own set of problems. Because the Bells are so heavily regulated by the FCC to meet a "checklist" of requirements before they can offer long distance service, they are limited on what bundled services and revenue share they can offer property owners.

The Bells have been slugging it out in state arbitrations with the long distance carriers and other CLECs that want to offer local service. Roughly 180 arbitrations were in the courts at press time, attempting to resolve differences over the interconnection order issued by the telecommunications law, which set up deep discounts for CLECs to encourage competition.

The Bells typically hold sway with state utility commissions, which appears, in some states, to be drawing out the issue of setting fair rates for at least another year. A recent stay of FCC interconnection rules indicates that local-phone rates and bundling opportunities may be determined at the state level.

All-Purpose Cable

Bundled services are not quite there yet for cable. It may be a couple of years before cable companies offer telephony due to technology and capital obstacles - not to mention arbitrations. Some estimate that it would take $ 2 billion for Time Warner, for example, to hook up all its cable customers to fiber optic networks.

Cable also faces certain regulatory hurdles before open competition becomes a reality. There are 13 states that still uphold forced access by the local franchise, excluding other providers. Whether or not the FCC will overrule the access laws has yet to be determined.

But if access laws are not an issue in your state, you could stand to gain something by arranging for cable service to residents. "In the past, the franchise cable operator took the subscriber as free fruit on a tree," says Heifner. "Now they'll pay $ 500 to $ 2,000 per subscriber to get access."

Do-It-Yourself Options

For those with enough capital, there are several do-it-yourself options. Installing and running your own private cable system is one option that companies like Heifner Communications specialize in. Heifner has set up over 1,000 private-cable/satellite-receiver systems nationwide, representing almost 500,000 units. He relates an example of one property owner of a 400-apartment community who invested $ 100,000 in a cable system and sold cable service at $ 1 a month to attract college students. Eventually he charged $ 30 a month, still
beating the local franchise by $ 6 a month, and saw a 5 percent occupancy increase.

But installing your own cable or telephone equipment requires serious capital outlay, and, for some, a partner. Houston-based Camden Property Trust has joined forces with Teleport to create a fiber optics network on which it plans to spend several million dollars. Through a "complex agreement" and investment in operations with Teleport, Camden has wired its 8,000 units in Houston and Dallas for fiber optic telephone service with high-speed Internet access to follow property by property early this year.

Boyer Taylor, senior vice president of Camden, says that although it costs $ 10,000 to $ 50,000 per property to tap into the local Bell's paired cable lines, "The rate of return is a higher percentage basis than the return on the real estate." According to Taylor, the cost is justified by the advantages of fiber interconnection: central office switching, a "self-healing sonet ring network" that protects against call interruption, and the ability to offer multiple services over the same line. The primary advantage of Teleport's fiber network is central office switching, says Taylor, which offers the same benefits as the LEC and better economies of scale.

Through an affiliate, Teleserve, Camden has also begun offering its fiber network as a third-party service to owners in other cities. It is part of a trend that includes companies that, because of the network unbundling, can use their customer base and brand name to start a telecommunications company.

"One could start a telephone company and serve customers, complete their calls, send them bills, and get paid - all without operating any physical network equipment because you can do it through the resale of the components through other carriers," says Tobin, "provided that the state regulatory bodies carry out the wholesale pricing properly."

Future Services

In these heady days of the Information Age, a new means of communication delivery seems to come out every quarter. A host of new systems, including cable modems and asymmetric digital subscriber line (ADSL) modems, hybrid coaxial fiber, and wireless Internet connections, will be hitting the market over the next decade.

The latest technology upgrade race is between the cable companies' cable modems and the telephone companies' ADSL modems. Both are extremely fast, high-speed wiring connections (up to six times faster than a T1 line) ideally

suited for Internet connections. But while cable modems are slightly faster, ADSL has the two-fold advantage that it runs on existing telephone lines and offers the security of point-to-point dedicated lines. Thus, the dozen or so cable modem operators are pushing for home markets, where data security is not as crucial, and ADSL will most likely be marketed by CLECs and Bells as suited for the office sector.

Experts predict that costly ADSL modems (in the thousands of dollars) will drop to competitive prices ($ 250 to $ 300) within two years in order to compete with cable modems on price. Cable modem services, available in limited areas, are running $ 50 a month for unlimited Internet access, plus $ 100 installation.

"If the cable modem guys offer you 10 percent of gross and, are selling Internet services for $ 35 or $ 40 a month, that's like adding another cable subscriber," says AIMCO's Bane. "With just 30 subscribers you could get back your investment in a couple of months."

The other big roll out ahead is wireless. The selling of $ 18 billion worth of personal communications services (PCS) licensing by the FCC to companies has created a surge of wireless networks that will air faxes, e-mail, and Web pages on pocket-sized devices. Some experts predict that by the end of the year as many as nine wireless providers will pop up in major metropolitan markets that are now served by two.

Keeping the Gates Open

Though some say the multifamily market is small fry to telecommunications companies in light of the enormous customer pool dwelling in single-family homes, as the apartment industry continues to grow, more activity is being directed toward renters.

"More and more property owners are starting to look at leveraging their gateway," says Bane. "As the multifamily industry continues to be more competitive, property owners will look for new revenue streams and more amenities to give residents an incentive to move in."

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