to Grantor the results of the negotiations. Notwithstanding the above, Grantee is committed to, and shall, interconnect the cable system with all cable systems operated by Grantee or its affiliates in the Detroit metropolitan area. Grantee shall notify Grantor within ninety (90) days of execution of this Agreement of its progress with respect to providing such interconnection. In addition, Grantee has budgeted Eighty-Eight Thousand Dollars ($88,000) for the implementation of regional interconnection. These funds shall be budgeted as follows:

Year of Franchise	System Interconnected	Budget
1	Birmingham	$13,000
2	Pontiac	25,000
3	Eastern Oakland Consortium and West Bloomfield	50,000
		$88,000

Notwithstanding the reference to budgeting certain sums for implementation, Grantee is obligated to interconnect in accordance with Ordinance 184 subject only to obtaining permission from the neighboring communities. The above interconnections shall permit two-way video, voice and data communications between governmental and educational institutions in Bloomfield Hills and at least the following institutions:

Oakland County Intermediate School
Administration Building - Pontiac
Oakland County Government Center - Pontiac
Oakland University - Rochester

5.8 Emergency Alert Capability. Grantee shall provide the system capability to transmit an emergency alert signal to all participating subscribers. Grantee shall also provide an

A G R E E M E N T

AN AGREEMENT GRANTING A NON-EXCLUSIVE FRANCHISE TO BOOTH COMMUNICATIONS OF BLOOMFIELD TO OPERATE A CABLE TELEVISION SYSTEM IN THE CITY OF BLOOMFIELD HILLS AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THE FRANCHISE.

5.3 Satellite Earth Stations. Grantee shall provide two (2) satellite earth stations initially [one (1) single signals and one (1) multiple signal type, both located at the Grantee's cable system facility in Birmingham, Michigan]. Grantee shall reasonably provide a sufficient number of earth stations to receive signals from all operational communications satellites that generally carry programs carried by cable systems, throughout the life of the franchise.

5.4 Capacity for Interactive Residential Services. Grantee shall provide initially the capability for interactive residential services including, but not limited to, impulse pay-per-view, one-way pay-per-view, opinion polling, security service and video games. Grantee shall also provide the capacity for energy management, electronic banking, videotext, data base access, electronic mail, interactive games and data networking services, with such services to be added within two (2) years of the effective date of this Agreement or within one (1) year of the first introduction of such service on an operational basis in Southeastern Michigan whichever occurs later. All customer equipment necessary for such services, such as addressable interactive converters, home terminals and home detectors, shall be provided to subscribers by Grantee in accordance with established and uniform rate schedules.

5.5 Cablecasting Facilities. Grantee shall provide the following cablecasting facilities or their equivalent for the cable system serving the Township of Bloomfield and the City of Bloomfield Hills, at the estimated costs shown:

CABLE COMMUNICATIONS FRANCHISE AGREEMENT

BETWEEN

THE CITY OF BIRMINGHAM, MICHIGAN

AND

BOOTH COMMUNICATIONS OF BIRMINGHAM

acquired territory shall be available to residents within twelve (12) months of annexation of the territory to the City. The Franchisee shall immediately notify the City in writing of all delays known or anticipated in the construction of the system and the City Commission may in its discretion extend the construction and service timetable in the event the Franchisee, acting in good faith, experiences delays by reason of circumstances beyond its control.

Section 6. CONSTRUCTION TIMETABLE

(a) Within thirty (30) days after the effective date of the franchise, the Franchisee shall apply for all necessary permits and authorizations which are required in the conduct of its business, including but not limited to any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of Cable Communications Systems or their associated microwave transmission facilities. The Franchisee shall apply for all necessary and required permits and file all necessary and required statements with the FCC within thirty (30) days after the effective date of the franchise.

(b) The Franchisee shall complete strand mapping and shall commence initial ground breaking within sixty (60) days after the effective date of the franchise.

(c) The Franchisee shall complete pole agreements and shall begin preparing the poles within ninety (90) days after the effective date of the franchise subject to the cooperation of the utility companies

involved. All poles shall be ready within one hundred eighty (180) days after the effective date of the franchise subject to the cooperation of the utility companies involved. The Franchisee shall notify the City of any failure on the part of a utility company to so cooperate under this subsection.

(d) Within one hundred twenty (120) days after the commencement of construction, activation and installation of the system, the Franchisee shall proceed to render cablecast service to subscribers, and the completion of the construction, activation and installation shall be pursued with reasonable diligence thereafter. Cablecast service to the subscribers shall be provided to the areas designated on the maps attached hereto as Exhibit A, in accordance with the timetables therein set forth.

(e) Within twelve (12) months from the effective date of the franchise or within the times set forth in Sections 22, 23 and 25 of this Agreement, the Franchisee shall provide all equipment in accordance with Exhibits D, E and F and all personnel required by this Agreement.

(f) The institutional network shall be activated in all local governmental buildings, community service agencies and all public schools in the Birmingham School District located within the franchise territory and shall be fully operational as set forth on Exhibit D.

(g) Within thirty (30) days from the effective date of the franchise, the Franchisee shall apply for

municipal approval for rights of way, easements or franchises necessary to interconnect with the two-way activated institutional network each school in the Birmingham School District but located outside the Franchise territory. Within one hundred twenty (120) days from the effective date of the franchise, the Franchisee shall provide the City with a written report outlining its negotiations with other municipalities for the necessary rights of way, easements or franchises, and setting forth the status of its applications. The Franchisee shall provide the City with such additional reports regarding its applications as may be requested by the City Commission or the Cablecasting Board. In the event municipal approval granting the Franchisee the necessary rights of way, easements or franchises is obtained, the Franchisee shall complete the installation and begin the operation of the institutional network in each of these schools in the Birmingham School District which are located outside the franchise territory and which are listed on Subsection III of Exhibit D within nine (9) months of having received the necessary municipal approval or within eighteen (18) months from the effective date of the franchise whichever is later. The Franchisee shall complete the installation and begin the operation of the institutional network in the balance of the schools in said School District and which are listed on Subsection IV of Exhibit D within the above time limits unless the City Commission determines that circumstances exist which would warrant the extension of said timetable. The City Commission may direct the Cablecasting Board to consider and report on any such circumstances including the probability of the communities involved awarding franchises to cable companies and the possibility of

cost savings by sharing installation costs with other cable companies.

Section 7. TRANSFER OF OWNERSHIP OR CONTROL

(a) The franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereo, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the City. The proposed assignee must show its qualifications and its financial responsibility as determined by the City Commission and must agree to comply with all provisions of the franchise. The City shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to the Franchisee within sixty (60) days following receipt of written notice of a proposed transfer or assignment. Consent by the City Commission shall not be unreasonably withheld.

(b) The parties shall be governed by the provisions of Title II, Chapter 20 of the Birmingham City Code relating to transfer of ownership and control in all instances involving a proposed or actual change in, transfer of, or disposition of or acquisition by any other party of the franchise or control of the Franchisee.

(c) This Section 7 shall not be construed to limit the right of the Franchisee to mortgage, pledge or otherwise encumber the personal and real assets, tangible and intangible, of the cable system of every kind and nature, other than the Franchise itself, as security for financing transactions entered into between the Franchisee and institutions (such as banks, [illegible]

Section 14. CONSTRUCTION STANDARDS, TECHNICAL REQUIREMENTS, PERFORMANCE REVIEW AND INSTALLATION PROVISIONS

(a) In its installation and maintenance of the Cable Communications System, the Franchisee shall comply with the terms and conditions of Title II, Chapter 20 of the Birmingham City Code, relating to System Design and Specifications.

(b) Upon expiration, termination, or revocation of a franchise, or should the Franchisee wish to dispose of any of its poles being used by the City, the City shall have the first option to purchase the Franchisee's poles being used by the City in place for a value equal to the original cost depreciated on a fifteen (15) year straight line basis of the poles at the time the City gives notice to the Franchisee that it is exercising its option to purchase.

Section 15. SYSTEM DESIGN

(a) Subscriber Services

(1) The Franchisee shall provide a cable communications system containing the technical capacity for two-way transmission which shall be activated according to the provisions of Section 17 of this Agreement.

(2) The Franchisee shall provide its economy subscribers with reliable Oak L-30 converters, or a device equivalent to or of better quality. The Oak L-30 converter or a device equivalent to or of better quality with an A-B Switch shall be provided to all monitors/receivers in the institutional network. All subscribers who choose a prime entertainment service shall be provided a programmable and upgradable Scientific Atlanta 6700-A converter or a device equivalent to or of better quality.

(3) Within eighteen (18) months of the effective date of the franchise, the Franchisee shall

available to all subscribers a home security service through its installation of the TOCOM III-A Security System. Within eighteen (18) months of the effective date of the franchise, the Franchisee shall install, without charge, a full perimeter security system for all public schools in the Birmingham School District located in the City and all public buildings listed on Subsections I and II of Exhibit D. Units in the full perimeter security system shall be equipped with modulators as are set forth in Exhibit E.

(4) The Franchisee shall make available at no charge to economy subscribers who request it a parental security key lock device for the pay service equivalent to or of better quality than the Oak L-30 parental security system. The Franchisee shall upon request make available to all prime entertainment subscribers at no charge (other than a security deposit) a Scientific Atlanta 6700-A programmable and upgradable descrambler converter or a device equivalent to or of better quality incorporating a "parental discretion code" capable of locking out reception from pay cable channels. The Franchisee shall make all subscribers aware of the availability at no charge of the parental lock out device.

(5) The Franchisee shall make available to all subscribers the FM stereo radio service indicated in its proposal and the stereo audio portion of all channels as available.

(b) The Franchisee shall, pursuant to the provisions of Section 22 of this Agreement, provide a separate, bidirectional, forty-two (42) channel institutional network, linking all government, educational, community service and library facilities in the franchise area, as listed in Exhibit D, with twenty-five (25) downstream channels and seventeen (17) upstream channels.

(c) All Channels Emergency Alert

The cable system shall include an emergency alert system which shall permit the City Manager, his representative, or the representative of any government or civil defense agency designated by the City, to override the audio and video on all cable channels from any telephone to transmit and report emergency information without charge. The system shall provide for the audio and visual transmission of emergency messages.

(d) Standby Power

The Franchisee shall maintain in constant readiness equipment capable of providing standby power for the head end, transportation and trunk amplifiers for a minimum of two (2) hours. The standby power equipment shall be constructed so as to revert automatically to the standby mode when alternating current power returns. The Franchisee shall comply with all utility and other safety regulations to prevent a standby generator from powering the "dead" utility line.

(e) Any System Design changes shall be accomplished in accordance with the terms and procedures in Title II, Chapter 20 of the Birmingham City Code relating to System Design changes.

Section 16. SERVICE OFFERINGS

(a) The Franchisee shall make available to all subscribers the service options of economy, prime entertainment/information, mini-pay and maxi-pay services listed on Exhibit B, attached hereto and incorporated herein by reference. The Franchisee shall during the entire franchise period or any renewal carry all television broadcast signals required by the Federal Communications Commission on the effective date of the Franchise Agreement to be carried by Cable Systems.

(b) The Franchisee shall make available additional service offerings at the rates set forth in Exhibit C or in accordance with Section 18(b), as follows:

(1) Reuters Instant Data Retrieval Service, within twelve (12) months from the effective date of the franchise or as soon as it becomes available thereafter.

(2) Las Vegas Entertainment Network, by July, 1982, or as soon as it becomes available thereafter.

(3) Bluebird, within twelve (12) months from the effective date of the franchise or as soon as it becomes available thereafter.

Payment Transactions Detail Report

Date: [illegible]

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9512118205128007	HOWARD & HOWARD THE PHOENIX BUILDING SUITE 500 222 WASHINGTON SQUARE N LANSING MI 48933	[redacted]	12/08/95

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
$910.00	$910.00	1	TQC	1		BOOTH AMERICAN COMPANY	48226		$910.00	1	PMT
Total 1									$910.00		

Payment Transactions Detail Report

Date: 1/16/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9601248205181006	HOWARD & HOWARD 222 WASHINGTON SQUARE N THE PHOENIX BUILDING SUITE 500 LANSING MI 48933	[redacted]	01/23/96

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
$910.00	$910.00	1	TQC	1		BOOTH AMERICAN COMPANY	48226		$910.00	1	PMT
Total 1									$910.00		

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

September 21, 1998

OFFICE OF
MANAGING DIRECTOR

DOCKET FILE COPY ORIGINAL

Mr. Roy Taylor
President
CNI Wireless, Inc.
P.O. Box 373
Somerset, KY 42502

Re: Request for Waiver of Filing Fee for Certification of Completion of Construction

Dear Mr. Taylor:

This letter is in response to your request for an emergency waiver or to defer payment of the filing fees for certification of completion of construction for "beam bender" facilities used to provide service to rural areas. You assert that the fee for a certification of completion for each beam bender channel will be $555. You maintain that the fees to provide 30 channels of wireless cable would be over $16,500 for each site and over $132,000 for the 8 sites required for your service. You maintain that your subscriber base is inadequate to support the fees for your prospective beam bender licenses.

CNI is the licensee of commercial ITFS stations and an MDS station which comprise a wireless cable system serving the Somerset, Kentucky area. It also has lease agreements for ITFS channels with a rural development center, a local hospital, and the county school system.

Effective September 14, 1998, the filing fee for a certification of completion of construction for a major modification for an MDS station is $585 (Fee Type Code CPM). However, it appears that CNI may not be subject to the MDS certification fee. Under the Commission's rules, a beam bender is considered to be a signal booster station. The application fee to add a new MDS booster station or commercial ITFS booster station and the application fee for a certification of completion of construction is $65. An application for a new MDS booster station and commercial ITFS booster station must be submitted on FCC Form 304 with a fee for each station (Fee Type Code CSB). Certifications of completion of construction must be submitted on FCC Form 304A with a fee for each channel (Fee Type Code CCB).

In prescribed instances, the Commission's rules allow the construction and operation of a low-powered booster station and possible modifications to an existing booster station without prior authorization. Under these circumstances, no fee is

required, and the licensee notifies the Commission by submitting FCC Form 304 for an MDS or commercial ITFS booster station or FCC Form 330 for an ITFS booster station.

Finally, governmental and non-profit ITFS applicants are exempt from the application and certification fees. An application for an ITFS signal booster station, that would retransmit an ITFS signal from an exempt entity, is also exempt from the fees.

Section 1.1117 of the Commission's rules, 47 C.F.R. §1.1117, provides that a filing fee may be waived only upon a showing of good cause and a finding that the public interest will be served thereby. See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 961 (1989). Section 1.1117 further requires that an applicant seeking waiver of a filing fee include the applicable fee with its waiver request, and provides that the fee will be returned if the waiver is granted. See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1989, 5 FCC Rcd 3558, 3572-73 (1990).

Even where a petitioner has made the requisite showing justifying a fee waiver, the Commission generally requires the petitioner to pay the underlying fee with its fee waiver request. See 47 C.F.R. §1.1117; see also Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 5 FCC Rcd 3558, 3572-73 (1990). In the absence of documentation of financial hardship, or a showing that you are exempt from the fee, you have not made a sufficient showing to warrant a waiver or an exemption from the regulatory fee payments. Your request, therefore, will be dismissed, without prejudice to being refiled with appropriate documentation of financial hardship or factors establishing an exemption from the fees, at the time you file your applications.

If you have any questions concerning the issues discussed above, please call Ms. Sharon Bertelsen of the Mass Media Bureau, at (202) 418-7057.

Sincerely,

Mark Reger
Chief Financial Officer

000000BCB-98-015

January 6, 1998

Magalie Roman Salas
FCC Secretary
1919 M St., N.W., Room 222
Washington, D.C. 20554

Dear Madam:

Attached you will find a copy of a letter that was sent to the FCC Chairman and the FCC Commissioners. Also a copy was sent to Ms. Marsha McBride, the Mass Media Bureau Senior Legal Advisor.

Sincerely,

Roy Taylor
President

CNI WIRELESS, INC.

P.O. Box 373, Somerset, KY 42502 • 310 West Columbia Street, Somerset, KY 42501
Phone 606-679-8917 • FAX 606-678-9032

January 6, 1998

8-30 ch

The Hon. Susan Ness
FCC Commissioner
1919 M St., N.W., Room 836
Washington, D.C. 20554

Re: Temporary wavier of $555 Per Channel Beambender Fees

Dear Madam:

This letter is to request an emergency waiver or abatement of certain FCC regulatory fees that are so out of proportion that the fees themselves act as a barrier preventing competitive service to rural consumers. Specifically, we urge the new FCC Commissioners, as part of your oversight of Mass Media Bureau rules (including the bienniel review), focus on the $555 cost per channel of regulatory fees needed for so-called "beam-benders" used to deliver wireless cable service around obstructions (such as mountains or buildings). The equipment itself is simple and relatively cost-effective apparatus and the FCC's internal regulatory burden is very modest. But the regulatory cost of delivering 30 channels to several families in a Kentucky valley would be $16,500 per beam bender simply for these regulatory fees. That would price the service out of the reach of these rural customers -- and the main reason is the FCC's decision to set at such a high level out of proportion with the FCC's internal costs or the benefits to the public.

As background, CNI is the licensee of commercial ITFS stations WMX674 and WMX680 (Parkers Lake, KY) which, along with MDS station WMX332 (Parkers Lake, KY), comprise the wireless cable system in the Somerset, KY area. CNI commenced construction of the system in May 1995, and completed construction of the Stations on July 31, 1995. Service to subscribers began on August 1, 1995. To date, CNI has expended well in excess of $1.1 million dollars less discount for small businesses in its effort to bring wireless cable services to the area, plus 1.2 million dollars associated with participating in the MDS auction and achieving status as the winning bidder in the Commission's auction of BTA authorizations in the MDS for the Somerset, KY BTA (B423) and the adjacent Corbin, KY BTA (B098). CNI also has leased back agreements for all ITFS channels.

CNI has leased back agreements for all ITFS channels, a Rural Developement Center, a very small Rural Hospital and a County School System. If CNI Wireless is successful, plans call for interconnection between these ITFS License holders. See Exhibit (A). This inter connection will provide a regional hookup so the schools can interact live on line with each other. The small rural hospital can have live interactive hookup with the University of Kentucky College of Nursing. CNI hopes to accomplish this and be of service to this area of Kentucky.

CNI having to service the BTA payments plus paying all the FCC filing and processing fees has put this small rural wireless system in jeopardy. This rural system must use beam benders to redirect signal down into the valleys where the people live. Example of costs: The ITS-605-B, a FCC Type Accepted Bender, installed and operating under 10,000 dollars. If 30 channels pass thru the bender then the total of all fees are more than 16,650 dollars not counting engineering and legal fees. When fees cost more than the equipment to serve the public - something is wrong. Not a lot of money to the Bell-South's of this world, but multiply that by 8 benders, which will be needed, thats $133,200 dollars, enough money to install 620 rural customers to our system. We must have relief from fees or assistance much like the REA 60 years ago to get electricity to rural america. The spread of technology to rural america thru wireless cable is just as important today as power was back then. Wireless cable will offer competition to hardwire as well as expand technology to the valleys and mountain tops that wired cable could not connect. With no off air TV, without expensive and elaborate antenna towers, we must rely on wireless cable for even our local broadcast stations. The telephone companies inferstructure will only support ISDN lines in very limited areas. With wireless cable High Speed Data, we can bring our local businesses and schools the communications speed they need to enter the 21st century.

We request that beambender fees and payments to the FCC be wavied or reduced for two years, until such time that our subscriber base will support those payments. This action will help bring technology to rural America 10 to 15 years sooner, because if left to large communications giants places like New Orleans, Atlanta and New York will get wireless technology first.

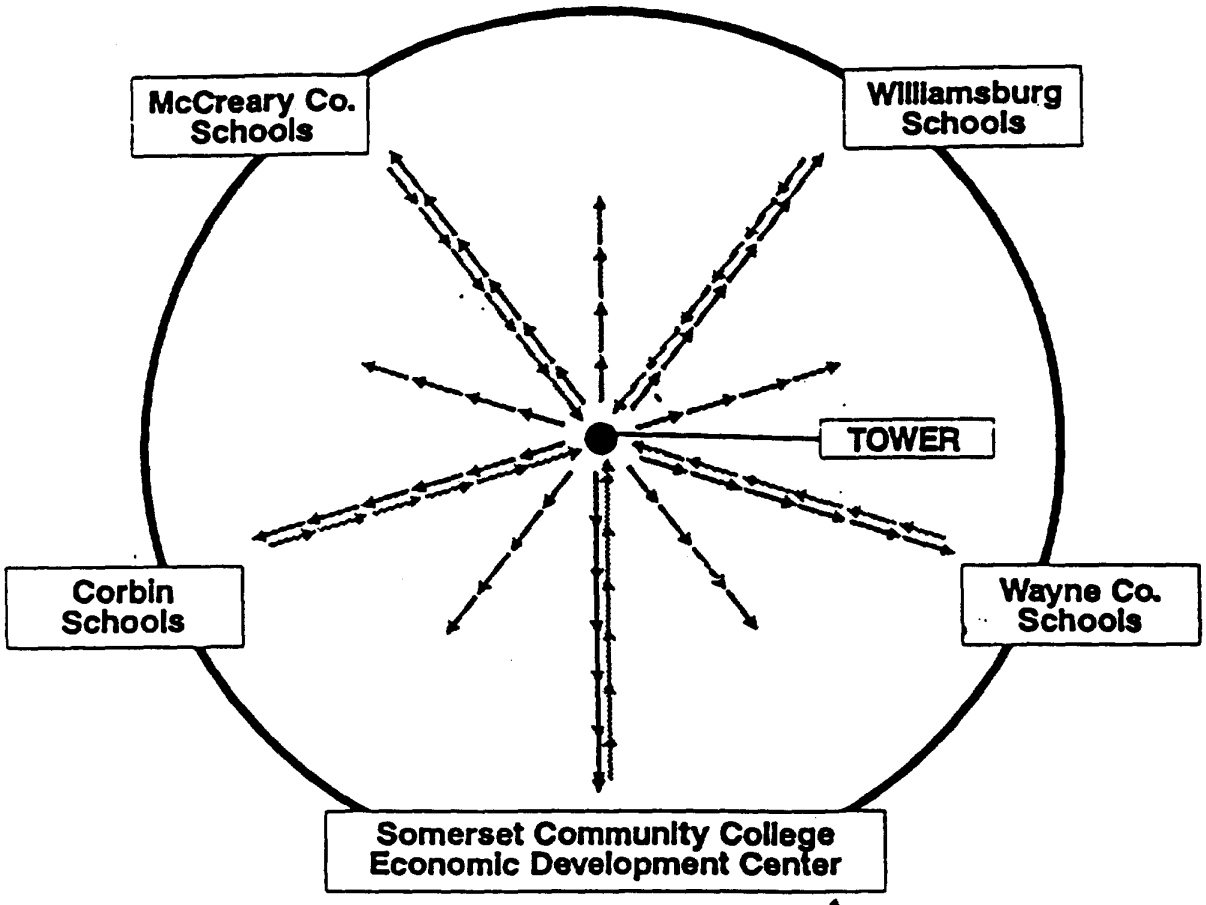
The FCC and Congress say they want competition for high wired cable rates and quick deployment of high speed date services, if that be the case help the small rural wireless systems compete.

Sincerely,

Roy Taylor
President

cc: FCC Secretary Magalie Roman Salas, Room 222
Mass Media Bureau Senior Legal Advisor Marsha McBride, Rm. 314

EXHIBIT A



TRANSMIT

RECEIVE

CNI WIRELESS CABLE TV

606-679-8917

At the Economic Development Center video can be up linked to KET for state wide distribution.

Also video can be easily transmitted to the University of Kentucky or any of the other Eastern Kentucky Communities Connected to the Economic Development Center.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

September 15, 1998

OFFICE OF
MANAGING DIRECTOR

DOCKET FILE COPY ORIGINAL

Cherie R. Kiser, Esquire
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

Re: Petitions for Waivers of the
Fiscal 1995 and 1996
Regulatory Fees
EMI Communications Corporation
Intermedia Communications, Inc.

Dear Ms. Kiser:

This is in response to Petitions for Waiver of the Fiscal Year (FY) 1995 and FY 1996 regulatory fees paid by EMI Communications Corporation and Intermedia Communications Inc. (formerly and now d/b/a EMI Communications Corporation) (ICI). Please excuse our failure to respond to your petitions in a more timely manner.

ICI operates approximately 200 point-to-point microwave stations. It uses those facilities for traditional point-to-point services such as the distribution of radio and television signals. ICI also uses the facilities to provide interexchange service in competition with landline interexchange providers. ICI argues that it is "double charged" because it pays a regulatory fee for each call sign for its microwave licenses and it pays another fee based on the revenues generated by its interexchange service. ICI maintains that it is unaware of any other provider who must pay fees for the both the technology it uses and for the services provided using those facilities. ICI asserts that it is at a disadvantage with competitors who pay only one fee.

ICI further notes that the Commission has taken measures to eliminated double charging of other common carriers, by permitting resellers of common carrier service, to deduct from their reported gross interstate revenues payments made to underlying carriers for facilities or services and it asserts that it should be accorded equal treatment.

ICI uses its point-to-point microwave facilities to provide two separate and distinct services. The Commission is required by 47 U.S.C. § 159 to recover the costs of regulating each of those services. In addition, ICI benefits from the reduced costs available from its dual use of the facilities. Moreover, in contrast to ICI's argument that the fees place it at a

competitive disadvantage, a waiver would give ICI an unfair competitive advantage because it will be avoiding fees assessed against competing service providers.

ICI's argument concerning the elimination for double billing for resellers of exchange services, is not relevant here. The interexchange reseller policy is designed to prevent duplicate fees for the same revenues. Here, ICI pays one fee based on gross revenues for its exchange service and a second fee for its facilities which are also used to generate fees from distribution services. Thus, ICI has not established a basis for a waiver of the regulatory fees and its request is denied.

If you have any questions concerning the regulatory fees, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,

Mark Reger
Chief Financial Officer

9609308835245023

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 19 1996

In the Matter of	)	
	)	
Assessment and Collection	)	MD Docket No. 96-84
of Regulatory Fees for	)	
Fiscal Year 1996	)	

To: The Managing Director

PETITION FOR WAIVER

Intermedia Communications Inc. (formerly and now d/b/a EMI Communications Corporation) ("ICI"), by its attorneys and pursuant to Sections 1.3 and 1.1166[1/] of the Commission's rules, hereby seeks a waiver of Section 1.1154 of the Commission's rules insofar as its application results in "double charging" ICI.[2/] Specifically, Section 1.1154 subjects ICI to both a call sign fee for its microwave licenses and a gross revenues fee for its interexchange service utilizing those licenses. Thus, ICI asks that the Commission waive the gross revenues fee.[3/]

[1/] Although Section 1.1166(c) states that a request for waiver must be accompanied by the required fee and FCC Form 159, the standard interexchange carrier fee, which is the subject of this petition, is not due and payable at this time.

[2/] See In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996, Report and Order, MD Docket No. 96-84, FCC 96-295 (released July 5, 1996) at ¶¶ 31, 32 ("1996 Fees Order").

[3/] In 1995, EMI Communications Corporation, based upon the same circumstances described herein, also filed a petition for waiver of Section 1.1154, as well as a petition for partial reconsideration of the order establishing the various fees. See In the Matters of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act, Report and Order, MD Docket 95-3, FCC 95-227 (released June 19, 1995) at ¶ 91 ("1995 Fees Order"). Those petitions remain pending.

ICI is the Part 21 licensee of nearly 200 point-to-point microwave stations. In addition to traditional point-to-point microwave service (e.g., distribution of radio and television signals), ICI uses these licenses to provide interexchange service in the eastern and northeastern United States.[4] ICI competes directly with other landline interexchange providers.

Pursuant to the 1996 Report and Order, released July 5, 1996, in the above-captioned proceeding ("1996 Fees Order"), ICI, like other microwave providers, is required to pay $155 annually for each microwave call sign.[5] Because the company also provides long distance service, however, it is required to pay a fee based upon the gross revenues derived from its interexchange service as well as the call sign assessment.[6]

ICI is not aware of any other situation whereby a provider is required to pay fees once for the technology it uses and a second time for the service it provides using that technology. Indeed, in the 1996 Fees Order, the Commission adopted special measures to keep from double charging regulated industries. For example, the Commission provided that, "[i]n order to avoid imposing a double payment burden on resellers, [it] will permit interexchange carriers to subtract from their reported gross interstate revenues, . . . , any payments made to underlying carriers for telecommunications facilities or services."[7]

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[4] Although ICI does provide telecommunications service utilizing facilities other than point-to-point microwave, it is not seeking a waiver of the Commission's regulatory fees requirements with respect to the revenues generated from those services. This waiver request is limited solely to the services provided by ICI d/b/a EMI via its point-to-point microwave facilities.

[5] 47 C.F.R. § 1.1154; 1996 Fees Order at Appendix F, ¶ 31.

[6] 47 C.F.R. § 1.1154; 1996 Fees Order at Appendix F, ¶ 32.

[7] 1996 Fees Order at Appendix F, ¶ 32.

Notably, with regard to mobile services, the Commission has stated that it does not have the data necessary to structure a fee schedule in a manner that would protect resellers from double payments.[8] Thus, while mobile licensees pay fees assessed on the basis of mobile units or telephone numbers, resellers are not required to pay any fees whatsoever.[9]

Other point-to-point microwave licensees that use their frequencies solely for video and data distribution are not subject to separate fees based upon the revenues derived from their transport business.[10] In addition, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service ("MDS"), and Multichannel Multipoint Distribution Service ("MMDS") licensees are required to pay only the $155 per call sign fee.[11] This is especially noteworthy in the case of MDS and MMDS licensees, which provide "cable" service over their wireless facilities. In contrast to its treatment of ICI, the Commission has declined to assess both a call sign fee and a per-subscriber cable fee on these licensees.[12]

Similarly, as noted previously, mobile operators are not assessed revenues-based fees on top of the per-unit fees, although many mobile licensees, like ICI, are users of the

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[8] 1996 Fees Order at Appendix F, ¶ 14; 1995 Fees Order at ¶ 91.

[9] Id.

[10] See 1996 Fees Order at Appendix F, ¶ 31.

[11] Id.

[12] See id. at ¶ 56. Indeed, the Commission rejected the National Cable Television Association's ("NCTA") request that the MMDS fee be calculated on a per-subscriber basis instead of a per call sign basis. Id. It apparently was assumed by both NCTA and the Commission that MMDS operators would not, and should not, be subject to both fees.