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March 30, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
12th Street Lobby, TW-A325
The Portals, 445 - 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 96-83 Ex Parte Presentation

Dear Ms. Roman Salas:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this is to notify the Commission that on March 30, 1999, Brent H. Weingardt, Vice President of the Personal Communications Industry Association, and I met with Steven Weingarten, Jeffrey Steinberg, and Melvin Del Rosario concerning broadband wireless building access issues, including CS Docket No. 96-83.

During the meeting, we discussed the petition for reconsideration of the *Second Report and Order* in this docket filed by PCIA and other parties and the implications of this proceeding for competitive broadband wireless operators. The subjects discussed are set forth in the enclosed materials, a copy of which were provided to each of the meeting attendees.

Two copies of this letter and the associated presentation materials are being filed with the secretary's office, as required by Section 1.1206.

Should you have any questions regarding this matter, please call me.

Respectfully submitted,

Katherine M. Harris

Katherine M. Harris

KMH/cet
Enclosures
cc: Steven Weingarten
Jeffrey Steinberg
Melvin Del Rosario
Eloise Gore

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THE COMMISSION MUST AND CAN TAKE STEPS TO ENSURE BROADBAND WIRELESS OPERATORS HAVE ACCESS TO BUILDINGS

I. BUILDING ACCESS IS CRUCIAL FOR BROADBAND WIRELESS OPERATORS

- Fixed wireless broadband operators (such as LMDS) require access to multi-dwelling units (MDUs) and office buildings in order to fulfill the competitive promise envisioned by the FCC.

- A licensee must first establish several hubs (antennas that serve as switches linked to the PSTN or other wired networks) at several locations in its service area. Hubs are typically located on the roofs of selected buildings with line-of-sight capability to those buildings with identified customers.

- In addition to these hubs, broadband wireless operators must place a small microwave send/receive transmitter (approximately 18 inches in diameter with mounts just above rooftop level) on the top of each building in which they have a customer. Typically, only one transmitter is needed for all customers in a building.

- Within a subscriber's building, the broadband wireless operator must place a wall-mounted network interface device and cables running to its customer(s). This equipment is typically placed in telephone closets, utility closets, risers, elevator shafts and existing rights-of way.

- The earliest broadband wireless operators (such as Teligent and WinStar) are now deploying systems. They are experiencing many instances of being denied access to buildings (where they have potential customers) or facing exorbitant rents that are not consistent with payments made by other telecommunications providers in the building.

- The Commission has ample authority to require the opening of in-building rights-of-way now used by other telecommunications carriers in accordance with Section 224.

- Section 207 is the most explicit means set forth by Congress to eliminate restrictions on antenna placements. However, the Commission also has clear authority under Section 706 to remove barriers to investment in and deployment of advanced communications services such as wireless broadband.

- Without a national building access policy, wireless operators will not be able to compete with the wired alternatives (ILEC, CLEC, cable) that are in the MDUs and office buildings.

II. THE COMMISSION'S INTERPRETATION OF SECTION 207 IS UNDULY NARROW AND MUST BE BROADENED TO COMPORT WITH CONGRESSIONAL INTENT AND THE PUBLIC INTEREST

- The Commission made significant strides in the *Second Report and Order* in CS Docket 96-83 by extending to certain categories of tenants the right to install and use a Section 207 reception device. By limiting access to and use of common property and restricted access property, however, the Commission creates discriminatory divisions among users and potential users of Section 207 reception devices and fails to implement the full benefits and objectives of Section 207.

- Jointly with several other parties, PCIA has sought reconsideration of the *Second Report and Order*, requesting the Commission to adopt amended rules that prohibit *all* restrictions on installation of Section 207 devices in multi-tenant buildings that are not necessary for public safety.

- The action taken in the *Second Report and Order* effectively denies the benefits of Section 207 to an overwhelming number of consumers that do not have access to rented space where they have exclusive use with a line-of-sight transmission path to a Section 207 video programming provider.

  - Section 207 does not permit such "line drawing," but instead contemplates that the Commission will act to remove — across the board — restrictions on consumers' access to over-the-air video programming.

  - The *Second Report and Order* instead moves the line for distinguishing between the "haves" and "have nots," without any sound justification for drawing such a line.

- Reversal of the Commission's narrow approach is necessary to help achieve the Congressional goal underlying the Telecommunications Act of 1996 of opening telecommunications markets and promoting competition in the over-the-air transmissions available to consumers.

- Implementation of the requested relief would not be a *per se* taking of property under the Fifth amendment or a compelled physical invasion, but would be no more than the permissible regulation of a preexisting contractual arrangement between the building owner, landlord, or condominium association and the tenant. Even if the requested Commission action were deemed a "taking," it would be permissible if accompanied by just and reasonable compensation.

- The public interest would be served by fully expanding the protections of Section 207 to all tenants, subject only to limitations necessary to promote safety, leading to enhanced competition in video programming and increased consumer choice.