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Federal Communications Commission
Office of the Secretary

August 24, 1981

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TARIFF DIVISION

* ADMITTED IN CALIFORNIA AND ARIZONA

Mr. Bertram Weintraub
Pole Attachment Branch
Federal Communications Commission
Room 516
1919 M Street Northwest
Washington, D.C. 20554

Re: American Cable Television Association
and American Cable Television v.
Arizona Corporation Commission, et al -
Arizona Supreme Court Cause No. 15597;
Cablecom v. F.C.C. - File No. PA-81-0039;
and American Cable Television v. A.P.S. -
File No. PA-81-0031

Dear Mr. Weintraub:

This correspondence will probably reach you upon return from your vacation and we hope you had an enjoyable rest. Subsequent to the Arizona Corporation Commission's ("A.C.C.") assertion of jurisdiction over the CATV Industry pole attachment in Arizona, we were advised that counsel on behalf of the Arizona Cable Television Association communicated with the Federal Communications Commission ("Commission") objecting to the A.C.C.'s order and notifying the Commission that litigation was anticipated on the issue. Although A.P.S. is directly involved in the above matters before the Commission, no notice or copy of the correspondence was provided to us or our client. We find no authority for this ex parte communication in the F.C.C.'s rules.

We wish to take this opportunity on behalf of Arizona Public Service Company to reply to a letter delivered to the Commission on or about July 30, 1981 from Mr. Stuart F. Feldstein of the law firm of Fleischman and Walsh, P.C. and advise as to the status of the litigation. In that letter, Mr. Feldstein erroneously concludes that the July 23rd A.C.C. letter was inadequate. It is clearly, by its terms and on its face, notification from the Chairman of the A.C.C. on its behalf that the A.C.C. is authorized under Arizona law to regulate the rates, terms and conditions for pole attachments to facilities of public service corporations and in so doing,

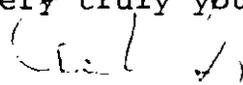
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has the authority to consider and will consider the interests of the subscriber of cable television services. This is, in its entirety, in compliance with Section 1.1414(D). In addition, on August 12, 1981, Mr. Tims supplemented his letter on behalf of the Commission.

The Arizona Cable Television Association, Cablecom-General, Inc., and American Cable Television filed a Petition for a Writ of Special Action with the Arizona Supreme Court on August 6, 1981. Consistent with the letter referred to above, there was no notice to Arizona Public Service Company of the filing, nor were they named as a party wherein the Cable Television Industry sought to obtain an order from the highest court in this jurisdiction to enjoin the Arizona Corporation Commission from asserting its jurisdiction over pole attachment rates, terms and conditions. A.P.S. was fortuitously advised of the suit approximately 20-25 minutes before an injunction hearing was scheduled before Arizona Supreme Court Justice Hays. Justice Hays heard lengthy oral arguments relative to the merits of the CATV petitioners' request for injunctive relief. At the end of that time period, Justice Hays concluded that there was no showing of any irreparable harm and denied the request for injunctive relief to preclude the A.C.C. from asserting jurisdiction as per its July 23, 1981 letter to the Commission. A.P.S. has filed a request to intervene in the suit. That request has been granted and a memorandum in support of the position of A.P.S. will be filed with the Court. The matter is currently set for further argument to Arizona's Supreme Court on September 15, 1981.

We wish to advise you as to the status of this matter and in the event you have any questions, please do not hesitate to contact us.

Very truly yours,


CHARLES W. HERF

CWH/pkj

cc: Stuart F. Feldstein, Esq.
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