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February 19, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY COURIER**

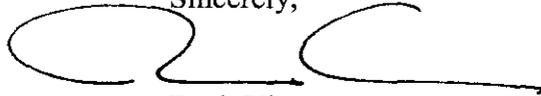
William F. Caton, Acting Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **Notice of Permitted Ex Parte Contacts, GN Docket No. 00-185**

Dear Mr. Caton:

The purpose of this letter is to advise the Commission of permitted *ex parte* contacts in the above-referenced proceeding. On February 19, 2002, Curt Shaw, Marvin Rappaport, and Paul Glist on behalf of Charter Communications had separate meetings with Catherine Bohigian (Office of Commissioner Martin); Stacy Robinson and Matthew Brill (Office of Commissioner Abernathy); Susan Eid and Marsha MacBride (Office of Chairman Powell); and Susanna Zwerling (Office of Commissioner Copps) to discuss the matters summarized in the attached handout.

Sincerely,



Paul Glist

Enclosure

cc: Curt Shaw  
Marvin Rappaport  
Catherine Bohigian  
Stacy Robinson  
Matthew Brill  
Susan Eid  
Marsha MacBride  
Susanna Zwerling

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## CHARTER COMMUNICATIONS

Ex Parte GN Docket No. 00-185

February 19, 2002

- ❖ If the FCC rules that internet-over-cable is an “information service,” and says nothing more, then:
  - LFAs are already positioning to challenge the right of cable operators to deliver “non”-cable services.
  - LFAs are readying demands in the franchise transfer context that cable operators enter in to new franchise agreements for “information services.”
  - LFAs are preparing a refrain to the market-by-market litigation over Section 253 “franchises,” but without even the guidance that the FCC had offered in *Troy*.
  - Potential for inconsistent court rulings.
  - Potential for proliferation of franchise fee litigation by plaintiffs bar and by LFAs.
  - Potential to delay the rollout of broadband access.
  - The LFAs are attempting to use the public rights of way to erect barriers to “information services” in the same way that pole owners attempted to misuse the pole.
- ❖ Just as the Supreme Court ruled in *Gulf Power* that a cable system remains a cable system (on the pole) even when it carries information services, under the Cable Act a cable system remains a cable system (in the right of way) even when it carries information services.
  - Information services are expressly permitted to ride on cable systems under Title VI.
    - H. REP. 98-934, 98<sup>th</sup> Cong., 2d Sess. 44 (1984) (“[C]able operators are permitted under the provisions of Title VI to provide any mixture of cable and non-cable service they choose. . . . A facility would be a cable system if it were designed to include the provision of cable services (including video programming) along with communications services other than cable service.”)
    - *Heritage Cablevision Assocs. of Dallas, L.P. et al v. Texas Utils. Elec. Co.*, 6 F.C.C.R. 7099 (1991), *recon dismissed*, 7 F.C.C.R. 4192 (1992), *aff’d*, *Texas Utils Elec. Co. v. FCC*, 997 F.2d 925 (D.C. Cir. 1993).
  - LFAs are expressly forbidden to regulate information services on cable systems.
    - § 544(a) (franchising authorities “may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with [Title VI]”)
    - § 544(b)(1) (franchising authority may not “establish requirements for . . . information services”).
  - No franchise may overrule that existing federal law.
    - § 541(a)(2) (“any franchise shall be construed to authorize the construction of a cable system over public rights-of-way,” without limitation on the services to be provided) (emphasis added)
- ❖ This information service is a normal part of the complement of services on a cable system (like an interactive program guide)

- ❖ Recognition that adding an information service to a cable system does not create new franchising requirements is also consistent with:
  - The policy of Section 706, where Congress encouraged broadband deployment.
  - Congress's directive to avoid regulation of the Internet, § 230(b)(1), (2)
  - Need to treat information service providers equally. Example: LFAs do not regulate 1-900 services, even though they are carried over facilities already authorized to use the rights of way. LFAs do not "franchise" other ISPs.
- ❖ FCC should express these legal conclusions:
  - This information service is delivered via a cable system. The "telecommunications" component is cable, rather than a "telecommunications service."
  - Cable modem Internet access service is interstate
  - We should not expect additional franchise requirements or fees.