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FEDERAL COMMUNICATIONS COMMISSION

February 16, 2000

Royce Dickens
Cable Services Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation
In the Matter of Cable Home Wiring
CS Docket No. 95-184

Dear Ms. Dickens:

On December 7, 1999 at the request of the Cable Services Bureau, Common Carrier Bureau and Wireless Bureau, I met with Eloise Gore of the Cable Services Bureau, Carl Kandutsch of the Cable Services Bureau, Cheryl Kornegay of the Cable Services Bureau, Royce Dickens of the Cable Services Bureau, John Norton of the Cable Services Bureau, Joel Taubenblatt of the Wireless Bureau, Jeff Steinberg of the Wireless Bureau, and Vincent Paladini of the Common Carrier Bureau.

During this meeting I shared my views on the current trends and developments in the multi dwelling unit (MDU), cable television CATV, telephony and high speed data service (HSDS) industries as they interrelate with one another. The focus was on (1) current distribution technologies available for the delivery of these services to MDU properties, (2) the issues and strategies of MDU owners and MVPDs when negotiating service and easement agreements, and (3) current and pending rule making decisions by the Federal Communications Commission (FCC) effecting both MVPDs and MDU owners.

Discussions were held on the subject of how each of these currently or prospectively effect MDU owners, MDU residents and MVPDs. The provision of voice, video and data services and the aforementioned issues were also addressed with reference to all MVPDs, LECs, CLECs and ISPs as telecommunications market sectors currently or prospectively delivering bundled voice, video and data services.

These discussions were focused on MVPDs (MSOs –using in-ground cable plant for signal distribution, and PCOs –using SMATV, MMDS or DBS for signal distribution, wireless providers and ISPs specializing in the MDU market), addressing their provision of bundled services (voice, video and data) to MDU properties. These discussions elicited the effects of current and pending FCC rulings on the current and prospective competitive marketplace for the delivery of bundled services to MDU properties. The specific issues addressed were (1) Right to Access/Mandatory Access, (2) Exclusive Contracts, (3) Inside Wiring, (4) Perpetual Contracts, (5) Fresh Look and (6) the current forced access issue pertaining to wireless providers.

Mandatory Access

The historical logic of mandatory access as a regulatory vehicle to ensure the delivery of quality CATV services to all MDU residents, without interference from MDU owners was discussed. It was posited that mandatory access' becoming axiomatic to "competitive" or "quality" CATV service, given today's new technologies and multiple non-MSO MVPDs, is appropriate and prevents state legislatures from understanding that mandatory access is actually anti-competitive and an antiquated concept.

It was further posited that the premise of mandatory access is implied by MSOs as a regulatory necessity required to prevent MDU owners from keeping their residents from accessing "competitive" and "quality" CATV service by acting as "Gate Keepers," but that such a premise is both presumptive and deceptive. Multiple points of fact were discussed to establish that the "Gate Keeper" role is not a reality, as it is the MDU owner who suffers the greatest detriment if the CATV services are not competitive or quality services (unhappy residents = decreased occupancy = decreased revenue).

An explanation was offered to members of the meeting as to the origin of the "Gate Keeper" term as it relates to the MSO's argument in favor of mandatory access. This discussion detailed references to the ancillary income gained from agreements with PCOs and other competitive MVPDs, and how such business practices (owners developing sources of ancillary income) do not in fact, dictate an MDU owner's decision of the MVPD selected to serve a property, given the diminutive amount of revenue gained. This discussion was highlighted with mathematical models illustrating how the loss of a single, 12 month lease resulting from the non-renewal of such a lease due to noncompetitive CATV service, typically results in lost revenues that far exceed the gains derived from the property's comparative 12 month ancillary income generated by a CATV service and easement agreement. The information suggests that an MDU owner's primary selection of an MVPD is predicated on the MVPDs ability to deliver high quality, competitive products and services for the full term of the agreement, rather than revenue sharing, as the MVPDs failure to do so directly impacts the MDU owners core business.

Case studies were discussed to demonstrate that MSOs in mandatory access states frequently place MDU properties at a marketing and service disadvantage, since mandatory access prevents the entry of the MSOs principal competitors, PCOs and DBS SOs (collectively PCOs). Although many PCOs are technologically capable of delivering superior video programming and High Speed Data Services (HSDS) as compared to many MSO systems, they are unable to enter and compete in mandatory access states (in most cases), due to the economies of scale associated with dividing a property's customer base between the MSO and PCO.

In addition to discussions on the subject of ancillary income were discussions to establish the contradiction between mandatory access and competition between MSOs and PCOs. Case studies were used as anecdotal evidence to demonstrate that current arguments in the affirmative for mandatory access are contradictory to the competitive, free-market objectives set forth in the 1996 Telecommunications Act.

Using recent cases of bankruptcy among PCOs (CablePlus, OpTel SkyView, etc.) as examples of the deteriorating viability of competition, it was discussed that mandatory access serves as a catalyst in preventing PCOs from establishing a more dynamic and strong financial position from which to compete with MSOs. It was further discussed that in addition to the information submitted to the FCC from both PCO and MDU owner trade organizations, the current market condition of mergers and acquisitions among MSOs is serving to further increase the barriers of competition for PCOs.

The acquisition of multiple cable systems by single MSOs within a large geographic footprint, combined with recent bankruptcies of numerous PCOs and wireless companies, combined with the anti-competitiveness of mandatory access, serves only to insure the viability of MSOs, not PCOs. As such, it was posited to members of the meeting that if the FCC presented specific, strong, hortatory language affirming the anti-competitive effects of mandatory access, urging states to consider that mandatory access unnecessarily restricts adequate competition among MVPDs, such language would play a significant role in removing the barrier to competition among MVPDs in the MDU marketplace, but without requiring direct intervention by the FCC.

Exclusive Contracts

Insight was offered into the arguments of MDU owners, MSOs and PCOs regarding exclusive contracts. A discussion was held supporting the premise that MDU owners and PCOs should have the right to enter into exclusive contracts. It was suggested that while such a right may possibly be predicated on the MDU owner's 5th Amendment rights, the primary impetus is based on the standard business model of PCOs and their need for owner's to have the right to grant such exclusivity.

It was discussed the PCO business model requires exclusive access to the residents of an MDU property in order to attain and maintain a level of subscriber penetration sufficient to maintain adequate operating capital. This fact is based on the relative investment difference to be made on an individual MDU, compared between PCOs and MSOs, as the PCOs investment for system installation and maintenance are greater than that of the MSO. Information was presented to establish that a sustained penetration of 50-65% over a period of not less than seven (7) years is required by the PCO in order to recoup the costs associated with installing and maintaining a CATV system on an MDU property. Such penetration is not achievable for a PCO or MSO when competing on an MDU property.

Inside Wiring

It was discussed that the current Inside Wiring Ruling does not empower the owner to gain access to such wiring so as to facilitate competition among MVPDs on the property. Instead, the ruling places real, as opposed to theoretical control with the MSO. It was further discussed that the current practices of the inside ruling are to the antithesis of its original intention.

Originally intended to provide the MDU owner with the opportunity to secure ownership of the inside wiring for either (a) adding an additional MVPD service option to the property or, (b) selecting an entirely new MVPD, while also compensating MSO's for their investment, the ruling fails to recognize that except in extremely rare circumstances two MVPDs can not and will not co-exist on an MDU property. However, the two most significant deviations from the intent of the ruling are in its description of the inside wiring and of the MVPD versus owner's options within the ruling.

Based on its numerous definitions regarding the general inside wiring existing from twelve inches (12") outside of each building up to each MDU resident's cable outlet, the FCC has made it impractical for that portion of the wiring it allows to be removed, while at the same time leaving the inside wiring distribution system intact and operational (which is required by the ruling). By the very definition of the inside wiring, as well as the exact locations and technical solutions for removing such wiring, MSOs openly admit that the expense of such removal (as such removal must be followed by the restoration of the property) is both excessively expensive and impractical. As a result, to date, it does not appear that any MSO system in the United States is currently practicing the removal of the inside wiring. However, the provision of the option for MSOs to threaten removal has unfavorably weighed in the MSOs benefit, and to the detriment of increasing competition. Such leverage is used as a negotiations tool and works from the owner's concern of having the wire removed.

It was discussed that MSOs can take advantage of unknowledgeable MDU owners in their negotiations for new service contracts, using this ruling. As only a small percentage of MDU owners are either aware or understand the ruling, an MSO's discussion of the removal process and its disturbance to residents creates concern among owners. As it is difficult for most owners to perceive or understand the impracticality of an MSOs removal of the wiring, or of the property being post wired by a competitive provider after such removal, they are in most cases, persuaded to simply enter into a new agreement with the incumbent MSO, without researching competitive options.

In addition to the MDU owner's concern over the idea of having wiring ripped from inside the building, disrupting both the residents and property aesthetics, owners are also confronted with wiring upgrade issues by MSOs. As illustrated in the attached letters, owners are often times presented with the threat of discontinuation of service to the property should they not enter into a new agreement with the MSO. MediaOne, as the case study discussed and as the author of the attached letters, have represented to owners for the past twelve (12) to twenty-four (24) months that the attached letter will go to the residents of the property should the owner not enter into a new agreement with MediaOne. As the "upgrade" refers to upgrading the cable system to digital video and HSDS, MediaOne lets the owner know that their "present system will not be able to support the new channels and services upcoming on [their] new system. Additionally, the new channel alignment means that some of [your] customers will no longer receive services and channels they've been enjoying".

The letter to the owner continues by saying that a separate letter "will be sent to [their] residents within the next ten (10) days." After reading about the several wonderful things offered from the new cable system, the resident's letter states "...expanded service will be enhanced to include services up to channel 63, however you may not be able to receive some channels above 54 due to the existing cable wiring. MediaOne may be unable to correct this difficulty without an agreement from your property owner." This statement is predicated by the letter stating "MediaOne ... has worked diligently over the past several months to renew our cable access agreement with [property name]. This ... agreement insures that we can continue to serve you with cable service into the future."

Allowing the MSO to have the right to elect for the removal of the inside wiring upon receiving a notice of termination from the owner, before first allowing the owner to have the option to purchase the wiring, does not produce the result originally intended by the ruling and as such, provides support for the argument of rewriting the inside wire ruling.

While the essence of the ruling is to provide compensation to the MSO for its investment in the wiring in the case where an MSO's right to serve is no longer enforceable, the current ruling overly empowers MSO's during their attempts to acquire a new or extended agreements. By rewriting the ruling to state that upon termination of the existing Services and/or Easement Agreement on an MDU property, as opposed to its current termination provision which is based on the legally enforceable right of the agreement (which is protected by current mandatory access laws in several states), at the owner's election, the owner can first elect to purchase the inside wiring (based on the current provisions guiding such purchase). In this case, the ruling would continue to provide compensation to the MSO for its cost of the wiring, as well as open the market for further competition. Additionally, it will effectively remove the predatory and unfair practices of MSOs using the apparently unrealistic threat of removing the wiring.

To assist in this process, it would be necessary to define inside wiring as all wiring and its appurtenances from twelve inches (12") outside the building to each outlet for the practical reasons of attaching an MVPD, other than the MSO and keeping the "inside wiring" operational.

Perpetual Contracts
It was discussed that the nature of perpetual contracts precipitate the same net effect as does mandatory access. Where an MSO is currently providing service under a perpetual contract, for the same reasons stated under the discussion of "mandatory access", PCOs are unable to compete. As such, the owner is prevented from selecting a service that may in many cases be superior to the existing MSO cable system. The MSOs insistence that both mandatory access and perpetual contracts are predicated on their ability to provide superior service to the PCO, is made false by the fact that many MSO cable systems are still operating at the 350 MHz or slightly higher level. In many cases, MSO systems have contractually obligated themselves to upgrading their systems but have not done so, for 24 to 36 months.

As the Cable Competition Report fails to survey the status of existing cable systems and their ability to provide digital video service or high speed Internet access, it is difficult to determine the status of MSO cable systems and their digital capabilities on a percentage basis. However, depending on the DBS model selected by a PCO and its HSDS alliance, PCOs are often times capable of directly competing with an MSO's service, or exceeding it in areas where the MSO's cable systems have not been upgraded. This is of significant importance to the owner as it provides a competitive marketing edge within an already competitive marketplace for MDU properties. It provides the ability to facilitate such competition among MVPDs, which is the essence of the Telecommunications Act. As discussed above, since competition can not take place in the presence of a perpetual contract being enforced by the MSO, such a contract is as equally effective as mandatory access.

As owners continue to present that mandatory access should not be forced upon them for 5th Amendment rights and other reasons discussed above, and MSOs continue to argue that perpetual contracts should not be removed for the same reasons, the FCC must search for middle ground on this issue.

Middle Ground

By enforcing a "Fresh Look" period, the FCC would facilitate a new competitive opportunity for both the PCO and MSO to submit proposals to MDU owners. In the case where MSOs are truly more competitive and providing higher quality services as is stated in their arguments for mandatory access, then the current marketplace indicates that MDU owners will elect to enter into agreements with MSOs. However, in cases where MSOs are not providing more competitive or higher quality video and HSDS services, the current marketplace indicates that owners will elect to enter into an agreement with the PCO. By virtue of creating this Fresh Look period, the FCC would be facilitating true competition among MVPDs within the MDU marketplace.

During the meeting it was discussed that while there is controversy among various trade organizations as to the length of time Fresh Look should occur, the discussions were based on a 36 month period. While some members of the meeting felt that such a period should be for only three (3) to six (6) months, it was discussed that such a time frame fails to recognize that it takes a significant amount of time for MDU owners at large, even with the educational assistance of their trade organizations, to both learn of and understand any rulings made by the FCC effecting the business of their properties. The reasons tendered for the minimum 36 month time requirement were to (a) inform and educate the MDU marketplace, (b) research and develop competitive service options, (c) issue RFPs to viable candidates, (d) receive, review and compare proposals, (e) eliminate and select one (1) to two (2) providers for final negotiations, (f) negotiate final terms of agreement, (g) satisfy the legal requirements for contract language of both owner and provider, (h) acquire lenders consent, (i) have both parties sign and retain original copies of the agreement, and (j) record such easement or agreement. In the highest percentage of contracts required between an owner and MVPD, each of these requirements must be met.

Further, it was discussed that should perpetual contracts be ruled as no longer enforceable and a Fresh Look period established, both MSOs and owners must be required to respond to each stage of the proposal and contract negotiation phases within a specified time frame. The failure to respond within such a time frame should result in the owner's election to eliminate the MSO from the negotiation process. Should such a provision not be made, current market practices of MSOs indicate that strategies to stall the process will be deployed to a point in time in which the Fresh Look period will expire.

Currently, if an MDU owner wishes to remove a perpetual contract from a property, he or she may be able to do so, but only with the incumbent MSO. It is now common practice throughout the marketplace for all MSOs to agree to negotiate new contracts with owners, with fixed term, replacing existing perpetual contracts. However, while this fact may seem to eliminate the need for concern by the FCC regarding perpetual contracts, the reality is that this is simply a posturing strategy by the MSOs to establish the perception they are in the process of eliminating perpetual contracts. The market reality is that such perpetual contracts are routinely held by MSOs as a predatory and unfair tool for influencing owners to write new agreements with the MSO. Unless perpetual agreements are ruled unenforceable by the FCC, the MDU owner and its residents will not have access to often times more competitive and quality services.

Forced Access - Wireless

During the meeting it was discussed that there are a number of specific reasons for not permitting mandatory access to wireless service providers (currently under review by the FCC), other than a property owner's 5th Amendment rights. To date, several wireless companies have failed to make a sufficient business case for insuring their financial survival. During the past 12 to 24 months, companies such as Heartland Wireless, CS Wireless, CAI Wireless, and The Beam have all either filed bankruptcy or ceased to operate. In each of these cases, MDU owners were harmed by these companies' failure to fulfill the obligations of the service and easement agreements entered into with MDU owners. Additionally, while the wireless industry suggests that property owners are serving as barriers to their ability to create new competition within the voice, video and data marketplace, these statements are void of the facts surrounding the owner's concerns and are untrue.

Other than property aesthetics, liabilities associated with the presence of wireless dishes and towers, and 5th Amendment rights, it was discussed that the owner's greatest concerns are grounded in the various wireless provider's ability to consistently deliver competitive and quality services for the term of an agreement. These concerns have evolved out of either the wireless technology's or wireless companies' failure to consistently deliver such competitiveness and quality, to date.

It was posited to members of the meeting that given the wireless industry's failure to deliver competitive and quality services, even in the environments where it had already established its wireless loops and customer base, in addition to the excessive bandwidth already available from numerous fiber optic networks, it addition to the latest Advanced Services Ruling allowing DSL providers to compete with the LEC's ADSL service, in addition to Open Access with cable systems, in addition to the strengthening position of companies such as DirecTV and Echostar and finally, in addition to increasing and significant market penetration by CLECs, granting forced access rights to wireless providers based on significant historical evidence will serve to only further expose owners to financial losses associated with decreased occupancy on their properties. Additionally and more importantly, such forced access can only serve to further expose unknowing consumers to the presence of a company who if they fail to deliver as they have in the past, will result in other than the positive experiences hoped by the FCC.

In concluding on this issue, it was posited that the FCC may find itself in a difficult position in granting forced access to wireless providers, as similar arguments and requests for such access will be made by MSOs, LECs, CLECs and ISPs where such companies are not currently protected by a form of forced access. This, in concert with the high number of emerging CLECs and ISPs creates sufficient concern that wireless services will not be able to gain adequate market share to insure long term survivability.

Summary Discussion

The meeting ended with a detailed discussion of how the above-mentioned issues will effectively serve to create greater competition among MVPDs within the MDU marketplace.

1. In ruling existing and future perpetual contracts between MVPDs and MDU owners as unenforceable, but in granting the Fresh Look period, the FCC will serve to further facilitate competition among MVPDs within the MDU marketplace. MSO trade organizations will argue that the ruling of perpetual contracts as unenforceable is similar to the MDU owner's argument that mandatory access violates 5th Amendment rights. However, the MSO argument is rendered based on the premise that the current market practice of MSOs in general is already to eliminate some perpetual agreements, exchanging them for new contracts of three (3) to ten (10) year terms. Additionally, MSOs will argue that such a ruling is not necessary, as they are currently removing perpetual contracts without enforcement from the FCC. However, this argument is rendered moot on the premise that their current market activity only benefits the incumbent MSO and does nothing to facilitate competition among MVPDs in the MDU marketplace.

2. By rendering perpetual contracts unenforceable and granting a Fresh Look period, all such agreements whether in mandatory or non-mandatory access state will be effected. As such, perpetual contracts in even mandatory access states will need to be renegotiated. The current market practices of MSOs in either a mandatory or non-mandatory access state, where they are placed in the position of having to negotiate a new contract (i.e. new construction), shows that such agreements are more equitable to both parties. MSOs would be insighted to negotiate such an agreement, with perpetual contracts becoming unenforceable, since having exclusive access to the inside wiring for the provision of service is of a significant financial advantage. This is evidenced by previous MSO activity in buying out their competition on MDU properties where there is a private cable system operated by either the owner or its subcontractor.

3. In amending the inside wiring ruling as discussed, the FCC reestablishes the original intent of the ruling, which was to both compensate the incumbent provider for its investment in the wiring should it not be selected to continue the provider on the property, and to foster the environment required for MDU owners to consider a competitor MVPD.

4. In amending the inside wiring ruling to become effective upon the termination or expiration of the agreement, as opposed to when the agreement is no longer legally enforceable (since the easement portion of the agreement is perpetually legally enforceable in a mandatory access state), the anti-competitive effects of mandatory access will become significantly weakened. In the event that an agreement in a mandatory access state has a specific term that expires, while mandatory access will enforce that the incumbent MSO will be able to remain on the property, the new language of the ruling will provide the MDU owner with the opportunity to at least consider viable competitive services should it become more economically feasible for such services to exist in the future.

   The differences between an agreement with an MSO in a mandatory versus non-mandatory access state, in terms of the contract language specifying competitiveness, service, quality and pricing are significant. Finally gaining access to the inside wiring provides the owner with at least the ability to consider attaching other services to the inside wiring in the future, should the MSO not be competitive, and should such competitive services become more economically feasible in the future.

5. By writing strong, hortatory language regarding the anti-competitive effects of mandatory access, amending the inside wire ruling, granting both MVPDs and MDU owners with the right to enter into exclusive agreements, and finding existing and future perpetual contracts unenforceable, the FCC will significantly increase the competitive opportunities within the MDU marketplace for all MVPDs. By providing strong, hortatory language against the anti-competitive nature of mandatory access, the FCC will also serve to give direction to state legislatures in their review of such access, as well as objective comments for their discussions with MVPD and MDU owner lobby and trade organizations.

6. As previously discussed, amending the inside wire ruling also restores the original intent of the ruling, but does so without taking anything away from the MSO that which was previously granted.

7. Finding existing perpetual contracts unenforceable, while at the same time granting a Fresh Look period for re-negotiation serves to open up the opportunity for MVPD competition without modifying the existing business plan of MSOs, as MSOs are currently re-writing perpetual contracts, (although this does not serve to increase competition).

8. Allowing exclusive contracts between an MDU owner and an MVPD serves to benefit both the MSO and the PCO. And as discussed, the owner's first interest is in the satisfaction of its residents since rental income exponentially exceeds any value of ancillary income derived from CATV service agreements. As such, MDU owners are motivated to select the best provider for a property, rather than select the provider for its ancillary income opportunities. This business logic largely protects residents from what MSOs lobby against as harmful exclusive contracts with PCOs.

By: ______________________

Larry Kessler
InteliCable

MediaOne
This is Broadband. This is the way.

RETURN RECEIPT REQUESTED

Dear Mr.

MediaOne, formerly Wometco and GCTV, has been working hard over the past several months to renew our cable access agreement with . We have not yet received an agreement from you to continue servicing your property.

As you know, we are currently in the process of installing a new fiber optic telecommunications system throughout Atlanta, which will enable MediaOne to bring exciting new services to your residents. We will need to make a significant capital investment in the wiring and electronics at your property. With our commitment to provide this capital investment, we require a new agreement to allow us to upgrade your property to meet the new standards of a 750 Mhz, two way interactive system.

This upgrade will enable your residents to receive expanded basic cable services and additional screens of premium services for the same monthly rates. We will also offer expanded pay-per-view services and new money-saving packaged pricing options. Plus, in the very near future, MediaOne will provide high quality, local telephone service and high-speed Internet access for your business and your residents.

Should our Rebuild Department bypass your property, your residents will not have access to many of our new products. Your present system will not be able to support the new channels and services upcoming on our new system. Additionally, the new channel alignment means that some of our customers will no longer receive services and channels they've been enjoying.

When our new services are activated in your area, and if no action is taken regarding a renewal agreement for this property, the service provided to the residents of will be limited to approximately 60 channels. A separate letter (see attached sample) will be sent to your residents within the next ten (10) days.

Please contact me at your earliest opportunity to further discuss the prospect of bringing exciting new services such as increased expanded basic line-ups, more premium channels, additional Pay-Per-View movies, and future service such as interactive banking, shopping, video games, competitive phone service, and high speed Internet access to your residents; our customers.

I can always be reached in the office. Thank you and I look forward to speaking with you soon.

Date

Dear (Property Name) Resident:

MediaOne, , has worked diligently over the past several months to renew our cable access agreement with (Property Name). This right-of-access agreement ensures that we can continue to serve you with cable service into the future. It also means the availability of many new, exciting services such as: a new basic cable service, additional optional service packages, more screens of premium service for the same monthly rate, and new, money saving packaged pricing. In the very near future (in some cases right away) MediaOne will provide high quality local telephone service and high-speed Internet access at reduced rates.

As you may know, we are currently installing a new fiber-optic telecommunications system throughout metropolitan This new system is already bringing many new cable service options to your neighbors in adjacent communities. Unfortunately, we will not be able to bring these new services to the residents of (Property Name) until we reach an access agreement with the owners of your apartment complex which will allow MediaOne the opportunity to upgrade the existing cable wiring in your community. This upgrade will transform your cable system into a new network capable of delivering clear, reliable cable services in addition to the enhanced services mentioned previously.

This means the current wiring in your community will not be capable of distributing the full expanded line-up of cable services now being provided in your area. The delivery of broadcast reception service will remain unchanged. Expanded service will be enhanced to include services up to channel 63, however, you may not be able to receive some channels above 54 due to the existing cable wiring. MediaOne may be unable to correct this difficulty without an agreement from your property owner.

Optional services like HBO and Showtime will continue to be available, however, premium services cannot be delivered with inadequate internal wiring. This same delivery difficulty will hold true for the expanded 14 channel pay per view line-up which cannot be delivered on the wiring system within your community.

We value you as an existing cable customer and would like to deliver enhanced cable services in addition to a broad new array of communications and information services of the future. We will continue to work with the management of your community to obtain an agreement which will allow MediaOne to provide our new enhanced service to your community. We apologize for any inconvenience this may cause you.

Sincerely,

Competitive Service Issues

- MSO (multisystem operator)
- LEC (local exchange carrier)
- CLEC (competitive local exchange carrier)
- Wireless
- DBS
- Local ISP Network Reseller

Gatekeeper Fallacies

- 280 Unit Property
- 95% Occupancy = 266 units
- Average Cable Penetration = 65%
- 172 units
- Average Cable Bill = $35
- Gross to Cable Company = $6,020/month
- Average Rev. Share = 6-12%
- ($6,020) x (12%) = $722.40/month

Rental Income

- 280 units
- 95% occupancy = 266 units
- Average Rent $750
- Rental Income = $199,500/month

Rental Income v. Revenue Sharing

Revenue Sharing

- $722.40/month
- $8,668/year

Rental Income

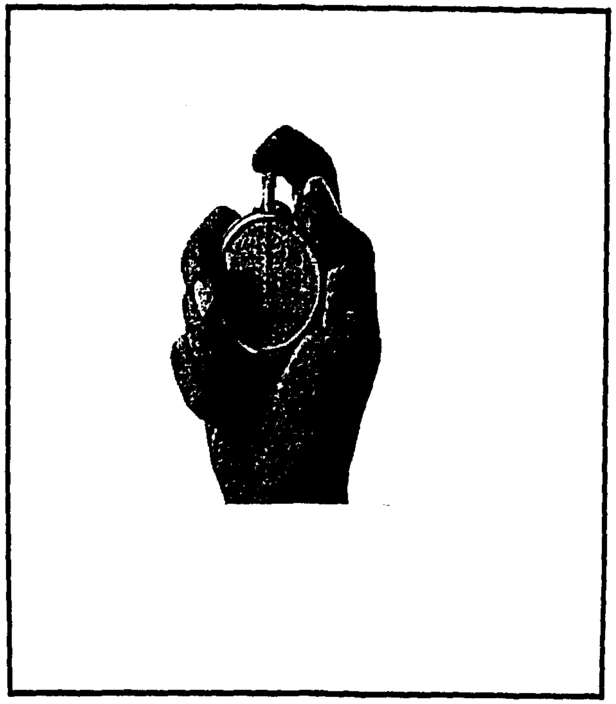
- $199,500/month
- 12 month Lease
- $9,000/year

$722.40 v. $199,500

($722.40/199,500) x 100 = 0.4%

Leveling the Playing Field

- Grandfather: 10 years (consistency)
- Fresh Look: 36 months
  - adequate notification to marketplace
  - Research
  - Request for Proposals
  - Proposal Evaluation
  - Terms Negotiation
  - Language Negotiations
  - Signature (Both Parties)



Facilitating Competition

- Eliminating perpetual contracts limits negative effects of mandatory access
- Eliminating perpetual contracts restores and opens up marketplace
- Changing inside wire ruling voids negative effects of mandatory access
- Changing inside wire ruling returns balance
- Exclusive contracts provide a win-win
- Strong language against mandatory access only <u>encourages</u> change