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March 25, 2003

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 02-52; GN Docket No. 00-185

Dear Ms. Dortch:

On March 24, 2003, Robert Schwartz on behalf of the Consumer Electronic Retailers Coalition and the undersigned, representing the Cable Modem Coalition, met with Catherine Bohigian, Legal Advisor to Commissioner Martin; Stacy Robinson, Legal Advisor to Commissioner Abernathy; and Sarah Whitesell, Legal Advisor to Commissioner Adelstein; and on March 25, 2003, we met with Jordan Goldstein, Senior Legal Advisor to Commissioner Copps. During the meetings, the parties emphasized the following points made in prior written submissions to the Commission by one or both of the parties:

- The Commission's success in promoting cable broadband will depend in part on the choice that consumers have for cable modems. The potential exists for a competitive retail market for cable modems, but Commission action is needed or else the cable modem market will become as restricted as the market for set-top boxes.
- Cable operators' pricing and certification practices can constrain development of a retail market, and that stifles innovation and harms consumer choice for cable broadband devices. The Cable Modem Coalition has submitted evidence showing how in particular cases cable operators have altered their pricing policies to unlawfully subsidize cable modems.
- Cable operators have demonstrated since 1998 that they can use their power to retard competitive entry, unless and until countervailing power or authority is brought to bear. An efficient way is for the Commission to reform its regulations

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so as to remove these obsolete and arbitrary elements of the deregulated industry's power over competitive entrants.

- The Commission should adopt a rule in this proceeding promoting consumers' right to select and use their own cable modem device without financial penalty. The rule would be enforced by a complaint mechanism in which the complainant would have to make a prima facie showing that the cable operator is subsidizing the cable modem.
- The proposed anti-subsidy rule is entirely consistent with the Commission's stated goals in the *Notice* to promote cable broadband.

The parties also distributed the attached hand-out.

Please direct any questions to the undersigned.

Sincerely,



Gerard J. Waldron

cc: Ms. Catherine Bohigian
Ms. Stacy Robinson
Ms. Sarah Whitesell
Mr. Jordan Goldstein
Ms. Barbara Esbin
Ms. Linda Senecal
Robert S. Schwartz, Esq.

Cable Modem Coalition

(excerpt from August 6, 2002 Reply Comments)

- In May 2002, AT&T Broadband announced a rate hike in which customers who own cable modems would pay an additional \$7 per month, while those customers who lease cable modems from AT&T would face no fee increase. Customers who lease their cable modems from AT&T would continue to pay \$45.95 per month, but only \$3 — down from \$10 — would be attributable to the cable modem rental fee. Thus, cable modem owners saw their fees rise \$7 per month, from \$35.95 to \$42.95.
- In late April 2002, Mediacom — a cable operator in the Springfield, Missouri region — increased its rates for cable modem owners by \$11, from \$29.95 per month to \$40.95 per month. Customers who rent cable modems from Mediacom saw their rates go up by only \$6, from \$39.95 to \$45.95. In other words, the monthly credit to cable modem owners went down from \$10 to \$5.
- In September 2001, Comcast raised the fees paid by cable modem owners by \$9, from \$25.95 per month to \$34.95 per month. In contrast, fees paid by customers who rent cable modems from Comcast went up by only \$7. Thus, the credit to cable modem owners went down from \$7 to \$5 per month.
- Time Warner Cable, meanwhile, continues to subsidize cable modems completely, offering *no discount* to subscribers who supply their own cable modems.