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October 1, 1999

**VIA HAND DELIVERY**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
TW-A325  
Washington, D.C. 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *CS Docket No. 98-82 and MM Docket No. 92-262* /  
NOTICE OF EX PARTE COMMUNICATION

Dear Ms. Salas:

On September 30, 1999, undersigned counsel, on behalf of The Wireless Communications Association International, Inc. ("WCA"), submitted the attached letter to Marsha J. MacBride, Legal Advisor to Commissioner Michael Powell, regarding the above-captioned proceeding.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, an original and one copy of this notice has been submitted for filing.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,



Robert D. Primosch  
Counsel for The Wireless Communications  
Association International, Inc.

Enclosure

Copey

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September 30, 1999

**VIA HAND DELIVERY**

Marsha J. MacBride, Esq.  
Legal Advisor  
Office of Commissioner Michael Powell  
Federal Communications Commission  
445 12th Street, N.W.  
Washington, D.C. 20554

Re: CS Docket No. 98-82 and MM Docket No. 92-262

Dear Ms. MacBride:

Thank you for taking time out of your busy schedule yesterday to discuss the concerns of The Wireless Communications Association International, Inc. ("WCA") as to the impact of the Commission's cable horizontal ownership rules on program access. As you know, it is WCA's view that any relaxation of those rules and any corresponding increase in consolidation among the largest cable MSOs will create a substantial risk that cable's competitors will continue to be denied nondiscriminatory access to programming, to the ultimate detriment of American consumers. We appreciate having the opportunity to present WCA's perspective, and look forward to maintaining a continuing dialogue with Commissioner Powell's office on this extremely important issue.

During our meeting, you appeared to suggest that the statute governing cable horizontal ownership, Section 613 of the Cable Consumer Protection and Competition Act of 1992 (47 U.S.C. § 533), was adopted primarily to ensure that consolidation of ownership within the cable industry did not preclude market entry by programmers unaffiliated with the cable MSOs, and that the statute was not designed to ensure that cable's competitors would have nondiscriminatory access to programming. In that regard, I draw your attention to Section 613(f)(2), which lists seven non-exclusive public interest objectives which the Commission must consider when adopting its cable horizontal ownership rules. More specifically, Congress directed the Commission to, "among other public interest objectives," ensure that no cable operator or group of cable operators "unfairly impede . . . the flow of video programming to the consumer." 47 U.S.C. § 533(f)(2)(A).

Marsha J. MacBride, Esq.  
September 30, 1999  
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Further, in its *Second Report and Order* implementing the statute, the Commission acknowledged the close relationship between horizontal ownership and the ability of cable's competitors to acquire programming on reasonable terms and conditions. In so doing, the Commission quoted from its *1990 Cable Report*, in which it recognized that the high level of concentration among the cable MSOs raised the "question of whether MSOs (particularly the largest MSOs) have attained sufficient market power to extract unreasonable concessions from program suppliers and to unfairly restrain competition from alternative distribution services." *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 8565, 8571 (1993), quoting *1990 Cable Report*, 5 FCC Rcd 4962, 5005 (1990).

Accordingly, while it is certainly true that Congress adopted Section 613 to promote market entry by independent programmers, we believe it is also true that Congress adopted Section 613 to alleviate what the Commission has long acknowledged is the primary source of the program access problem, *i.e.*, the control that the largest MSOs have over distribution of multichannel video programming. For that reason, it is WCA's view that the program access issue can and should be accorded significant weight in the Commission's deliberations over whether the cable horizontal ownership rules should be liberalized at this time.

Should you have any questions or need additional information from this office on this matter, please do not hesitate to contact me directly.

Very truly yours,



Robert D. Primosch  
Counsel for The Wireless Communications  
Association International, Inc.