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September 27, 2006

VIA ECFS

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

Re: MB Docket 05-311 – Ex Parte

Dear Ms. Dortch:

On September 26, 2006, Jack Day of SureWest Communications and I met with Ms. Heather Dixon, Legal Advisor on Media Issues for FCC Chairman Martin. The parties discussed the matters in the attached document.

Please contact me if you have any questions or need further information.

— Sincerely,



Paul J. Feldman
Counsel for SureWest Communications

cc: Heather Dixon, Esq.

PRESENTATION OF SUREWEST COMMUNICATIONS
on
MDU EXCLUSIVE ACCESS AGREEMENTS

9/26/2006

- SureWest: 90 years of providing service in Northern California, now including voice, DSL and fiber-based broadband data services, as well as digital multichannel video ("MV") services over a number of different IP platforms using different technologies. SureWest Broadband provides fiber-to-the-home MV services with over 260 channels, as well as advanced video-on-demand and pay-per-view features. MV services are typically marketed as part of a package of services that includes voice and broadband data services ("Triple Play"). Currently, over 17,000 customers take MV service from SureWest, either alone or in combination with other services.

-The Commission has previously recognized the anti-competitive implications of exclusive access contracts, but has failed to take action at that time because it believed that there was "insufficient evidence in the record as to "the extent to which exclusive contracts have been utilized" as well as whether "such contracts have thwarted alternate providers' entrance into the MDU market...."

SureWest's experience:

-MDU exclusive contracts bar SureWest from serving over 25% of the MDU units that its network passes

-Exclusive contracts are primarily held by the incumbent in SureWest's service area -- Comcast. The attached spreadsheet lists MDUs that SureWest has attempted to provide service to in the last two years, where service was blocked by a Comcast exclusive access agreement.

-It is **good policy** for the Commission to address MDU access at this time:

-*NPRM* notes that greater competition in the MVPD market is a primary goal of federal communications policy

-Changes since the FCC last looked at the issue:

1. use of **IP technology** which can provide unique and new services to consumers, if only the provider is allowed access
2. Greater **packaging** of MV services with voice and data services resulting in greater potential price savings for consumers
3. Increased **consolidation** in the MVPD industry, with likely result that more exclusive access contracts are held by incumbents

-The Commission has the **legal authority** to regulate MDU exclusive access agreements, including:

1. **Sections 4(i) and 303(r)** of the Communications Act. These provisions authorize the Commission to perform any and all acts, and make such rules and regulations not inconsistent with the Communications Act, as necessary to carry out the Commission's functions and/or the provisions of the Act. **Section 601(6)** of the Act states that one of the purposes of Title VI is to "promote competition in cable communications." The Commission previously relied on these provisions to authorize rules governing the transfer of inside wiring among MDU owners and MVPDs,¹ an issue related and similar to that of contracts for service in MDUs. Authority under Sections 4(i) and 303(r) could be combined with the goal of competition in MV services expressed in **Section 621(a)(1)**. Also, to the extent that incumbent MVPDs use public rights-of-way ("ROWs") or compatible easements within an MDU, **Section 621(a)(2)** suggests that any other cable franchisee has a right to use those ROWs or easements to serve that MDU, and the Commission could act to ensure that right.

2. **Section 628(a)** states that one purpose of that Section is to "spur the development of communications technologies." **Section 628(b)** prohibits cable operators from engaging in practices, "the purpose or effect of which is to hinder significantly or to prevent" any MVPD from providing satellite delivered programming to consumers. **Section 628(c)** specifies only the "minimum" regulations required to fulfill Congressional policy. Additional regulations are thus authorized.

3. The Commission has already ruled that it has broad authority to regulate cable home wiring and home run wiring under **Section 623** and that its "home run wiring disposition procedures, by facilitating MVPD competition, are an appropriate and reasonable method of fulfilling Section 623's mandate" that basic service rates be reasonable.² Given the lack of MVPD competition resulting from MDU exclusivity contracts, there is a similarly close nexus between MDU exclusive contracts and basic tier rates, and thus equal or greater authority to regulate under Section 623.

¹ Cable Home Wiring, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659 (1997), at paras. 83-101, 218.

² Cable Home Run Wiring, First Order on Reconsideration and Second Report and Order, 18 FCC Rcd 1342 (2003) at note 10.

MDUs With Existing Agreements/Exclusives

<u>Area</u>	<u>Complex Name</u>	<u>Units</u>	<u>Provider</u>
Roseville	Slate Creek @ Johnson Ranch	612	Comcast
Roseville	Carmel @ Woodcreek West	222	Comcast
Roseville	Rosemeade	465	Comcast
Roseville	Preserve @ Creekside	336	Comcast
Roseville	Pinnacle Galleria	236	Comcast
Roseville	Heritage Park	328	Comcast
Roseville	Coventry Park	244	Comcast
Roseville	Bridges @ Woodcreek Oaks	185	Comcast
Sacramento	Lincoln Place	100	Comcast
Natomas	Laurel Oaks	520	Comcast
Natomas	Seasons @ Winter Park	384	Comcast
Sacramento	The Summit	220	Comcast
Sacramento	Emerald Place	204	Comcast
Sacramento	Oak Pointe	216	Comcast
Roseville	Quail Ridge	200	Comcast
Sacramento	River Terrace	347	Comcast
Roseville	Terraces @ Highland Reserve	273	Comcast
Sacramento	Homecoming @ Creekside	450	Comcast
Sacramento	800 J Lofts	225	Comcast
Roseville	Foothills Tennis Village	268	Comcast
Sacramento	Miramonte Trovas	440	Comcast
Elk Grove	Agave	188	Comcast
Elk Grove	Jasmine	154	Comcast
Roseville	Stone Ridge	230	Comcast

MDUs With Existing Agreements/Exclusives

Roseville	Crocker Ranch	131	Comcast
Sacramento	Tamaron Ranch	796	Comcast
Sacramento	Villagio	272	Comcast
Sacramento	Adagio	224	Comcast
Antelope	Arlington Creek	131	Comcast
Sacramento	Broadstone at Strawberry Creek	268	Comcast