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Wednesday, May 24, 2000

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

- C. Closed in accordance with restrictions contained in donor's deed of gift.
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- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

new per

NH

THE WHITE HOUSE

WASHINGTON

May 24, 2000

copied
Berger
NSCWW
Desk

M. Nakamura
President and Chairman of the Board
Daiwa Steel Tube Industries Co., Ltd.
Nakanoshima Center Building, 22nd Floor
6-2-27 Nakanoshima
Kita-Ku, Osaka 530
JAPAN

Dear Mr. Nakamura:

Thank you for your letter and for your kind words.

I do hope to see you while I'm in Japan this summer and have forwarded your request to the appropriate members of my staff for their review.

It was good to hear from you.

Sincerely,

Bill Clinton

Sandy

This guy is an old friend [illegible] a business group [illegible] [illegible]

cc: Scheduling

NH

Berger
Sperling

THE WHITE HOUSE

WASHINGTON

May 24, 2000

M. Nakamura
President and Chairman of the Board
Daiwa Steel Tube Industries Co., Ltd.
Nakanoshima Center Building, 22nd Floor
6-2-27 Nakanoshima
Kita-Ku, Osaka 530
JAPAN

Dear Mr. Nakamura:

Thank you for your letter and for your kind words. It was good to hear from you.

I do hope to see you while I'm in Japan this summer, and as we review potential delegates, I will certainly keep in mind your request.

Sincerely,

DAIWA STEEL TUBE INDUSTRIES CO.,LTD.

NAKANOSHIMA CENTER BLDG. 22ND FL., 6-2-27 NAKANOSHIMA, KITA-KU, OSAKA 530, JAPAN

PHONE 06-448-5201 FAX 06-448-6415 CABLE DAIWASTEELTUBE OSAKA TELEX 63877 DAITUBE

EB/ cc Sched NB ✓ HR

May 17, 2000

The President of the United States of America
The White House
Washington, D. C.
20500 U. S. A.

Dear President Clinton,

I am very happy to have seen through the medium of TV you and all of your family doing well. Your tenure for 8 years as the President of the United States is now left only half year.
Your excellent leadership over the past 7 years made U. S. economy the strongest one in the world, created jobs for many people, cleared away U. S. financial deficit which has been estimated impossible to make up when you were inaugurated as President, and achieved unbelievable excellent economic growth with a current surplus of 200 billion US dollars.
Probably, this would be a great achievement since the New Deal Policy adopted by then-President Roosevelt.

In the last year our Century Tube Corporation celebrated its 20th Anniversary, and under the prosperous economy in U. S., Century could achieve the largest sales turnover (110 million US dollars) and the largest profit (7 million US dollars before tax) in its 20 years history.
I really appreciate for your economic management abilities. Seeking for a further development, we are constructing a new factory in the state of Indiana where we produce newly technical-developped automotive tube, and it will be completed in the end of June 2000.

In Japan, on the other hand, we do not feel that Japanese economy is really recovering. Many major Japanese banks merge with each other one after another, but each bank holds a huge amount of bad claims against many general contractors and major real estate companies, and the fact is that they are just sitting idly by with this issue.
I think it is impossible to recover Japanese economy without taking drastic

measures to settle financial issues which compose the basis of economic activities.
We, at Daiwa Steel Tube, had a hard time in the past 2 years, due to the bank's grudging us loan facilities. However, we are getting out of this problem now, thanks to the support of Century Tube Corporation in U. S.

By the way, the Summit Meetings, being scheduled to be held in Japan coming July, would be the last international meetings in Japan for you as a President of the United States. I really wish to ask you to appeal to the Japanese government so that Japan would remove all the bad regulations, carry out structural reforms, and keep a real international competitiveness.

I now recall vividly those days when you visited Japan first time as a President of the United States – your speech and dialogue with the students at Waseda University in Tokyo, your meeting with then-Prime Minister Miyazawa over Sushi dinner……
If possible, I wish to ask you to include myself as a member of the Presidential delegation during the coming Summit meeting in Okinawa, and I wish to see your good presence with my eyes since this would be my last chance to see you as a President. I earnestly and sincerely hope that my wish could be accepted by Mr. President.

Please take a good care of your health and I look forward to your visit to Japan coming July in good shape.

Yours sincerely,

Nakamura

M. Nakamura
President and Chairman of the Board
Daiwa Steel Tube Industries Co., Ltd.

May 24, 2000

Minyon Moore
Marybeth Cahill
Bruce Reed

'00 MAY 24 PM4:08

Betty:

Here is the stuff I mentioned yesterday

First the letter to Jack Nicklaus.

The PGA Distinguished Service Award will be presented to Jack Nicklaus on Wednesday, August 16 during the 82nd PGA Championship at Valhalla Golf Club in Kentucky. In previous years President Clinton has written a letter of congratulations to the winner. The PGA of America has asked my help in securing a letter for this year. Since it is Jack Nicklaus I thought the President might like to send a letter this year as well. I know it would mean a lot to Jack Nicklaus to have a letter from the President.

Here are some details.

The letter should be addressed to:

Carolyn - Can you do first pass?
B

Mr. Jack Nicklaus
11397 Old Harbour Road
North Palm Beach, Florida 33408

The letter needs to be delivered by July 31 to:

Jamie Roggero
The PGA of America
100 Avenue of the Champions
Palm Beach Gardens, Florida 33410

Delivery by July 31 will give them the time necessary to have the letter mounted and framed so that they can present it on August 16.

I have attached a press release for background. Let me know if you need more information.

The second item is a letter and copy of a video that I worked on. It is an exercise video for children. Rather than a traditional exercise video, there is a story attached to this one that includes exercises that the kids can do. The story also features the President asking Cindy Crawford for her help in getting kids in shape. My kids love it.

I have included a letter from me and a copy of the video.

5-24-00

Thanks for your help with this.
Love,
Danny

Send to Burkhardt?

Yes ✓

No ____

May 24, 2000

'00 MAY 24 PM4:08

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5-24-00

Send to Burkhardt?

Yes ✓

No ______

Thanks for your help with this.

Love,
Danny

DG

PGA NEWS

IMMEDIATE RELEASE
March 7, 2000

Contact: Jamie Roggero
(561) 624-8446
jroggero@pgahq.com

THE PROFESSIONAL GOLFER'S ASSOCIATION OF AMERICA
100 AVENUE OF THE CHAMPIONS
BOX 109601
PALM BEACH GARDENS, FLORIDA 33410-9601
TELEPHONE: (561) 624-8400
FAX: (561) 624-8448

JACK NICKLAUS NAMED RECIPIENT OF 2000 PGA DISTINGUISHED SERVICE AWARD

PALM BEACH GARDENS, Fla. –Jack Nicklaus, whose historic impact on the game of golf incorporated more than 30 years of dominating play and a passion for designing quality courses, has been named recipient of the 2000 PGA Distinguished Service Award.

Nicklaus, 60, will receive the award on Wednesday, Aug. 16, during the 82nd PGA Championship week at Valhalla Golf Club in Louisville, Ky.

The PGA Distinguished Service Award honors an individual who has perpetuated the values and ideals of The PGA of America. The honoree is selected on the basis of his or her humanitarian qualities, including integrity and good sportsmanship, as well as love and enthusiasm for the game. Former award winners include Herb Graffis, Bob Hope, President Gerald Ford, Gene Sarazen, Byron Nelson, Arnold Palmer, Patty Berg, Frank Chirkinian, President George Bush and Paul Runyan. Last year's honoree was Bill Dickey, president and founder of the National Minority Junior Golf Scholarship Association.

"The name Jack Nicklaus is synonymous with golf," said PGA of America President Will Mann. "As a player, course designer, a family man and humanitarian, Jack Nicklaus is a legend and most deserving of the PGA Distinguished Service Award."

Nicklaus, has 70 official PGA Tour victories, including 18 professional major championships – six Masters, five PGA Championships, four U.S. Opens and three British Opens – and two U.S. Amateur Championships. Nicklaus will be one of 150 of the world's greatest players competing in the 82nd PGA Championship at Valhalla Golf Club, a course he designed in 1986. Ranked No. 68 in the nation, Valhalla is one of 184 that Nicklaus has either designed, co-designed or redesigned in his career.

Nicklaus joined the Senior PGA Tour in 1990 and owns 10 victories, including the 1991 PGA Seniors' Championship at PGA National Golf Club's Champion Course, a site he redesigned in late 1989.

– more –

"To say the least, I am very proud and honored to receive The PGA of America's Distinguished Service Award, and to be in the company of such great past recipients," said Nicklaus. "The PGA of America is our parent organization, and I have a deep appreciation for the job that the PGA club professional does in promoting the game of golf at all levels.

"I suppose with this recognition, The PGA of America is saying thank you for the part I played in helping grow a game for which I have a great passion and respect. I am very honored and flattered by that."

Nicklaus was a member of six U.S. Ryder Cup Teams, compiling a 17-8-3 overall record. Though he was Captain of two U.S. Teams (1983 and 1987), Nicklaus is perhaps best remembered for his first Ryder Cup competition and his display of sportsmanship on the final day. In 1969, Nicklaus conceded a par putt to England's Tony Jacklin on the 18th green at Royal Birkdale Golf Club in Southport, England. The conceded putt resulted in the first draw in Ryder Cup history. The gesture is widely regarded as one of the most poignant moments in all of sport.

Nicklaus and his wife, Barbara, who was the 1998 PGA First Lady of Golf award winner, live in North Palm Beach, Fla. They are the parents of five children: Jack II, Steven, Nancy Jean, Gary, Michael and 11 grandchildren.

-- 30 --

'00 MAY 24 PM4:59

OFFICE OF THE GOVERNOR
207 STATE CAPITOL, SPRINGFIELD, ILLINOIS 62706

GEORGE H. RYAN
GOVERNOR

5-24-00
TO BURKHARDT
FOR REPLY;
COORDINATE W/ OMB
BC SIG per Nancy
Red Dot

May 23, 2000

The Honorable William J. Clinton
President of the United States
The White House
Washington, DC 20503

cc: OMB

Dear President Clinton:

When Lura Lynn and I were honored with your kind invitation to stay overnight at the White House last February, during the N.G.A Conference, we briefly spoke about our effort to build the Abraham Lincoln Presidential Library and Museum in Springfield. You may recall that we presented you with the DVD set of the State of Illinois' collection of Lincoln documents— the only other DVD copy to date has been given to the Library of Congress.

The idea of a presidential library for our 16th president has been discussed for decades. Such a facility is critically needed if we are to properly display the priceless articles in the State's collection: a copy of the Gettysburg Address written in Lincoln's own hand, and a rare signed copy of the Emancipation Proclamation, to name just two of those items.

Last year, my first budget as Governor included an appropriation of $50 million towards the construction of an Abraham Lincoln Presidential Center in downtown Springfield. The City of Springfield has committed $15 million, and we are seeking $50 million from the federal government to allow us to complete this $115 million project. Senator Richard Durbin, Speaker J. Dennis Hastert, Congressman Ray LaHood and Congressman John Shimkus have been leading the effort to secure the federal funding commitment, an effort which has been supported by every member of the Illinois Congressional Delegation as well as Chicago Mayor Richard M. Daley.

We had understood that a requirement of federal participation was the establishment of a privately-financed endowment to support the ongoing programs and operations of the Center. Lura Lynn and I have established a not-for-profit foundation for that purpose, and we have begun to raise $35-50 million to support it, a goal that I am confident we will meet.

We had also understood that the federal government did not wish to be encumbered with the annual operating expense of the facility. Accordingly, the State of Illinois agreed to have our Historic Preservation Agency assume the responsibility for operating the facility when it is completed in October of 2002.

I was concerned, therefore, when I received a copy of an April 28, 2000 letter from Jack Lew, Director of the Office of Management and Budget, directed to Illinois Senators Durbin and Fitzgerald, and Congressmen Shimkus and LaHood. Mr. Lew indicated that he was responding on behalf of your Administration and had "concerns with the proposed legislation [authorizing $50 million in federal funds] because it would authorize the use of limited National Park Service (NPS) appropriations to fund major construction projects for non-Park Service facilities." I do not understand the apparent contradiction— how can Mr. Lew object to the federal government assuming the burden of an annual operating expense of this facility, and then object to the fact that federal funds would be used on a "non-Federal facility" when the State of Illinois agrees to assume the annual operating burden?

I would appreciate your help, Mr. President, and ask that you support the authorization proposal, and subsequently support the development of this critically important project.

Springfield was Abraham Lincoln's home– and it will always be his home. When he left Springfield some 140 years ago to assume the awesome responsibilities of the Presidency, he said "to this place and to these people I owe everything." As one of our greatest presidents, Abraham Lincoln deserves a presidential library and museum to showcase his legacy to the world for generations to come. As this facility is built over the next three years, Lura Lynn and I will work with the Board of Trustees of the Abraham Lincoln Presidential Center Foundation to prepare educational programs that will, through technology, be available to children throughout the United States and the world. When we traveled to Cuba last fall, we found that the one American revered as a hero in that country is Abraham Lincoln. We leave today for South Africa, and expect to find our 16th President revered there as well.

We need your support, Mr. President, to help us make this project a reality. Help us bring the legacy of Mr. Lincoln to future generations of Americans, and to people around the world.

Sincerely,

George H Ryan

George H. Ryan
GOVERNOR

(1) 8002 4u

Carol L. Schwartz LICSW
241 Perkins Street, I 402
Jamaica Plain, Massachusetts 02130
617-232-7611

May 8, 2000

Dear Mr. President / Bill,

I was asked by a dear friend-of-long standing (and my Pilates Trainer, as well) - all wrapped up in one person - to intervene on behalf of her mother-in-law in New York. The enclosed l... the complet... dilemma.

TO BURKHARDT FOR REPLY: ACTION BY AGENCY LIAISON

(u) 5.24.00

If ther... possibly ... ed removed fr... 'eing in Montro... nter been recei... would be a ... , if ... miracle, gift, and I would be most humbly grateful!

Carol L. Schwartz LICSW
241 Perkins Street, I402
Jamaica Plain, Massachusetts 02130
617-232-7611

(1) [illegible]

May 8, 2000

Dear Mr. President / Bill,

I was asked by a dear friend-of-long standing (and my Pilates Trainer, as well) - all wrapped up in one person - to intervene on behalf of her mother-in-law in New York. The enclosed letters describe the complex medical situation and dilemma.

If there is anything you could possibly do to prevent her from being removed from the V.A. Medical Center in Montrose, N.Y., where she has been receiving superb care, it would be a true miracle, gift, and I would be most humbly grateful!

Carol L. Schwartz LICSW
241 Perkins Street, I 402
Jamaica Plain, Massachusetts 02130
617-232-7611

(2)

Your ever-loyal, devoted and admiring friend, for your constantly championing the same concepts and issues that you spoke when we first met at Renaissance Weekend '85 - you've never veered from the course - I marvel and extoll your unswerving beliefs and convictions!

With the greatest pride, respect and empathy over all these years,

Carol Schwartz

R.R.1, 550 Millwood Road
Mount Kisco, N.Y. 10549
Tel./Fax: (914) 241-3166
April 24, 2000

President William Jefferson Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear Mr. Clinton,

I am taking the liberty of writing to you in the hope that you may assist my wife in her plight.

My wife, Ruth, a W.W.II veteran, has been a patient in the extended-care unit of the V.A. Medical Center in Montrose, N.Y. since September 1, 1999. She is in the late stage of Alzheimer's disease.

As a member of the W.A.C. during the war, she served abroad in Italy. Women were barred from combat during that conflict and were not subject to being wounded or held by the enemy as P.O.W.s. Therefore, she has been presumed to be a Category C veteran (one with a non-service connected disability) and, under current V.A. regulations, is entitled only to a three-month stay in a V.A. extended-care facility. The director wants Ruth removed from the medical center and has instructed me to find a community nursing home for her.

I am opposing his decision based on provisions in the Veterans Millennium Health Care and Benefits Act (Public Law 106-117) signed by President Clinton on November 30, 1999. The new law will either confer "grandfather" status on my wife's residence or permit me to co-pay for her stay (Title I, 1710A and 1710B.) I have engaged an attorney to buttress my effort to keep Ruth in Montrose. The V.A. is now in the process of promulgating new regulations to carry out the provisions of the Act but will not do so before March 2001 or later. Until then, the three-month rule for Category C veterans obtains.

There are many reasons why Ruth should remain where she is:

1. She has adjusted well and receives excellent care, affection and attention in her ward. I have had an opportunity to observe this because I visit my wife every day, feed her, brush her teeth, take her to rehab, take her outside for air, etc.

2. There is a fine rehabilitation clinic which enables my wife to maintain her physical condition. In addition, dental and podiatric treatments are regularly scheduled and provided by staff members who are based on the campus.

3. Ruth is the only woman veteran in ward 9C. She gets better care than she would receive in a nursing home in which the majority of patients are women.

4. I have been to five nearby nursing homes. They cannot compare with the pleasant, uncrowded atmosphere in ward 9C, and with the quality of care Ruth is receiving. This is not my opinion alone. Rabbi Greenberg, Jewish Chaplain in the Montrose medical center, has been to many more nursing homes than I and has stated unequivocally to me that the treatment of the patients in Montrose is better than anything he has seen.

A brief word about myself. I am a combat veteran of W.W.II, having served with the 447th Bomb Group of the Eighth Air Force as a radar-navigator in a Pathfinder crew. For five years before Ruth's admission to the V.A. hospital, I took full care of Ruth, without help, for twenty-four hours a day, seven days a week. We have been married for almost fifty-four years. You may well understand why I want the best possible care for her and why I feel that women veterans of W.W.II are, in a very real sense, discriminated against even though they extended themselves to the maximum under the non-combatant restrictions that existed at the time.

I respectfully request that you contact the director of the medical center and ask that Ruth Foster be permitted to remain in the extended care unit until the V.A. enforces the provisions of the Millennium Act. The director's name, address and phone are:

Mr. Michael A. Sabo, Director
V.A. Hudson Valley Health Care System
P.O. Box 100
Montrose, N.Y. 10548-0100
Tel.: (914) 737-4400, ext. 2460

I am enclosing a copy of a letter sent by my lawyer, Neil H. Reig, to Mr. Sabo, to give you and your staff members more background information. No response to Mr. Reig's letter has been forthcoming to date.

Thank you for your interest and support.

Sincerely yours,

Bernd Foster

Bernard Foster

Enclosure: Letter from Neil H. Reig to Michael A. Sabo, dated March 20, 2000

NEIL H. REIG
ATTORNEY AT LAW
100 SOUTH BEDFORD ROAD; SUITE 200
MOUNT KISCO, NEW YORK 10549

E-MAIL: nreig@cloud9.net

PHONE: (914) 242-4800
FAX: (914) 241-2402

March 20, 2000

Via facsimile (914) 788-4244
Mr. Michael Sabo
Director, Department of Veterans Affairs
Hudson Valley Health Care System
P.O. Box 100
Montrose, New York 10548

Re Ruth Foster

Dear Mr. Sabo:

As you know, I represent Bernard Foster, the husband of Ruth Foster, a 77 year-old veteran of World War II who is a victim of late stage Alzheimer's disease. I am informed that Mrs. Foster is presently receiving exemplary care in the VA Medical Center in Montrose, but that the facility now seeks to discharge her to a community nursing home based upon a determination by its Impasse-Hardship committee that Mrs. Foster is medically stable, has achieved maximum benefits, and is not entitled to long-term care within the VA system.

It must be noted at the outset that Mr. Foster specifically wanted me to accompany him and his son, Daniel, to the February 29, 2000 meeting that was arranged by the Patient Advocate, Ms. Valerie Stein. When I telephoned Ms. Stein to advise her of Mr. Foster's request, she informed me that the meeting was limited to family members, but acknowledged that I could request a meeting with you at some future point. While this letter is being submitted in response to your invitation-- later confirmed by Mr. Gitelson-- to have counsel submit a written document outlining our points, concerns and questions, it should not be viewed as a withdrawal of my earlier request for a personal meeting with you or any representatives you deem appropriate.

My initial request was predicated, in part, upon concerns relating to the very manner in which the discharge issue was addressed. My understanding is that at least two federal courts have afforded veterans and their families limited due process rights in connection with a determination to transfer a veteran out of the VA system. [1] The cases hold that while due process does not require a formal or quasi-formal hearing, it does require an

[1] The cases are Hanke v. Walters 740 F.2d 654 (8th Cir. 1984) and Ruloff v. U.S. Veterans Assn., 1989 U.S .Dist. Lexis 14680 (S.D.N.Y. 1989)

independent medical decision- making process to resolve the question of whether the veteran has received "maximum benefits" from the care available within the system. It further requires that the veteran's family or representatives be provided with "notice and the opportunity to present medical information that they believe to be material to the transfer decision" and that only after a discharge decision is made under appropriate procedural protections should it be considered a final determination.

Mr. Foster was not afforded these procedural safeguards. By the time the Chairman of the Medical Center's Impasse Committee meeting wrote his January 13, 2000 letter, the committee already knew that Mr. Foster had taken issue with the Medical Center's discharge decision. Accordingly, the letter should have specifically advised him of his rights to obtain an independent medical opinion and to present independent medical evidence. Instead, the letter merely invited Mr. Foster to informally "share his thoughts" with the committee. Further, the letter should have specifically informed Mr. Foster that any determination reached by the committee at the meeting would be deemed final without any avenue of internal appeal within the VA system. Instead, it merely advised him that the committee would make a "recommendation" to the Director concerning a resolution of the discharge issue. By leaving Mr. Foster with the distinct and reasonable impression that he could prepare a more formal presentation later, if necessary, the letter failed to provide him even the limited due process to which he was entitled. However, we submit that Mrs. Foster should be permitted to remain in the Medical Center on more substantive grounds.

Simply stated, our position is that although Mrs. Foster is not presently classified as a veteran with a service connected disability, and thus does not presently have an "automatic" entitlement to long-term nursing home care, she should remain in the Medical Center if not for the remainder of her life, then at least until the Secretary of Veterans Affairs has fully implemented the broad spectrum of "extended care services" he is obligated to operate and maintain under Title 1 of the new Veterans Millennium Health Care and Benefits Act of 1999 (the "Millennium Act"). We believe that the committee's finding that Mrs. Foster has received "maximum benefits" is immaterial. Her entitlements have been elevated by legislation whose *very purpose*, according to Senator Arlen Specter, Chairman of the Senate Committee on Veterans Affairs, is to counteract the "increasing evidence that the discretionary nature of VA's long term care mission has created an incentive for VA to divert resources to other missions and reduce its capacity to provide long-term care." [2]

---

[2] In commenting on the Millennium Act, Senator Specter noted that "(l)ong term care is one of the most pressing issues facing America—and the Department of Veterans Affair (VA). A half century ago, the 16 million youthful veterans of World War II looked forward to building new civilian lives. Today, only about 6 million survive, and their average age is 75. **Health care is their primary concern, the long-term care is a critical component of their health care needs. Simply put, what World War II veterans need from the VA is long-term care...."** (emphasis added). (See the Senate's November 19, 1999 consideration of the Conference Report on Bill H.R. 2116).

It is true that the most *publicized* segment of Title 1, section 102 of the Millennium Act is the one which adds a new Section 1710A obligating the VA to provide needed nursing home care to any veteran for a service-connected disability or who has a service-connected disability rated at 70 per cent or more. However, section 102 of the Act also adds a new Section 1710B, which independently mandates the Secretary to implement a package of extended care services, ranging from home-based primary care to **nursing** home care (which, although the least desirable alternative from both an emotional and financial standpoint, remains the only present viable alternative for Alzheimer's victims such as Mrs. Foster). Thus, new section 1710B, paragraph (a) provides:

> (a) the Secretary....**shall** operate and maintain a program to provide extended care services to eligible veterans in accordance with this section. Such services shall include the following:
>
> (1) Geriatric evaluation
> (2) **Nursing home care** (A) in facilities operated by the Secretary and (B) in community-based facilities through contracts under section 1720 of this Title
> (3) Domiciliary services under section 1710(b) of this Title.
> (4) Adult day health care under section 1720(f) of this title.
> (5) Such other non-institutional alternatives to nursing home care as the Secretary may furnish as medical services under section 1701(10) of this title.
> (6) Respite care under section 1720B of this title.
> (emphasis added)

The statute explicitly provides that these extended care provisions are not meant to apply solely to veterans with service-connected disabilities. Thus, new section 1710B, paragraph (c) explicitly provides that a veteran who does not have a compensable service-connected disability must share in the cost of the extended care services "except for an episode of extended care services that a veteran is being furnished by the Department on the date of the enactment of the Veterans Millennium Health Care and Benefits Act." In fact, paragraph (d) directs the Secretary to develop a methodology of co-payments which must both "protect the spouse of a veteran from financial hardship" and "allow the veteran to retain a monthly income allowance." Such protections are similar to those afforded to spouses of community nursing home residents who are the recipients of Medicaid. Here, as was suggested during the February 28 meeting, Mr. Foster would certainly be willing to pay the United States a co-payment for future extended care services if, in fact, his wife does not already fall within the Act's grandfather provisions.

Even while the Millennium Act is meant to encourage the investigation and creation of long-term care alternatives to institutional care, it does not lose sight of the fact that many of its veterans have no choice but to remain in nursing homes at least until these theoretical alternatives become realities. Thus, while Section 102 of the Millennium Act requires the Secretary to develop three pilot programs aimed at "determining the effectiveness of different models of all-inclusive care delivery", it specifically provides for the inclusion of "nursing home care, as needed." The law even requires that under one of the pilot programs, the "Secretary shall provide services directly though facilities and personnel of the Department", thereby reinforcing the VA's commitment to taking care of its own.

Further, the Millennium Act's mandate to provide automatic nursing home care to veterans with service-connected disabilities is <u>not</u> intended to result in a "reverse" mandate whereby other veterans are deprived of needed care. Section 1710A, paragraph (b)(2) warns **that the Act is not to be construed as authorizing or requiring that a veteran who is receiving nursing home care in a Department nursing home**-- which, we submit, includes a veteran who is receiving the equivalent of nursing home care in an extended care unit of any VA facility-- **be displaced, transferred or discharged from the facility.** Section 1710B paragraph (b) requires that the "staffing and level of extended care services provided by the Secretary nationally in facilities of the Department during any fiscal year not be less than the staffing and levels of such services provided nationally in facilities of the Department during fiscal year 1998." And, significantly, Title II, section 207 of the Act , which enhances the state home grant program, requires the Secretary to enact regulations

> based on projected demand for (nursing home) care 10 years after the date of the enactment of the Veterans Millennium Health Care and Benefits Act by veterans who at such time are 65 years of age or older and who reside in the state. <u>In determining such projected demand, the Secretary shall take into account travel distances for veterans and their families.</u>
>
> ---Emphasis added.

In sum, the Millennium Act is an aptly named, revolutionary measure which *redresses* the VA's problems of servicing the long-term care needs of its ever-increasing frail and elderly population. According to House Veterans' Affairs Committee Chairman Bob Stump:

> the benefits provisions honor commitments to men and women who served their country and the health provisions prepare us for the medical needs of veterans in the 21st century.... <u>This ends the century with one of the most productive legislative years for veterans in a long time.</u>
>
> News Release, House Committee on Veterans Affairs, dated November 16, 1999 (emphasis added)

However, the Millennium Act is only an "enabling statute" whose implementation must await the promulgation of detailed regulations. These regulations will define in greater detail the scope of the extended care services and the methodology for co-payments for those required to contribute. The VA's own web-page entitled "VA Hot Topics and Press Releases" hails the virtues of the Act and notes that "VA headquarters is currently working on implementation of the new provisions." It seems utterly inconceivable that at a time when the VA is finally making a long-overdue commitment to addressing the needs of its elderly-- and has been given a sizable budget increase to boot-- -the Medical Center would insist upon discharging Mrs. Foster to a non-Department community nursing home, thereby depriving her of both the excellent care she is now receiving and her anticipated enhanced benefits under the Millennium Act. Indeed, one would expect that a World War II veteran who honorably served her country in the E.T.O. would be viewed by the Medical Center as *precisely* the type of veteran the Act was designed to embrace.

We further maintain that as both a woman <u>and</u> an aged veteran suffering from the debilitating effects of Alzheimer's disease, Mrs. Foster is particularly deserving of remedial legislation. In a March 1997 "fact sheet entitled "VA Research on Women's Veterans' Health" and available on the VA's web-site, the VA acknowledges that women have particular health care problems and concerns:

> VA has responded to the growing number of women veterans by targeting programs and facilities to meet their unique health care needs. There are 1.2 million women veterans living in the United States today....
>
> Using National Institutes of Health criteria for identifying 'women's health issues', VA research projects deal with diseases or conditions that are unique, more prevalent, or more serious among women.

The fact sheet goes on to discuss, among other things, the Women's Health Sciences Division, located at the Boston VA Medical Center, which is the first center of its kind in the country. It notes that "(r)esearch in this division is specifically designed to address gender issues potentially linked to post-traumatic stress and closely associated disorders such as depression and substance abuse."

Congress has affirmatively directed that the VA respond to the growing needs of women veterans. In 1991, it amended 38 U.S.C. to establish the Advisory Committee on Women Veterans, which was intended to regularly advise the Secretary with respect to the administration of benefits for women veterans and to issue bi-annual reports assessing the extent to which their needs were being met. Then, in 1994, Congress amended 38 U.S.C. again, this time to create the Center for Women's Veterans, which was to intended to serve as principal adviser to the Secretary on the adoption and implementation of policies affecting veterans who are women (and to provide support to the Advisory Committee on

Women's Veterans). We have no knowledge of how successful these agencies have been in advancing the cause of women veterans generally, but now, for the first time, they will have the opportunity to advise the Secretary on how to best apply the Millennium Act's comprehensive long-term care programs to women veterans. We submit that the Medical Center should be particularly sensitive to this fact.

Finally, we believe that as a victim of Alzheimer's disease, Mrs. Foster deserves the highest level of duty and loyalty from the VA. Medical research has been unable to pinpoint precisely when this degenerative disease first develops and thus, as Mr. Foster has noted, no one can safely say that his wife's present medical condition is not service-connected. Mr. Foster is presently consulting with his physician, the Disabled American Veterans, and the Montrose Veterans' Benefit Coordinator to determine whether his wife's disability status may be changed to service-connected (based not only upon her suffering from Alzheimer's disease, but also upon her having suffered sexual trauma during her time of service). He has been told that the resolution of these issues may take from eight to ten months. Given present medical uncertainties, Mr. Foster may, or may not, be able to make a definitive link. In that case, we believe that the only fair and compassionate response—and the only one consistent with the VA's general mandate to assist veterans in obtaining their hard-earned benefits—is to give Mrs. Foster every benefit of the doubt and to permit her to remain in the facility until such time as a more appropriate alternative may be implemented <u>within the VA system</u>.

We appreciate your consideration of this submission and look forward to discussing it with you further at your earliest opportunity.

Very truly yours,

Neil H Reig

Neil H. Reig

cc: Mr. Bernard Foster ✓
confirmation copy by mail

STATE OF KANSAS

'00 MAY 24 AM8:26

KANSAS DEPARTMENT ON AGING

NEW ENGLAND BUILDING
503 S. KANSAS AVE.
TOPEKA, KS. 66603-3404

PHONE (785) 296-4986
FAX (785) 296-0256

BILL GRAVES
Governor

Connie Hubbell
Secretary of Aging

May 23, 2000

NO

Ms. Betty Currie
Personal Secretary to the President
The White House, 1st Floor, West Wing
Washington, DC 20500

Dear Ms. Currie:

The Kansas Department on Aging is hosting a state-wide Conference on Aging here in Topeka on June 13th and 14th. We actually attract participants from the surrounding states which results in over 400 registrants. The Conference is self-supporting through donations, sponsors, exhibitor fees, and funds raised by a silent auction of celebrity items from all over the country.

The purpose of my letter is to see if you could assist us with securing a few items from the President that we could use in our silent auction. Items we had in mind might be a Presidential Seal bookplate, signed by the President; a drawing or doodle signed by the President; and/or a personal correspondence card that is signed and dated by the President.

We are looking for unique items that would help us generate funds to make the annual Conference self-supporting, rather than rely on taxpayer dollars.

If you could send any items to me at the following address, that would certainly be appreciated:

Office of the Secretary
Kansas Department on Aging
503 S. Kansas
Topeka, KS 66603

Attn: Juanita Lewis

If you have any questions, please feel free to contact my Special Assistant, Mike, at (785) 296-5222, as my schedule will likely take me out of the office for the next few weeks.

5-24-00

Sincerely,

Connie Hubbell

Connie Hubbell
Secretary of Aging

Send to Burkhardt?
Yes ✓
No ____

af

THE WHITE HOUSE

WASHINGTON

December 15, 1999

'00 MAY 24 PM 1:36

THE WHITE HOUSE

WASHINGTON

'00 MAY 24 PM 1:36

CC: BURCKHARDT

RETURN ORIGINAL TO ME

W

5.24.00

Sean:

More Medal of Freedom Info!

Sean

to the President
ctor for
airs

Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

December 15, 1999

'00 MAY 24 PM 1:36

Dear Senator Schumer:

Thank you for your letter to the President regarding the nomination of Mr. Richard Rappaport for the Presidential Medal of Freedom. You can be assured that his nomination will receive the utmost consideration.

I am happy to assist you with this matter. Please do not hesitate to contact me if you have any questions.

Best wishes.

Sincerely,

Chuck Brain

Charles M. Brain
Deputy Assistant to the President
and Deputy Director for
Legislative Affairs

The Honorable Charles E. Schumer
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

July 10, 1996

Mr. Richard J. Rapaport
Apartment 4-[illegible]
[illegible] East 68th Street
New York, New York 10021

Dear Mr. Rapaport:

Senator Daniel Patrick Moynihan kindly passed along your request to be awarded the Presidential Medal of Freedom.

The names of individuals recommended for this honor are maintained on file at the White House. The President is not limited as to the number of awards that he may present during the course of his Administration, and he periodically reviews the names of recommended individuals along with a description of their accomplishments.

On behalf of the President, thank you again for your continuing interest. You may be assured that your request to be awarded the Presidential Medal of Freedom will be given careful consideration.

Sincerely,

James A. Dorskind
Special Assistant to the President
Director of Correspondence and
Presidential Messages

To Catch The Light Of Peace Let Freedom Ring, Inc.

President
Richard J. Rapaport
215 East 68th Street
New York, N.Y. 10021, Apt. 4-O
212-737-0972
917-692-5542

#.

5/20/2,000

DEAR MR. BRAIN,

I HAVE ENCLOSED YOUR LETTER WRITTEN ON MY BEHALF AND SENT TO THE HONORABLE SENATOR CHARLES E. SCHUMER DATED DECEMBER 15, 1999 TO REMIND YOU WHO I AM FOR I REALIZE HOW BUSY YOU MUST BE.

I AM THE ARTIST THAT HAS THE HONOR OF BEING UNDER CONSIDERATION BY THE WHITE HOUSE TO BE AWARDED THE PRESIDENTIAL MEDAL OF FREEDOM FOR MY SUCCESSFUL ARTISTIC AND SCIENTIFIC RESEARCH IN WHICH I HAVE DISCOVERED A NEW WAY OF THINKING, A NEW WAY OF SEEING, A NEW WAY OF ENCODING BIOLOGICAL INFORMATION LINGUISTIC AND SYMBOLIC OF GROWTH THAT PAYS TRIBUTE TO PEACE, FREEDOM, COOPERATION AND DEMOCRACY. THIS NEW GLOBAL BIOLOGICAL UNIVERSAL LINGUISTIC AND SYMBOLIC OPENS THE DOOR OF INTELLIGENCE TO A NEW UNDERSTANDING THAT CAN MAKE PROFOUND, FUNDAMENTAL CONTRIBUTIONS TO NATIONAL UNITY, NATIONAL SECURITY AND WORLD PEACE.

I WOULD BE HONORED AND GRATEFUL IF YOU COULD BE SO KIND AS TO SHOW THE PRESIDENT MY ARTISTIC AND SCIENTIFIC ABSTRACT AND SUPPORT MY EFFORTS TO BE AWARDED BY THE WHITE HOUSE THE PRESIDENTIAL MEDAL OF FREEDOM.

WE HAVE SUCH BRILLIANT AND WONDERFUL OPPORTUNITIES TO INTRODUCE THE WORLD COMMUNITY OF NATIONS A

To Catch The Light Of Peace Let Freedom Ring, Inc.

II

President
Richard J. Rapaport
215 East 68th Street
New York, N.Y. 10021, Apt. 4-O
212-737-0972
917-692-5542

NEW ~~LIGHT~~ A NEW LIGHT OF PEACE.

THANK YOU FOR YOUR KIND AND THOUGHTFUL CONSIDERATION CONCERNING MY REQUEST.

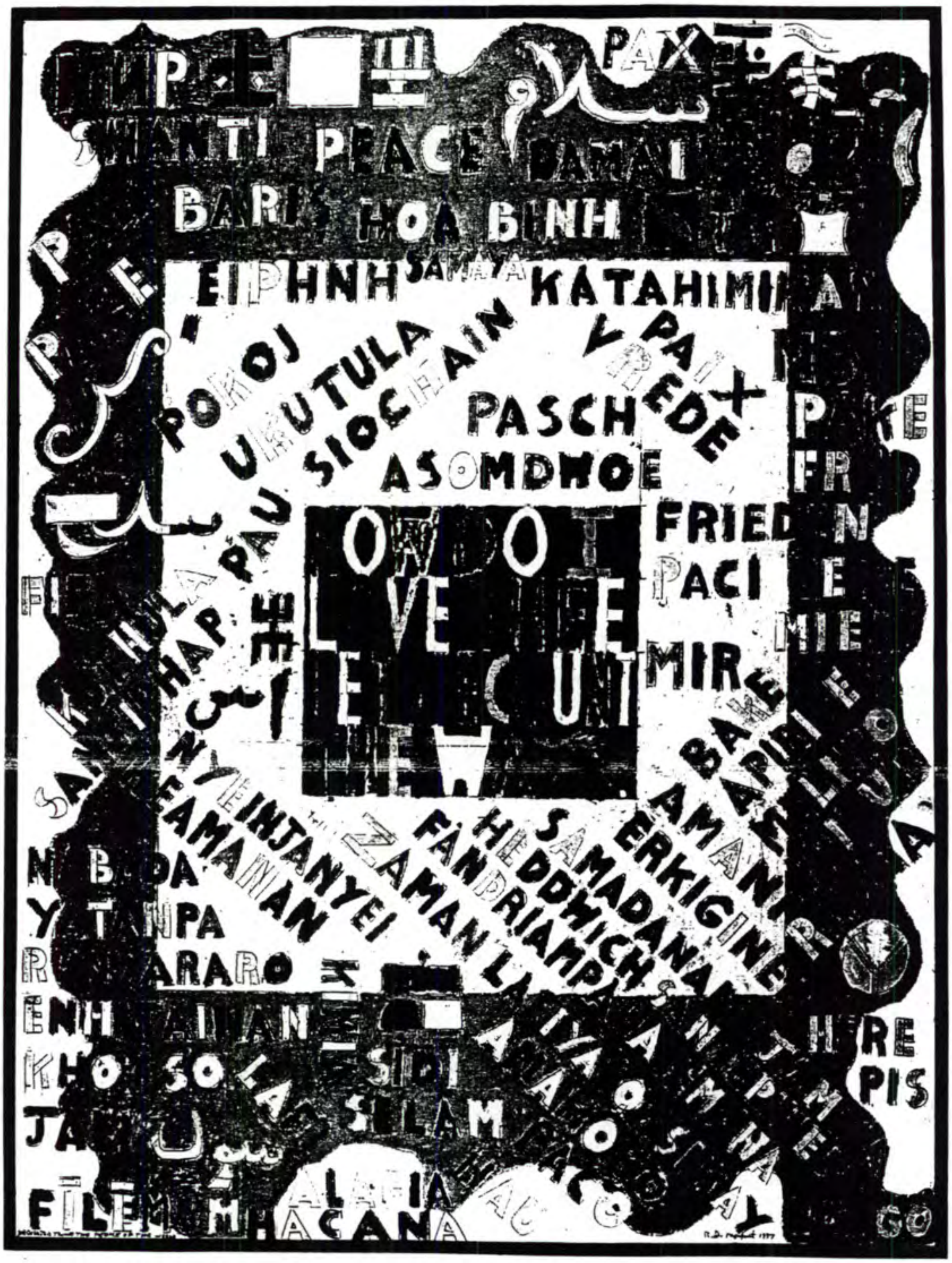
SINCERELY,

[signature]

A NEW UNIVERSAL BIOLOGICAL GLOBAL VISUAL LOGIC LINGUISTIC AND SYMBOLIC NESTED IN PEACE AND COOPERATION.

"TO CATCH THE LIGHT OF PEACE LET FREEDOM RING"

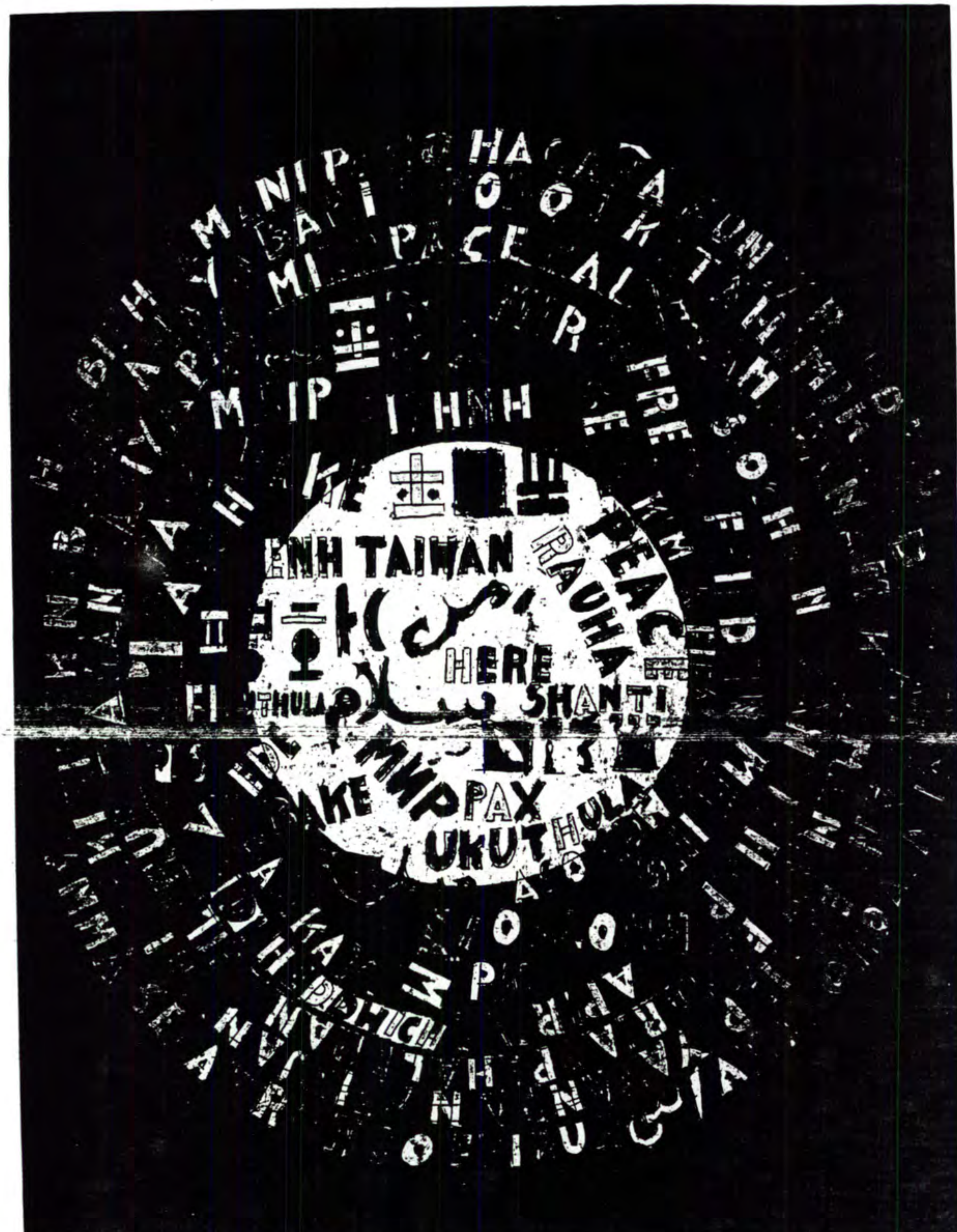
DEDICATED TO THE SPIRIT OF AMERICA



HOW DO I LOVE THEE. LET ME COUNT THE WAYS
IN TRIBUTE TO ELIZABETH BROWNING

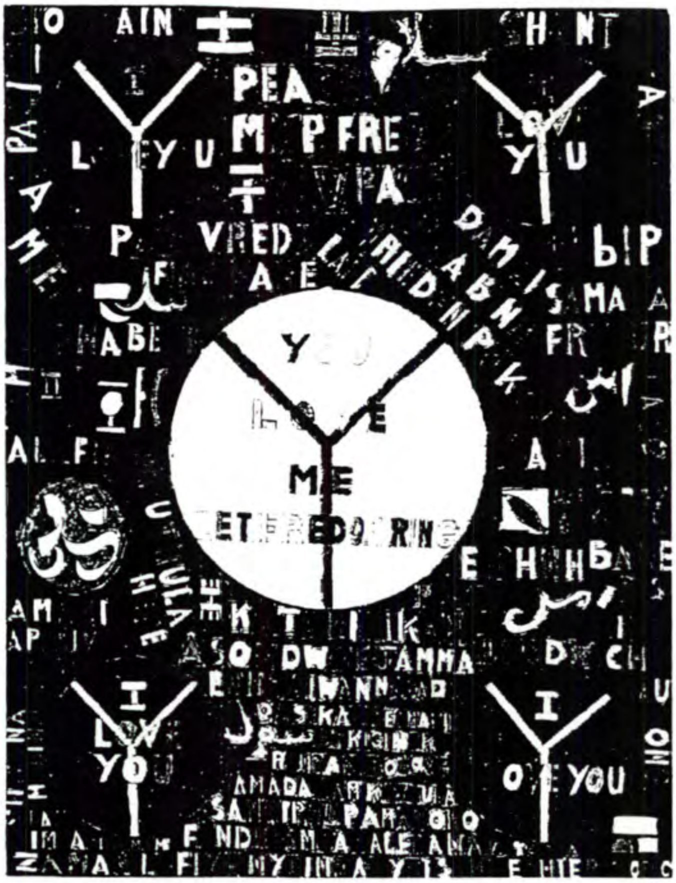
R. J. RAPAPORT 1997

A NEW GLOBAL CULTURAL BIOLOGICAL VISUAL PARADIGM OF PEACE IS EVOLVING



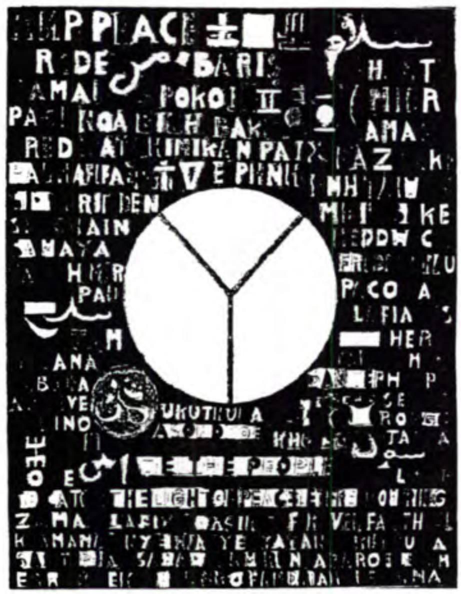
PEACE

R. J. RAPAPORT 1999



YOU LOVE ME R. J. RAPAPORT 2000

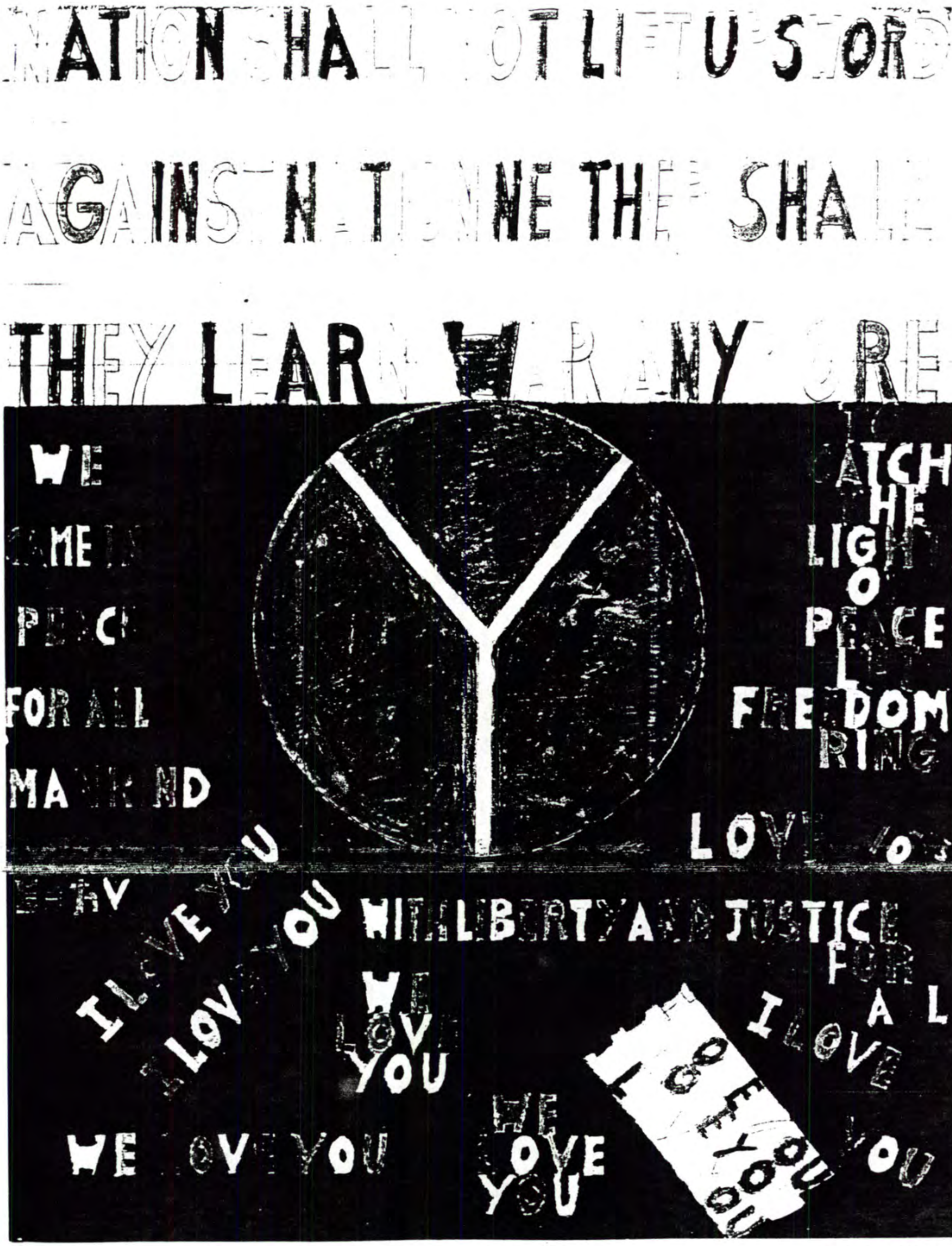
A NEW VOYAGE R. J. RAPAPORT 2000



WE THE PEOPLE R. J. RAPAPORT 2000
DEDICATED TO ABRAHAM LINCOLN

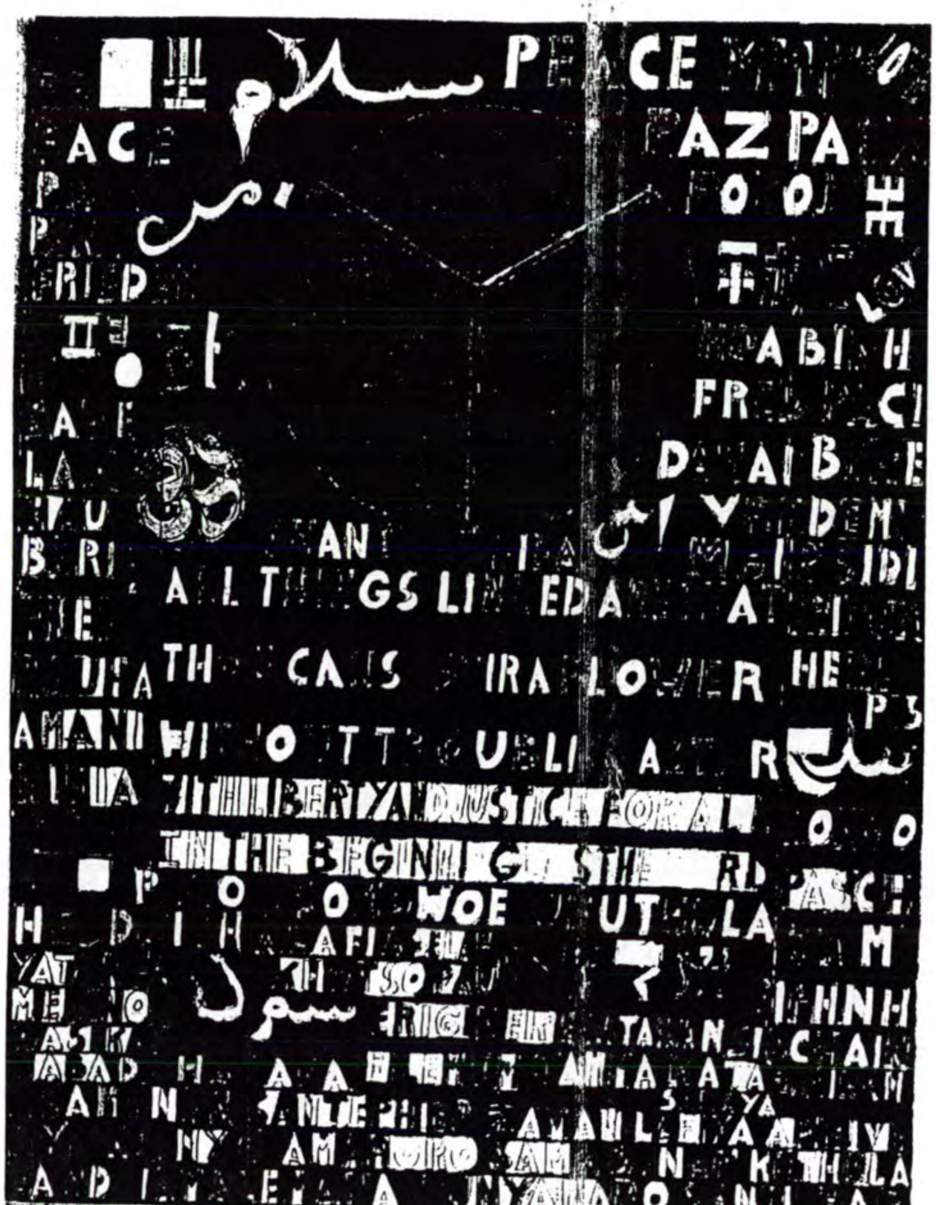
A NEW LIGHT OF PEACE R. J. RAPAPORT 2000

A NEW LOGIC SYSTEM R. J. RAPAPORT 2000



DEDICATED TO GLOBAL PEACE

R. J. RAPAPORT 2000



IN THE BEGINNING WAS THE WORD R. J. RAPAPORT 2000

DEDICATED TO A NEW EMERGING SOLAR CIVILIZATION EMBEDDED IN PEACE
R. J. RAPAPORT 2000

WE LOVE YOU R. J. RAPAPORT 2000

WITH LIBERTY AND JUSTICE FOR ALL

R. J. RAPAPORT 2000

A NEW UNIFICATION OF KNOWLEDGE

STATEMENT

My idealistic artistic dream is to, in some way, influence - signal a new biological informational visual multicultural artistic logic of peace both linguistic and symbolic, creating a new biological artistic aesthetic way of thinking to influence the entire local and global visual communication system for all ages.
We have such brilliant and wonderful opportunities to introduce to the world community of nations a new light of peace that will create, evolve and establish "A new Global Cultural Visual Environment Reality of Peace" that is the right step in the right direction. I deeply and firmly believe a new globalization of world peace is possible now, a practical opportunity for the creation of "A New Local and Global Cultural Visual Reality of Peace" which will act as a new biological informational (Visual pattern configurations - that can be amplified, focused, targeted and mapped to the neocortex of the brain, evolving new biological correlations of growth linking, gene, gene domains, gene expression, protein synthesis, brain, mind, culture and behavior in a new quasi phase locking biological synchronization embedded in peace and growth.), self organizing neuro feedback loop amplifying this new global visual multicultural logic. We can evolve a new biological gradient along these evolutionary lines.

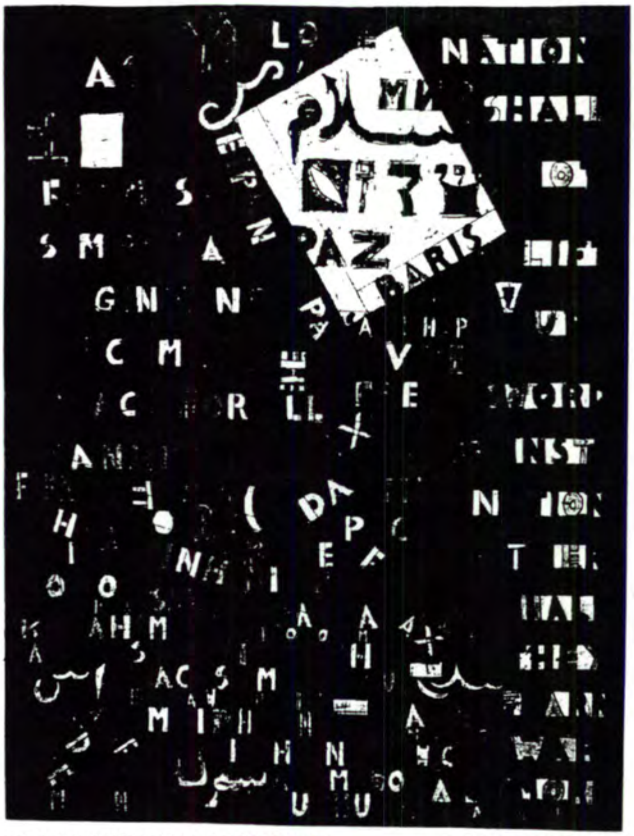
I am honored and proud to give voice to a new emerging local and global art movement of peace called. "to catch the light of peace - let freedom ring". The continued illumination of this new global artistic genre of peace will assist us to achieve a more peaceful world. As a result of our efforts, we will establish a new creative global cultural reality of peace creating a <u>new light</u> of peace.

This emerging local and global artistic genre of peace linguistic and symbolic has its origin in a long intellectual tradition of aesthetic ideas.

Like *Impressionism*, where the scientific study of light led to a new cultural reality, this new genre invites an innovative scientific perspective on art and culture. Recent brain research has led to an exciting understanding of the synchronization that exists between mind and culture. <u>And it is now possible to evolve a new visual, creative reality that is embedded in the dynamics of international peace. Through the specific structure of *linguistics* and *symbolism*, my work will illuminate the aesthetic links between language, thought, art and culture, and how they are integral to the development of world peace today. My artistic vision is not political. It is an artistic investigation into new formal visual elements of language and symbols that link different phenomena together and will forge a biological aesthetic axis towards world peace, freedom and cooperation.</u>

Richard J. Rapaport
215 East 68th Street Apt 4-0
New York , NY 10021

Home Telephone: 212-737-0972
Office Telephone: 914-738-5400
Cellular Phone: 917-692-5542



FROM SO SIMPLE A BEGINNING
TRIBUTE TO CHARLES DARWIN

R. J. RAPAPORT 1999

THE JOY OF PEACE

R. J. RAPAPORT 1998

I LOVE YOU

R. J. RAPAPORT 1999

WE CAME IN PEACE
DEDICATED TO NASA

R. J. RAPAPORT 1999

THE PRESIDENT HAS SEEN
5-24-00

CHIEF OF STAFF TO THE PRESIDENT

Hearing is tomorrow at 2pm
POTUS call to Hatch needs
to be made today.

JDP has approved

E CALL

I called
He was non-committal - said
he'd get back to us
BC

DATE: As soon as possible.

RECOMMENDED BY: Sarah Wilson and Mary Beth Cahill

PURPOSE: To ask for Senator Hatch to schedule a Judiciary Committee Hearing for Dolly Gee, your nominee for the Central District of California.

BACKGROUND: When you met with Dolly Gee today, you indicated your interest in calling Senator Hatch to ask that Gee be put on tomorrow's Judiciary Committee hearing. There are currently four judges on the hearing – all four of those are diversity candidates: Bonnie Campbell, a Caucasian woman nominated for the Eighth Circuit/Iowa; Jay Garcia-Gregory, an Hispanic man nominated for the District of Puerto Rico; Beverly Martin, a Caucasian female nominated for the Northern District of Georgia; and Laura Taylor Swain, an African American woman nominated for the Southern District of New York. Given that Gee has postponed her honeymoon in order to be in D.C. this week, you may be able to appeal to Hatch to add Gee to tomorrow's hearing while Gee is in town.

Copied
Podesta
Wilson
Cahill

Gee, a partner with the law firm Schwartz, Steinspar, Dohrmann & Sommers in Los Angeles was nominated on May 27, 1999. She is currently the only Asian Pacific American judicial nominee awaiting confirmation. Although Gee's nomination has been pending for almost a year and she has received the "blue slips" from both of her Senators, Gee has still not received a Judiciary Committee hearing. Only four district court candidates have waiting longer for a hearing than Gee. Senator Boxer is Gee's primary sponsor in the Senate. Although she is an exceptional candidate, Gee's candidacy has been viewed with deep suspicion by Senate Republicans, who have thus far refused to move her nomination. The Asian Pacific American community, which has been disappointed by our decision not to recess appoint Bill Lann

5-24-00

THE WHITE HOUSE

WASHINGTON

May 24, 2000

RECOMMENDED TELEPHONE CALL

I called
He was non-committal - said he'd get back to us
BC

TO: Senator Orrin Hatch

DATE: As soon as possible.

RECOMMENDED BY: Sarah Wilson and Mary Beth Cahill

PURPOSE: To ask for Senator Hatch to schedule a Judiciary Committee Hearing for Dolly Gee, your nominee for the Central District of California.

BACKGROUND: When you met with Dolly Gee today, you indicated your interest in calling Senator Hatch to ask that Gee be put on tomorrow's Judiciary Committee hearing. There are currently four judges on the hearing – all four of those are diversity candidates: Bonnie Campbell, a Caucasian woman nominated for the Eighth Circuit/Iowa; Jay Garcia-Gregory, an Hispanic man nominated for the District of Puerto Rico; Beverly Martin, a Caucasian female nominated for the Northern District of Georgia; and Laura Taylor Swain, an African American woman nominated for the Southern District of New York. Given that Gee has postponed her honeymoon in order to be in D.C. this week, you may be able to appeal to Hatch to add Gee to tomorrow's hearing while Gee is in town.

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Lee as Assistant Attorney General for Civil Rights, will greatly appreciate your public efforts on behalf of Dolly Gee.

Gee is a well-respected civil litigator in Los Angeles. Appointed by you to serve a five-year term (1994-99) on the Federal Service Impasses Panel of the Federal Labor Relations Authority, Gee is active in the legal community. A co-founder of the L.A. Asian Pacific American Bar Association and a former president of the Southern California Chinese Lawyers Association, Gee has served on the boards of the Western Center on Law and Poverty, the California Women's Law Center, and the Southern Californian Asian Pacific American Legal Center. Gee's nomination has generated bi-partisan support in California – among others, she has been endorsed by Congressman James Rogan, L.A. County Sherriff Lee Baca, and L.A. D.A. Gill Garcetti.

As you know, Gee got married this past weekend and, following her visit here, will proceed to Europe for her honeymoon.

TOPICS OF DISCUSSION:

1. Thank you for all of your help on the confirmation of the judges today and for scheduling a Judiciary Committee hearing for tomorrow. Let me reiterate my thanks for your sense of fairness while chairing the Judiciary Committee. I certainly have noticed – and appreciate – your integrity in these matters.

2. I am pleased that you have scheduled hearings for four top-notch diversity candidates for tomorrow's Judiciary Committee hearing. I am calling to ask you to add Dolly Gee, my nominee to the Central District of California, to tomorrow's Judiciary Committee hearing. Gee is an excellent district court candidate. She has generated impressive bi-partisan and law enforcement support in California. Gee just got married this past weekend and has postponed her honeymoon in order to meet with me this week. It would be truly wonderful if she could be added to tomorrow's hearing.

CONTACT PERSON AND TELEPHONE NUMBER(S): Patricia Knight, Chief of Staff, 224-6333
Ruth Montoya, Scheduler, 224-5251

DATE OF SUBMISSION: May 24, 2000

ACTION: ______________________________

STARCOM
SATELLITE TECHNOLOGIES, LLC

4113 Vincennes Road
Indianapolis, Indiana 46268
www.starcomst.com

Phone 317 / 228-0423
Fax 317 / 228-0711
Toll Free 877 / 301-7958

May 17, 2000

Ms. Minyon Moore
The White House
1600 Pennsylvania Avenue
West Wing 2nd Floor
Washington, DC 20515

Re: Telecommunications Act of 1996 – Competition at Risk

Dear Ms. Moore:

A
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deregulat
telecomm

Th
contract is
competitic

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services" t
connected
and soon C
and other n

We
appropriate
also attache
Please conta

THE WHITE HOUSE

Hot
Urgent
ASAP!

Betty:
The President requested this material
Thanks
Minyon

'00 MAY 24 PM1:34

5/24/00

Send to Burkhardt?
Yes ✓
No ____

Carol

scheduling

Sincerely,
StarCom Satellite Technologies, LLC

Christopher Day
Chief Executive Officer

Todd Ryden
Chief Operating Off

Enclosures

StarCom
Satellite Technologies, LLC

4113 Vincennes Road
Indianapolis, Indiana 46268
www.starcomst.com

Phone 317 / 228-0423
Fax 317 / 228-0711
Toll Free 877 / 301-7958

May 17, 2000

Ms. Minyon Moore
The White House
1600 Pennsylvania Avenue
West Wing 2nd Floor
Washington, DC 20515

Re: Telecommunications Act of 1996 – Competition at Risk

Dear Ms. Moore:

As requested by President Clinton, upon meeting him this past Monday, we are forwarding information regarding attacks facing the Telecommunication Act of 1996 and the potential elimination of the competition it has inspired. Our company has thrived in light of telecommunications deregulation; however, today the viability of our business is at risk. Unfortunately, smaller private telecommunications companies have little influence with the various departments of the FCC.

The issues that must be addressed are perpetual contracts, mandatory access and exclusive contract issues. If the rulemaking on these issues is not addressed appropriately it will sacrifice competition in the marketplace and stifle the growth of successful companies such as ours.

StarCom, among other companies throughout the United States, offer high-tech "bundled services" to the multi-family population, in which 30% of United States citizens reside, creating connected communities. Our company alone is conducting business in Indiana, Illinois, and Michigan and soon Ohio and Virginia. We successfully compete daily against AT&T, Time Warner, Comcast, and other major telecommunications companies. Their lobbying power we cannot match.

We would like the opportunity to meet with the President, Vice President Al Gore, or their appropriate staff members in the near future to discuss the critical nature of the above issues. We have also attached some general information on these issues and their affect on the industry for reference. Please contact us personally at (317) 228 – 0423.

Sincerely,
StarCom Satellite Technologies, LLC

Christopher Day
Chief Executive Officer

Todd Ryden
Chief Operating Officer/General Counsel

Enclosures

Crossmann
Communities, Inc.

April 20, 1999

Mr. Frank Lloyd
Post-Newsweek Cable
2520 Endress Place
Greenwood, IN 46143

RE: Bexley Village Apartments, Greenwood, IN

Dear Mr. Lloyd:

This correspondence is sent to you after months of frustration by Crossmann Properties, the Owner of Bexley Village. This frustration has turned into anger.

In December, 1997 Crossmann gave to Post-Newsweek the opportunity to offer cable services to the residents of this apartment community (276 dwelling units on 25 acres). However, Post-Newsweek has abused the opportunity by its continued lack of quality workmanship on the property as evidenced by the enclosed photographs (taken on April 16, 1999). Repeated telephone calls over the past twelve months to Post-Newsweek from the Bexley Village Management Office, Crossmann's construction personnel, and from this office have fallen on the deaf ears of Post-Newsweek. Post-Newsweek has refused to take corrective action at Bexley.

Photographs #1 and #2 show a cable line above ground for a distance of 40 feet. This line was placed on-site by Post-Newsweek on or near February, 1998; to date it remains above ground creating lawn care problems. Photographs #3, #4, #5, and #6 show existing conditions of open pedestal boxes and exposed wiring; water infiltration is a serious problem. These photographs represent other locations on the property. This behavior by Post-Newsweek is simply unacceptable.

You can see from the photographs of the Clubhouse and one apartment building (one of a total of nineteen buildings) that Bexley Village is a very attractive and well maintained property. Monthly rentals reach $825, a higher-income resident profile. Please be assured that Crossmann takes pride in its multifamily communities.

I can only describe your behavior as aloof and arrogant. This comes because of the lack of market competition; you have none. Solutions to these problems are long overdue. Will anything be done?

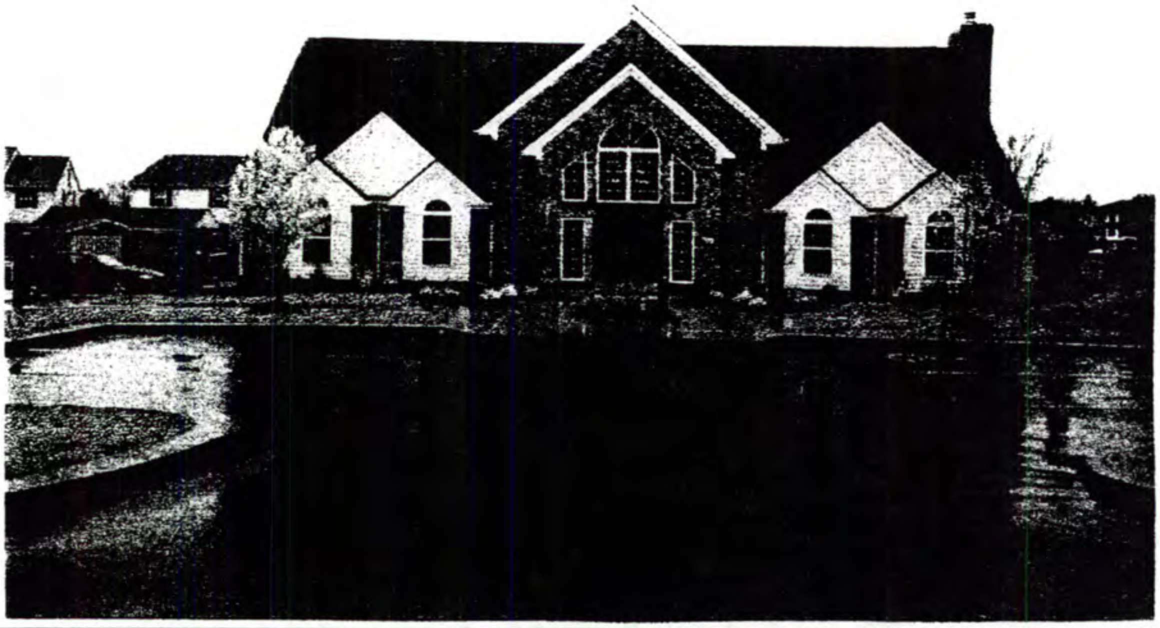
Sincerely,

M. L. Best

Minor L. Best
General Manager

cc: Indiana Senators and Representatives
Mayor Charles Henderson

BEXLEY VILLAGE APARTMENTS
Greenwood, IN



CLUBHOUSE (Clubroom, Exercise Room, Business Center)

TYPICAL BUILDING (19 TOTAL BUILDINGS)

BEXLEY VILLAGE APARTMENTS
Greenwood, IN

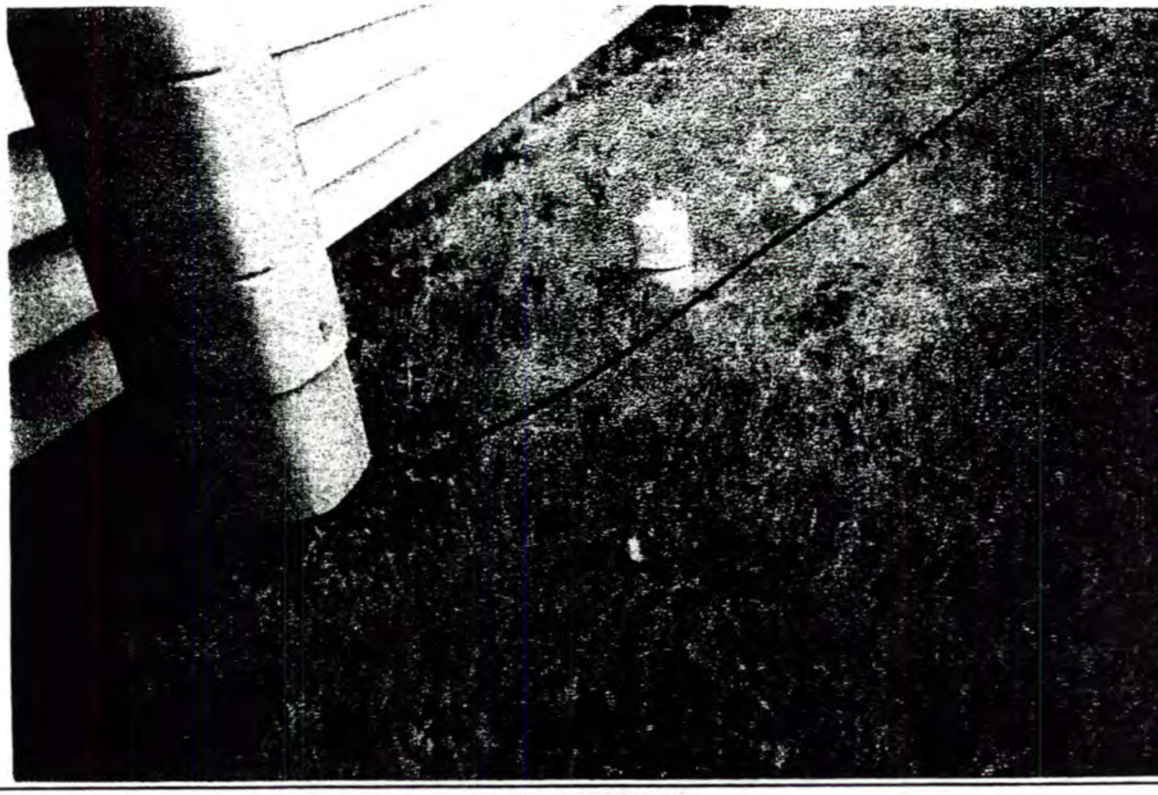


PHOTO #1

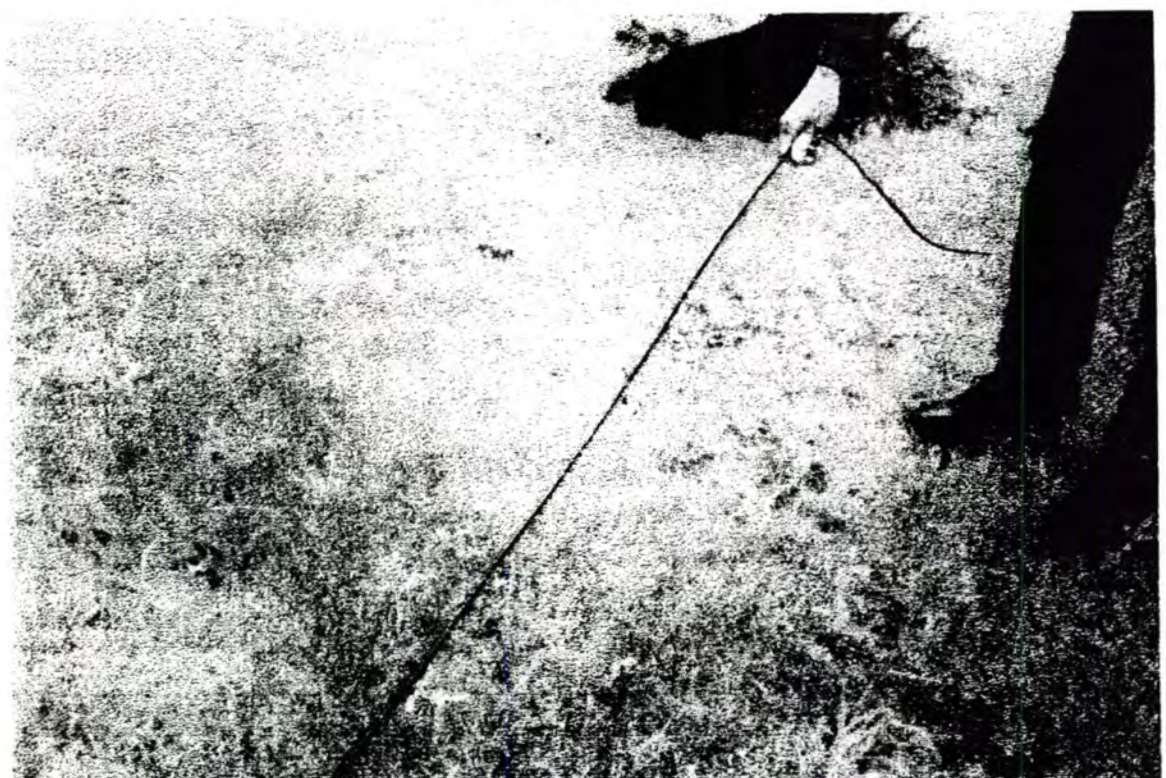
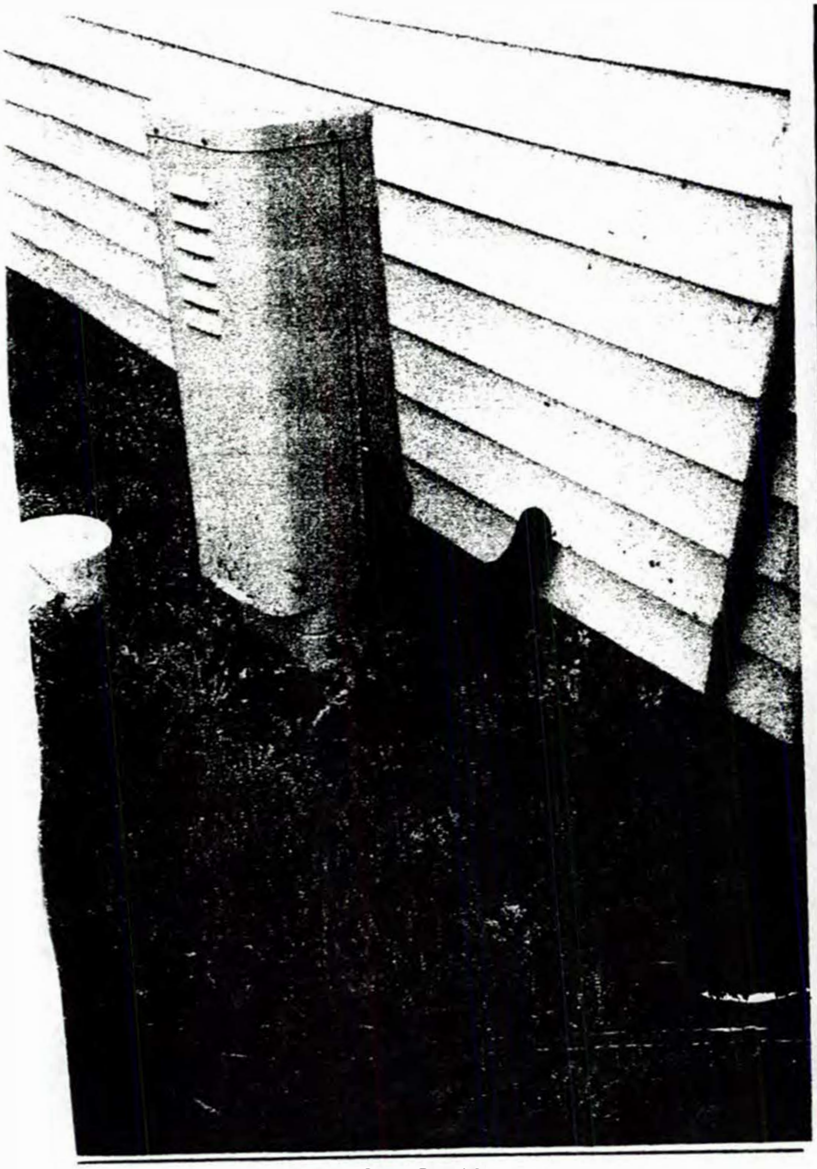


PHOTO #2

BEXLEY VILLAGE APARTMENTS
Greenwood, IN



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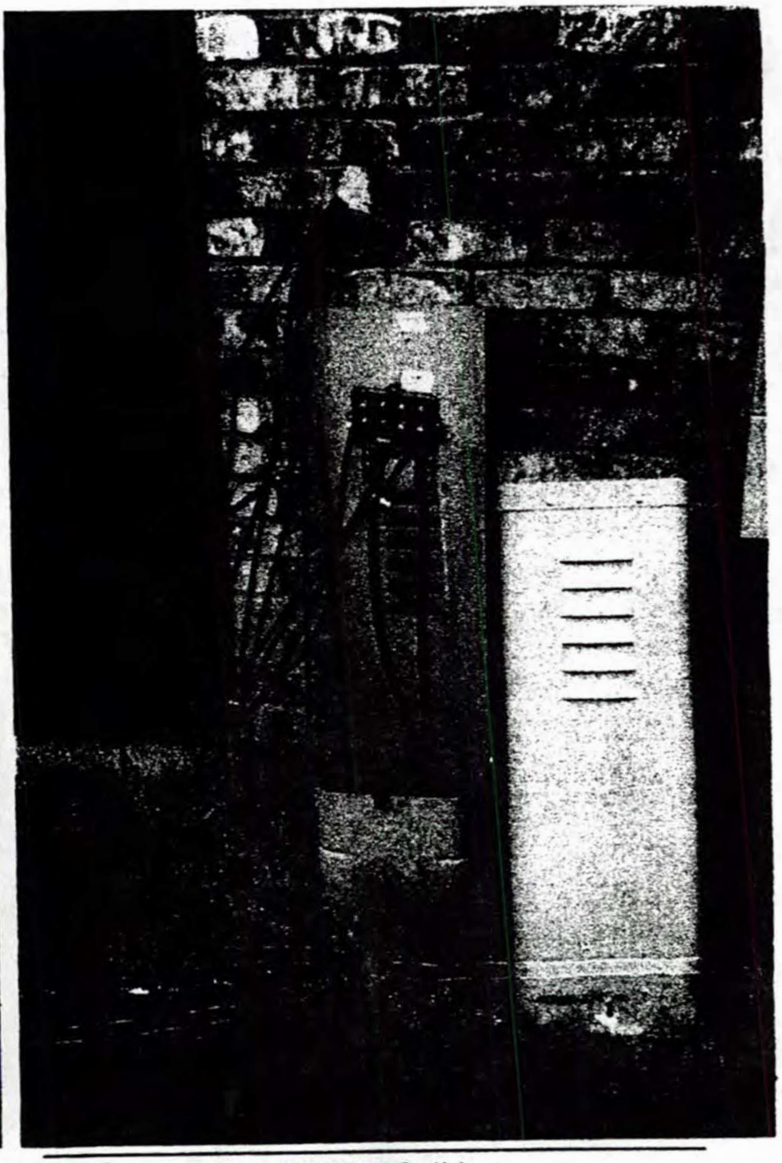

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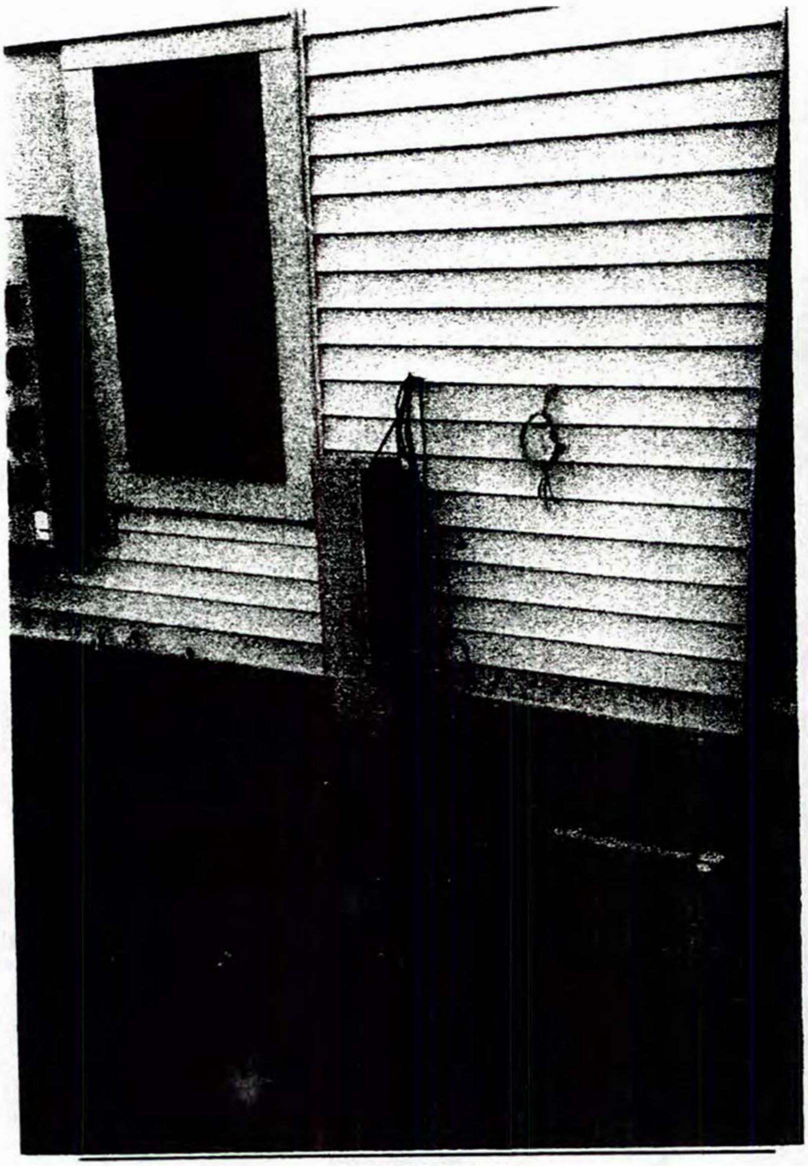
Greenwood, IN



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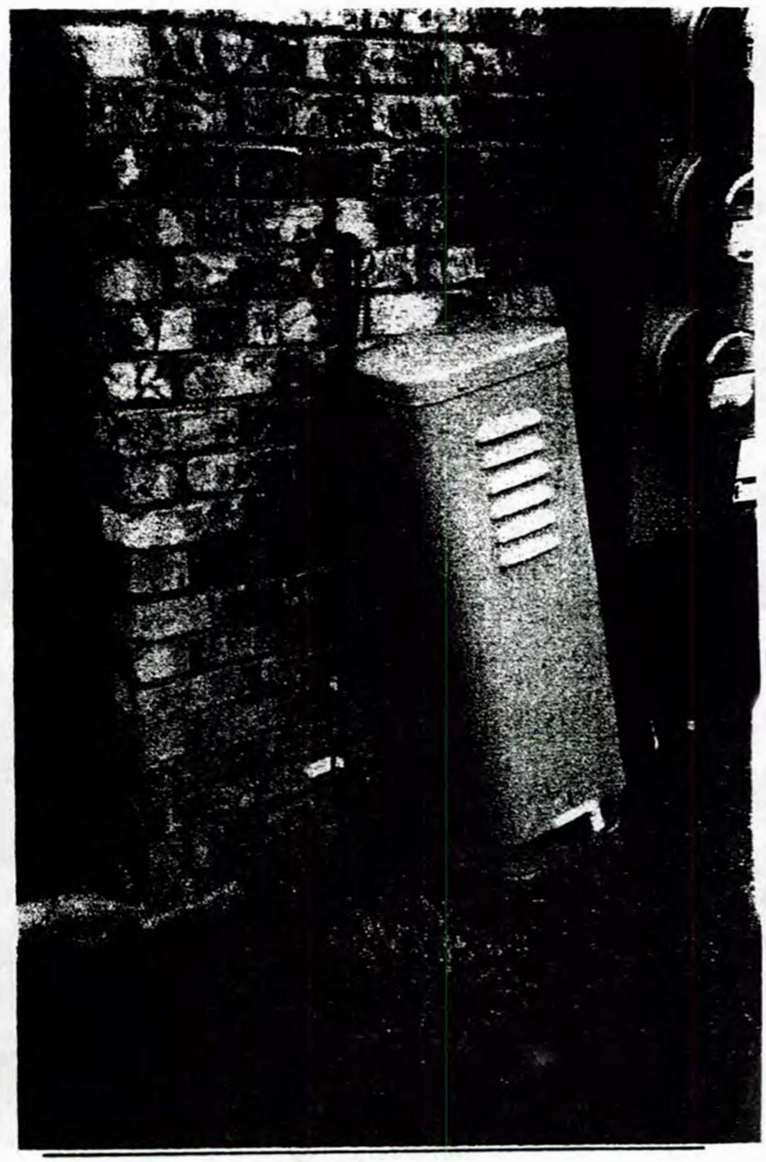

PHOTO #6

Report on the Competitive Effects of Exclusive Contracting for Video Programming Services in Multiple Dwelling Units

by

Michael D. Whinston

March 2, 1998

1. My name is Michael D. Whinston. I am currently a Professor of Economics at Harvard University, where I have taught since 1984, and a Visiting Professor of Economics at Northwestern University. I have recently accepted an endowed chair at Northwestern University as the King Professor of Business Institutions, effective September 1, 1998. I received my Ph.D. from the Massachusetts Institute of Technology in 1984, my M.B.A. from the Wharton School of the University of Pennsylvania in 1984, and my B.S. in Economics from the Wharton School of the University of Pennsylvania in 1980. Since receiving my Ph.D., I have taught courses in Industrial Organization (Ph.D. level and undergraduate) and Microeconomic Theory (Ph.D. level).

2. I have published extensively in academic journals on the topics of industrial organization and microeconomic theory. I have received a number of awards and professional recognitions, including an Alfred P. Sloan Foundation Research fellowship, election as a Fellow of the Econometric Society, a fellowship at the Center for Advanced Study in the Behavioral Sciences, and National Science Foundation research grants. I have also served as a Co-Editor of the *Rand Journal of Economics*, the leading professional journal in the field of industrial organization, and on the editorial boards of other professional journals. Within the area of industrial organization, a number of my articles deal with the topic of exclusive dealing contracts.

3. I have been retained as a consultant and/or expert witness on matters of antitrust policy in

numerous matters, including by the U.S. Department of Justice.

4. A copy of my curriculum vita is included as Appendix A to this report.

SUMMARY OF OPINIONS

5. I have been retained by the Independent Cable and Telecommunications Association (ICTA) and its members to analyze the competitive effects of exclusive contracts between multichannel video programming distributors (MVPDs), primarily private cable operators (PCOs), and multiple dwelling unit owners (MDU owners).

6. In the course of analyzing competition in the market for video programming in MDUs, I have examined documents and reports relevánt to competition in this market, I have reviewed comments filed in this proceeding, and I have interviewed a number of PCOs and MDU owners.

7. My analysis leads me to believe that there is little risk of competitive harm arising from the use of exclusive contracts by PCOs. The very low levels of economies-of-scale present in the PCO distribution technology indicates that a PCO is highly unlikely to be able to use exclusive contracts to reduce competition in the MDU market and earn supra-normal profits. Moreover, exclusive contracting with PCOs serves an important pro-competitive role in this market, and in particular, may be essential for assuring the competitive participation of PCOs in this market.

8. Given the low risk of any anti-competitive effects arising from PCOs= use of such contracts, and the important pro-competitive role that they play in the market, the FCC should be very cautious about imposing administrative limits on PCO=s use of exclusive contracts, and about imposing administrative limitations on their duration, over the judgements of the marketplace. Particularly detrimental would be any limitations that jeopardize PCOs= abilities to recover their investments and thereby compete effectively in the marketplace.

ANALYSIS OF POTENTIAL ANTICOMPETITIVE CONCERNS

9. As a general matter, sophisticated parties contracting in a complex environment may find it optimal to write contracts that differ from the simple types of exchange contracts contemplated in the classical perfectly competitive model. For example, these contracts may include incentive provisions, they may give one or another party options of whether and how much to trade, and they may include exclusivity provisions.

10. Such contracts can serve a variety of purposes. Typically, they are adopted for pro-competitive, efficiency-enhancing purposes. Sometimes, however, they may be employed to achieve anti-competitive ends.

11. When two parties writing a contract choose to include a provision such as exclusivity, it may be presumed that such a contract is an efficient choice for the parties in the sense that it maximizes their joint payoff (i.e. their monetary and other benefits). Were this not the case, there would be an alteration of the contract that, when combined with an appropriate monetary transfer between the parties, increases both parties= individual payoffs. This observation leads to a first principle for evaluating the anticompetitive potential of an exclusive contract: to present a threat to the efficiency of market outcomes, the exclusive contract must generate some kind of external effect on third parties. In general, these affected parties could be other buyers or sellers in the market, or even participants in related markets.

12. A second principle is that for an anticompetitive exclusive contract to be signed, the third parties who are impacted by the contract must not be present in the bargaining and negotiations over the contract in questions. The reason for this is that, if they were, these parties would have an ability and an incentive to make offers to mitigate the negative impacts they anticipate from

the contract in question. Thus, if the contract in question is signed despite these efforts, we must conclude that it is efficient.[1]

13. As an example of these two principles, it is instructive to consider an economic model of a hypothetical situation in which two sellers compete for the business of one buyer. Suppose that the first seller would earn 2 absent an exclusive contract and 6 with an exclusive contract, that the second seller would earn 0 if the first seller has an exclusive and 1 if the first seller does not have an exclusive, and that the buyer would have benefits of 2 if the first seller has an exclusive contract and 3 if the first seller does not have an exclusive contract. What will be the outcome of negotiations in this case? Note that the second seller is willing to offer the buyer up to 1 to *not* sign an exclusive contract with the first seller. Thus, including this payment, the buyer sees a net benefit of 4 if he does not give the first seller an exclusive contract, and 2 if he does. Hence, the first seller will need to pay the buyer 2 to sign the exclusive contract. In the present case, he will find this worthwhile (since his extra benefit from an exclusive is 4) and an exclusive contract will be signed. Note, however, that this outcome is *efficient* here B an exclusive contract results in an aggregate payoff of 8 (6 for the first seller and 2 for the buyer), while the aggregate payoff is only 6 without it (2 for the first seller, 1 for the second seller, and 3 for the buyer).

14. By way of contrast, suppose instead that the first seller receives a payoff of only 3 under an exclusive contract. In this case, an exclusive would not be efficient (total payoffs would be 5 with an exclusive and 6 without an exclusive). Note, however, that the first seller would also not find it worthwhile to pay the buyer to obtain the exclusive: he would need to pay the buyer 2 for the exclusive, but would gain only 1 from it.

[1] This is a version of the well-known Coase Theorem: if all interested parties are able to bargain together, efficiency is achieved.

15. Indeed, these observations reflect a very general point: when all affected parties are involved in the negotiations over the exclusive contract, *the exclusive contract will be signed precisely when it is efficient.*[2] Among other things, note that this tells us that the Alock-up@ of the buyer for the period of the exclusive should not B in and of itself B be a cause of concern. This is in notable contrast to the view sometimes expressed by some observers that exclusive contracts are inefficient because they Aeliminate choice.@ Rather, if competition at the contract formation phase works well (in the sense that all affected parties are involved in the bargaining process), then contracting outcomes will be efficient.

16. The lesson that follows from these two principles is that to identify cases in which exclusive contracts are signed with anti-competitive (i.e. inefficiency-causing) effects, we must identify third parties who are negatively impacted by the contract, and who are not part of the negotiations over it.

17. One set of parties who may at first appear not to be part of the negotiations are tenants. However, such an appearance would be deceptive. Because of the competitive nature of the market for real estate rentals, MDU owners are forced by the marketplace to act as *de facto* representatives, or proxies, for their tenants. To not do so would be to place their ability to rent their units at jeopardy. Or, put slightly differently, in a competitive marketplace, if an MDU owner is able to increase the value of being a tenant in its building by some amount (say, through arranging for better cable service), it can capture this through increased rental levels. Thus, MDU owners have every incentive to act as effective proxies for their tenants in negotiations.[3]

[2] Indeed, this remains true when other contracting possibilities (such as an exclusive contract with seller 2) are allowed. For a general statement of this result, see B.D. Bernheim and M.D. Whinston, AExclusive Dealing,@ JPE (106), February 1998, pp. 64-103, Sections II and III.

[3] It is instructive to note in this regard that the contracts signed by cooperative associations for video programming services look very much like the contracts signed by MDU owners.

Moreover, with their increasing level of sophistication, MDU owners have every ability to do so as well.

18. Given that tenants are effectively represented, the leading case in which problems could in principle arise occurs when significant scale economies are present in the efficient method of production and distribution in a market. In such a situation, a firm needs to be able to capture a significant share of business in the market to be a viable competitor. As a result, if one firm is able to sign enough buyers (here, MDUs) in the market to exclusive contracts, other firms will be unable to enter and compete for business. This creates precisely the sort of negative externalities described above, because when a buyer (MDU) signs an exclusive contract it reduces the likelihood of future competition in the market, and thereby has a negative effect on other buyers (MDUs).[4] Moreover, buyers are typically not involved in each others= negotiations, and so have no means for mitigating these effects.

19. However, a notable fact about the provision of video services by PCOs is that the efficient scale of operation for these operators is very low relative to a typical market=s size. PCOs offer service to an MDU primarily in one of two ways. The first possible method involves installing a dedicated headend for reception of satellite signals for that MDU; the signals are then distributed via wiring internal to the MDU from this headend to individual dwelling units. The second involves instead reception of a signal via microwave transmission from a headend facility located on another building. The number of buildings that can be served in this manner from a single headend is limited by the fact that microwave signals require line-of-sight transmission, by

[4]See, for example, B.D. Bernheim and M.D. Whinston, AExclusive Dealing,@ JPE (106), February 1998, pp. 64-103, Section IV; E. Rasmusen, J. M. Ramseyer, and J. S. Wiley, Jr., ANaked Exclusion,@ *American Economic Review* (81), December 1991, 1137-45; and I. Segal and M.D. Whinston, ANaked Exclusion and Buyer Coordination,@ Harvard Institute of Economic Research Discussion Paper No. 1780, September 1996.

the fact that they are effective only up to a distance of approximately 3-8 miles, and by the fact that physical space and other limitations typically exist that significantly limit the number of microwave transmissions that can be made from a single headend facility. Indeed, my understanding is that it is very rare for a single headend to serve more than 5-10 buildings. The result of these facts is that, to a great degree, the costs incurred by a PCO in providing video services are incurred on an MDU-by-MDU basis. That is, economies of scale in signal reception and distribution are very minimal for PCOs.

20. This is not to say that signal reception and distribution are the only costs incurred by a PCO in serving a local market. A PCO must maintain both marketing and service staff in a local market. But even with these costs, PCOs typically see themselves operating at an efficient scale when they have approximately 10,000-20,000 passings in a local marketplace, or assuming a 60% penetration rate, roughly 6,000-12,000 subscribers. In fact, in a survey that ICTA recently sent to some of its members, the respondents (who included a number of the largest PCOs) had an average of 10,060 passings and 5,412 subscribers in the cities in which they were active. This number is very small when compared to the number of potential subscribers in most major, or even medium-sized, cities. For example, in 1995 the franchised cable operators in Chicago served a total of 335,000 subscribers; in San Francisco this number was 174,450; in San Diego it was 678,474; in Memphis it was 157,209; and in Seattle it was 431,352.[5] Even if one focuses on just MDUs, the number of potential MDU subscribers in these cities is clearly very large compared to an efficient scale of 9,000-12,000 subscribers (For example, the FCC=s *Fourth Annual Report* on the state of competition in markets for delivery of video programming notes

[5] See the 1996 issue of the *Cable Fact Book*. These numbers represent the number of subscribers within the city limits. The number of subscribers would be much larger if we instead looked at the overall metro areas.

that as of 1990, MDUs contained roughly 28% of the total housing units nationwide; the share of total housing units in even a medium-sized city would obviously be much higher).

21. Another notable feature of the current contracting environment for contracts with MDU=s is its highly competitive nature. This fact was explicitly noted in the FCC=s *Fourth Annual Report*. There, the Commission notes Athe emergence of a distinct MDU market, which is more competitive than other MVPD markets.@ (p. 76) It goes on to comment that the Acompetitive strategies of a number of firms that are focusing on the MDU market illustrate what appears to be a developing competitive trend for this market.@ (p.77) Indeed, PCO=s must compete not only against the established franchised cable operator in a market (who has all of the advantages of incumbency, including buyer awareness), but also against each other, and increasingly against services provided by local telephone operators (LECs) and direct broadcast satellite (DBS) providers (see the *Fourth Annual Report*, p. 77). The contracting environment is made all the more competitive by the increasing sophistication and size of the MDU owners who are seeking contracts for video services on their properties (see again, the *Fourth Annual Report*, p. 77). In fact, the survey information recently collected by ICTA indicates significant competitive interaction even among PCOs. The respondents to this survey were 6 PCOs, including three of the four largest PCOs. Across the 45 cities in which these PCOs currently are serving subscribers, on average 1.24 of the 6 were active. That is, in roughly one quarter of these cities, 2 of the 6 respondent PCOs were already serving customers. More significantly, however, these responding PCOs also reported which other PCOs were current competitors in each of these cities. On average, there were 2.87 PCOs currently competing in these cities. Since this survey was potentially far from fully inclusive, these numbers should be thought of as lower bounds on the true number of PCO competitors.

22. We have already noted that in the absence of any economies-of-scale, negative externalities across buyers would not arise, and with all sellers are actively competing for contracts there would be no ability to use exclusive contracts for anti-competitive ends. Even though there are *some* economies-of-scale in PCO delivery, their extremely low level makes it highly unlikely that any PCO could profitably seek to use exclusive dealing contracts for anti-competitive ends. It is simply not feasible for a PCO to effectively eliminate competition from other PCOs, and thereby gain the freedom to price non-competitively in the MDU segment of the video programming distribution market, without signing up essentially all of the MDUs in a city. The likelihood that such a strategy would prove profitable seems very remote.[6]

23. It is worthwhile noting that using exclusive contracts for anti-competitive ends may be a more plausible strategy for a franchised cable operator. In particular, for a franchised cable operator, the most efficient source of competition in the future may not be entirely clear at this point. In the event that PCOs turn out to be the most efficient alternative provider, exclusive contracts will help reduce competition for the franchise cable operator only if essentially all MDUs are signed up to exclusives. However, in the event that delivery by methods akin to those currently used by franchised cable operators turn out to be the most efficient alternative means of service to the franchised cable operator (i.e. if delivery by a LEC is much more efficient than delivery by a PCO), then because such means of delivery are characterized by substantial economies-of-scale, exclusives may well turn out to be a means for insulating the cable franchise operator from competition. Here, a franchised cable operator may foresee the possibility of future states of the world in which having a significant number of exclusive contracts with MDUs

[6] For a more explicit statement of this point, see I. Segal and M.D. Whinston, ANaked Exclusion and Buyer Coordination,@ Harvard Institute of Economic Research Discussion Paper No. 1780, September 1996.

would reduce the extent of competitive pressure it faced.

24. Moreover, franchised cable operators signed many MDUs to very long-term, and even perpetual, exclusive contracts well before any alternative providers were on the scene. At the time these contracts were signed, the owners of these MDUs may well not have foreseen *any* possibility of future competition in the video programming distribution, and so it would have been particularly easy for the franchised cable operator to induce an MDU owner to accept an anti-competitive contract.

PROCOMPETITIVE ASPECTS OF EXCLUSIVE CONTRACTS

25. Exclusive dealing contracts can also serve important pro-competitive functions by making exchange relationships work more efficiently. One way in which this can happen is through the effect of an exclusivity provision on the investments undertaken by the parties to the contract. In particular, the economics literature has studied the ways in which exclusivity might affect investments that cannot be explicitly specified in the parties= contract (in the language of the economics literature, these are Anon-contractible investments@). [7] As I discuss below, such issues are potentially important ones in the context of the sale of video programming in MDUs, and in fact have some potentially important ramifications for the level of competition in these markets.

26. In the contracting problem facing PCOs and MDU owners, the initial investments of the

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[7] See, for example, B. Klein, AVertical Integration as Organizational Ownership: The Fisher Body-General Motors Relationship Revisited,@ *Journal of Law, Economics, and Organization*, 1988 (reprinted in S. Masten, ed. *Case Studies in Contracting and Organization*, New York: Oxford University Press, 1996); S. Masten and E. Snyder, AUnited States v. United Shoe Machinery Corporation: On the Merits,@ *Journal of Law and Economics*, 1993 (reprinted in S. Masten, ed. *Case Studies in Contracting and Organization*, New York: Oxford University Press, 1996); H. Marvel, AExclusive Dealing,@ *Journal of Law and Economics*, 1982, 1-25; and I. Segal and M.D. Whinston, AExclusive Dealing and Protection of Investments,@ 1997,

PCO, their initial programming, and the prices to be initially charged are largely able to be contractually specified. What is much more difficult to specify contractually is the level of these items in the future. Future technologies are hard to imagine in the present, and therefore a contract cannot readily specify a PCO=s or franchised cable operator=s investment obligations in the future. Likewise, future programming is unknown, as are future programming tastes of consumers, and so it is difficult to specify what programming and price should be in the future. It is true that a recent trend in the contracts between MDU owners and PCOs has been toward the inclusion of some contractual provisions, such as technological most-favored-nation-type clauses, that offer the MDU owner some protection (such a clause might say that the PCO must keep the technology in the building up to Aprevailing standards@ or the PCO=s Acurrent standards elsewhere in the MDU=s market area@). But such provisions are likely to offer far from complete protection, and the attempt to include them seems to indicate, more than anything else, the importance of the issue.

27. A significant concern regarding future investments within an MDU involves the incentives for an MDU owner to allow, or even encourage, an inefficient over-build (or upgrade investment) by a second cable provider once a PCO has made an initial investment in a building. In the case of a new MDU where a PCO is the first provider to wire the MDU, this could involve bringing the local franchised cable operator into the MDU. Where the local cable franchise operator is already in the building, the issue may be the incentive for the franchise holder (possibly encouraged by the MDU owner) to upgrade its facilities.

28. Without an exclusive contract, there is nothing to prevent such over-building. However, such overbuilding may very well be inefficient. Moreover, the prospect of such overbuilding

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may make the PCO unwilling to invest in the MDU in the first place.

29. To illustrate these points, consider the following simple example. Suppose that there is a new MDU and that a PCO must invest 220 to serve this MDU. The local franchise operator on the other hand, needs to invest 50 to serve the building (its costs may be lower because it need not install any reception equipment B its signal is already just outside the MDU). There are 300 residents in the building. Of these, 100 of them are happy to receive their service from either cable provider and have a value of 1 from cable service. The remaining 200 residents are only interested in the services of the PCO, and receive a value of 1 from these services. (This is a simple way of capturing the fact that the PCO is likely to be able to provide a higher value product, in part because its channel capacity may be greater, but more significantly because it can tailor the programming it offers in the MDU to the particular attributes of the MDU=s residents.) If just the PCO serves the building, it will charge each resident 1 for cable service and earn 300 in subscriber fees. If just the franchised cable operator serves the building it will charge 1 for service and earn 100 in subscriber fees. Finally, we suppose that in the event that both the PCO and the franchise operator serve the building, then the PCO serves the 200 consumers who value only it, while the MSO serves the remaining residents (at a price of 1). Hence, in this event the PCO earns 200 in subscriber fees and the franchised cable operator earns 100 in subscriber fees.[8,9]

30. Note, first, that in this setting, the efficient outcome is for only the PCO to serve the

[8] The same conclusions can follow whether or not firms start undercutting each other when they are both in the building. Although I will not go through such an example here, similar effects can arise: the MDU owner may encourage inefficient over-building, leading the PCO to lose money if it enters the building, and ultimately resulting in the PCO being unable to compete. In such cases, even though having both providers in the MDU would lower prices, lower prices never materialize when exclusives are banned.

[9] For simplicity, we assume that there is only one period of sales. Alternatively, we can view the stated valuations of residents as the present discounted values of their valuations.

building B aggregate surplus is 80 in this case (gross consumer value is 300, and investment costs are 220), while it is 50 if the building is served by only the cable franchise operator (gross consumer value of 100, less investment costs of 50), and it is 30 if both cable providers serve the building (gross consumer value of 300, less investment costs of 270).[10]

31. Suppose that exclusive contracts are not allowed and that the PCO and MDU owner reach an agreement whereby the PCO invests to serve the building. Once the PCO has invested, the building owner and the cable franchise operator have an incentive to reach an agreement whereby the cable franchise operator invests in providing service to the MDU as well. By doing so, the cable operator will earn subscriber fees of 100, while incurring an investment cost of only 50. However, note three things. First, this decision is socially inefficient B allowing the MSO into the building creates no additional consumer benefits here, but incurs an investment cost of 50. The reason that it pays for the cable operator to enter the building (or upgrade) is that in doing so he steals some of the PCO=s business.[11] Second, if the MDU owner will allow the cable franchise operator into the building once the PCO has invested, the PCO will lose money: he will invest 220, but earn only 200. Third, the end result of this will be that the PCO will not be willing to invest at all B the MDU will be forced to contract with the MSO, yielding a socially inefficient outcome.

32. One might wonder about alternative arrangements to exclusive contracts that could be

[10] I am ignoring any costs of programming acquisition here, but we can equally well think of the residents= valuations as net of these costs.

[11] For more general discussions of this type of inefficiency and the role of exclusivity in limiting it, see I. Segal and M.D. Whinston, AExclusive Dealing and Protection of Investments,@ 1997, mimeo; a similar point arises in the literature on free entry and social inefficiency, such as N.G. Mankiw and M.D. Whinston, AFree Entry and Social Inefficiency,@ *Rand Journal of Economics*, Spring 1986, 48-58. Note that if prices were bid down for cable service due to the cable operator=s entry/upgrading then it would still be true that the cable operator and the MDU owner might *jointly* find it optimal to facilitate this entry given that the MDU owner internalizes the reduction in residents= cable expenses that this entry would bring. For more on this point, see R. Innes and R.J. Sexton, AStrategic Buyers and Exclusionary Contracts,@ *American*

used to circumvent these problems. One possibility is that MDUs could write bulk contracts with PCOs, thereby assuring them business without writing an exclusive contract. In fact, bulk contracts are written in the marketplace, particularly with condominium and cooperative associations. However, from the standpoint of an MDU owner, such contracts have the risk of being inefficient if not every tenant will want and value cable service. Moreover, long-term quantity contracts involve a similar potential for anticompetitive effects. Alternatively, an MDU owner could subsidize a PCO=s investment in its building to reduce the PCO=s exposure to an acceptable level. There are two problems with this idea. The first is that it actually does not have any effect on the MDU owner=s incentive to allow inefficient over-building (i.e. the incentives in the above example would not change if the MDU owner had subsidized the PCO=s initial investment). Second, the MDU may see little or no direct benefit from encouraging the PCO to come into the building (i.e. in the above example, the MDU owner sees no benefit given that he will be allowing the cable franchise operator into the building anyway.) Finally, one mechanism that can curb the MDU owner=s incentives for inefficient over-building is for the MDU owner to receive a large share of the PCO=s subscriber revenues (this works because the cable franchise operator is now taking some of the MDU owner=s revenue stream when it enters the building.) In fact, MDU owners do often receive a share of the PCO=s subscription revenue stream. However, this share is typically quite small (on the order of 5-10%); too small to really matter for the MDU owners incentives regarding over-building in any significant way. Moreover, this share cannot be significantly increased without greatly diminishing the incentives of the PCO to invest in keeping service quality high.

33. In fact, both PCOs and MDU owners seem to be in universal agreement that exclusives

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Economic Review, June 1994, 566-84.

are necessary to create an environment in which PCOs are willing to invest in MDUs. Indeed, the comments submitted to the FCC by the Building Owners and Managers Association remarked that AWithout the right to enter into exclusive contracts, many building owners would be forced to deal with the incumbent cable operator and no one else.@ (p. 4) My interviews with MDU owners revealed similar sentiments.

34. Some evidence of the importance of these concerns can be seen by considering the effect that state mandatory access statutes have had on the level of competition in delivery of video programming to MDUs. These statutes mandate that the local franchised cable operator has a right of access in an MDU, and thereby make exclusive contracts with competitors to the franchised cable operator impossible.[12] Anectodal evidence suggests that PCOs are much less likely to be active in states that have such statutes. Moreover, the responses to the ICTA survey confirm this anecdotal evidence: survey respondents were active in 28 of the 36 non-access states (77%), but in only 5 of the 14 access states (36%). Thus, the inability to write exclusive contracts in access states is associated with a significant reduction in the extent of PCO competition that franchised cable operators face.

[12] The presence of these statutes is not exactly equivalent to a ban on exclusive dealing contracts because they also mean that an MDU owner cannot bar the local franchised cable operator from access to its building. But such a difference is unlikely to be of significant relevance in practice, because the difference only matters for the incidence of inefficient over-building in cases in which the franchised cable operator can earn positive profits by entering the MDU or upgrading its service to the MDU following investment by a PCO, but the building owner is made worse off by this entry. The typical case is likely to be that the building owner is at worst indifferent about this entry.

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Curriculum Vitae

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Harvard University, Assistant Professor of Economics, 1984-88

VISITING POSITIONS

Department of Economics, Northwestern University, 1997-8
Antitrust Division, U.S. Department of Justice, April - July 1988
Department of Economics, Yale University, Fall 1989

GRANTS, FELLOWSHIPS, PRIZES

National Science Foundation Research Grants, 1986-88, 1990-94
Alfred P. Sloan Research Fellow, 1990-92
Fellow, Center for Advanced Studies in the Behavioral Sciences, 1993-94
Fellow, Econometric Society (Elected in 1993)

PROFESSIONAL ACTIVITIES

Co-Editor, *RAND Journal of Economics*, 1991-1996
Research Associate, National Bureau of Economic Research
Program Committee, Econometric Society Meetings, Winter 1989

CONSULTING EXPERIENCE

I have been the principal economic consultant in the following matters:

Starkist/Bumble Bee Merger Investigation (Dept. of Justice Merger Investigation)
Phelan v. Newport Imports (Price Fixing Case)
Ticketmaster Investigation (Dept. of Justice Investigation of Contracting Practices)

In addition I have worked as a member of a consulting team in numerous other antitrust matters.

TEACHING

Graduate industrial organization, antitrust, and regulation
Graduate microeconomic theory
Undergraduate industrial organization and antitrust
Undergraduate applied microeconomics

PUBLICATIONS: BOOKS

1. *Microeconomic Theory*, Oxford University Press, 1995, 981 pp. (with A. Mas-Colell and J. Green)

PUBLICATIONS: JOURNAL ARTICLES

1. AMoral Hazard, Adverse Selection, and the Optimal Provision of Public Goods,@ *Journal of Public Economics* (22), October 1983, pp. 49-71.
2. ACommon Marketing Agency as a Device for Facilitating Collusion,@ *RAND Journal of Economics* (16), Summer 1985, pp. 269-81. (with B.D. Bernheim)
3. AMenu Auctions, Resource Allocation, and Economic Influence,@ *Quarterly Journal of Economics* (101), February 1986, pp. 1-31. (with B.D. Bernheim)
4. AFree Entry and Social Inefficiency,@ *RAND Journal of Economics* (17), Spring 1986, pp. 48-58. (with N.G. Mankiw)
5. ACommon Agency,@ *Econometrica* (54), July 1986, pp. 923-42. (with B.D. Bernheim)
6. ACoalition-Proof Nash Equilibria I: Concepts,@ *Journal of Economic Theory* (42), June 1987, pp. 1-12. (with B.D. Bernheim and B. Peleg)
7. ACoalition-Proof Nash Equilibria II: Applications,@ *Journal of Economic Theory* (42), June 1987, pp. 13-29. (with B.D. Bernheim)

8. AExit with Multiplant Firms,@ *RAND Journal of Economics* (19), Winter 1988, pp. 568-88.

9. AMultiproduct Monopoly, Commodity Bundling, and Correlation of Values,@ *Quarterly Journal of Economics* (104), May 1989, pp. 371-84. (with R.P. McAfee and J. McMillan)

10. AMultimarket Contact and Collusive Behavior,@ *RAND Journal of Economics* (21), Spring 1990, pp. 1-26. (with B.D. Bernheim)

11. ATying, Foreclosure, and Exclusion,@ *American Economic Review* (80), September 1990, pp. 1-26.

12. AThe >Foreclosure= Effects of Vertical Mergers,@ *Journal of Institutional and Theoretical Economics* (147), March 1991, pp. 207-26. (with P. Bolton)

13. APatent Expiration, Entry, and Competition in the U.S. Pharmaceutical Industry: An Exploratory Analysis,@ *Brookings Papers on Economic Activity, Microeconomics*, 1991, pp. 1-48. (with R. Caves and M. Hurwitz)

14. AEntry and Competitive Structure in Deregulated Airline Markets: An Event Study Analysis of People Express, *RAND Journal of Economics* (23), Winter 1993, 445-62. (with S. Collins)

15. AIncomplete Contracts, Vertical Integration, and Supply Assurance,@ *Review of Economics Studies* (60), January 1993, pp. 121-48. (with P. Bolton)

16. AOn the Efficiency of Privately Stipulated Damages for Breach of Contract: Entry Barriers, Reliance, and Renegotiation,@ *RAND Journal of Economics* (26), Summer 1995, pp. 180-202. (with K. Spier)

17. AExclusive Dealing,@ *Journal of Political Economy* (106), February 1998, 64-103. (with B.D. Bernheim)

18. AIncomplete Contracts and Strategic Ambiguity,@ forthcoming in the *American Economic Review*. (with B.D. Bernheim)

PUBLICATIONS: OTHER

10 AThe Ethyl Corporation in 1979,@ *Harvard Business School Case Study No. N9-388-075.*

WORKING PAPERS

ANaked Exclusion and Buyer Coordination,@ H.I.E.R. Disc. Paper # 1780. (with I. Segal)

AExclusive Dealing and Protection of Investments,@ mimeo. (with I. Segal)

Crossmann
Properties, LLC

July 29, 1999

Chairman William Kennard
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: FCC Rulemaking (Private vs. Franchise Cable Operators)

Dear Chairman Kennard:

Crossmann Properties, L.L.C., an affiliate company of Crossmann Communities, Inc., would like to share a recent experience with a local franchise cable provider. Crossmann understands that new regulations will soon be proposed to you by the franchise cable operators, thus the need to deliver this letter.

Crossmann Communities, Inc. is a publicly traded homebuilder located in Indianapolis, Indiana. Crossmann is actively involved in six states east of the Mississippi River. Crossmann Properties, L.L.C. is the entity which develops, builds and operates multifamily rental communities.

Enclosed is a copy of correspondence (dated April 20, 1999) delivered to Post-Newsweek Cable, the provider of cable services for our property in Greenwood, Indiana (south of the Indianapolis metropolitan area). This correspondence, with photo attachments, was delivered to all Indiana State Senators and Representatives.

This experience with the franchise cable operator is not an isolated one. Over the past 15 years we have experienced such behavior from most of the franchise operators.

I trust this correspondence is self explanatory and I do appreciate you taking the time to review such.

Sincerely,

M. L. Best

Minor L. Best
General Manager

STARCOM
SATELLITE TECHNOLOGIES, LLC

4113 Vincennes Road
Indianapolis, Indiana 46268
www.starcomst.com

Phone 317 / 228-0423
Fax 317 / 228-0711
Toll Free 877 / 301-7958

February 18, 2000

Honorable Carl Holmes, Chairman
House Utilities Committee
Kansas House of Representatives
State House
300 SW Tenth Street
Topeka, Kansas 66612

Re: SB 54

Dear Mr. Chairman:

We understand that SB 54 is before you for consideration. A similar franchised cable mandatory access bill was proposed by the franchised cable coalition and defeated in Indiana last year. The franchised cable coalition will promote such bills as promoting competition. They do not.

In your single family home you have two choices – franchise cable or DSS (DirecTV / Dish Network). In the multi-dwelling home Private Cable Operators (PCO) can be a third choice. However, due to the expensive nature of building a coaxial plant for video services, it is not economically feasible to have a franchise and private operator on the same property at the same time.

On a typical 200-unit property, the PCO capital expenditure is over four times that of the franchise operator. The reason is the PCO must build a fully operational video system to serve 200 homes and the franchise has the luxury of feeding off of a master system that is feeding many thousands of homes.

The Indiana legislature realized that the property owner's best interest is to make their resident as happy as possible therefore maximizing occupancy. The owner can negotiate more stringent service requirements, lower price points, limit price increases and require specialty channels to be included (i.e. ethnic, security, community channels etc).

Mandatory access bills are not pro-choice, not pro-consumer and retard video competition.

Should you have any questions or need additional information, I can be reached at (317) 228 – 0423.

Sincerely,
StarCom Satellite Technologies, LLC

Christopher Day
Chief Executive Officer

Cc: House Utilities Committee
Bcc: Mark Armstrong, SW Bell Video

FCC Rulemakings

As of this date, the FCC indicates that the rulemaking addressing exclusive contracts, perpetual contracts, and mandatory access is in final stages of preparation and will be submitted to the Commissioners in the near future. Assuming we can ascertain the contents of the rulemaking, ICTA representatives will communicate with the FCC Commissioners and their legal advisors regarding our point-of-view. Therefore, it is requested that BOD members be prepared for letters, telephone calls and perhaps visits to the FCC during the middle of February and thereafter.

18 GHz

The FCC International Bureau rulemaking on the use of the 18 GHz radio spectrum is also still in preparation. We are quite certain the appropriate FCC staff understand the PCO point-of-view and are taking it into consideration in their draft that will be submitted to the Commissioners within the next month or so. This issue also will require ICTA lobbying intervention, but the exact time frame is unclear.

Executive Director 2000 Goals

Based on the November ICTA BOD meeting and conversations with many people concerned with the MDU marketplace, Bill Burhop has identified 10 goals to pursue during this year, as follows:

1. Win on FCC rulemaking regarding exclusive contracts, perpetual contracts and mandatory access statutes. Work to prevent new mandatory access statutes.
2. Win on 18 GHz rulemaking.
3. Get more deeply involved in the FCC Wireless Bureau local telephony competition rulemaking. Define MDU and PCO goals for this rulemaking.
4. Develop Program of Excellence with 3 components, seek adoption by ICTA and SBCA, work toward implementation of Standards by the end of the year, make progress on PCO/DBS Data Collection/Dissemination, and more fully develop the POE Training and Certification plan for the July MDU Conference.
5. Organize successful ICTA/SBCA activities at the March Charleston Technology Conference.
6. Organize and manage a successful MDU Conference at the SBCA Convention scheduled for Las Vegas, July 19 – 21.
7. Solicit more MDU/REIT members of ICTA.
8. Solicit more Internet Service Provider members of ICTA.
9. Solicit more financial institutions as members of ICTA.
10. Work toward development of a high quality electronic and print publication utilizing the resources of PrivateCable.com, WSNet News and any other periodical that focuses on the PCO/DBS products in the MDU environment.

Satellite Home Viewer Act

On November 29, 1999, President Clinton signed the Satellite Home Viewer Act which passed the Congress on November 19.

Chuck Hewitt, President of Satellite Broadcasting and Communications Association (SBCA), said, "For three years, the satellite television industry and the SBCA, backed by over one million satellite television consumers who have called, written and visited their Members of Congress, have been fighting for legislation that would enable the satellite industry to become more competitive with the cable monopoly. Congress has now passed legislation that contains many of the building blocks our industry needs to bring to consumers a more competitive video marketplace."

Hewitt continued, "One of the most important features of the new legislation enables Direct Broadcast Satellite service providers ("DBS") to retransmit to subscribers local television broadcast stations within their service areas - so-called local-into-local service. This will allow the satellite industry to deliver to its subscribers the same local broadcast programming that cable subscribers receive. In many metropolitan areas, therefore, satellite carriers will be offering local television channels in addition to the high quality digital video and audio programming which is already part of their service."

Chairman Kennard of the Federal Communications Commission indicated that the FCC will aggressively implement the new Satellite Home Viewer Act so that consumers have viable alternatives to cable.

Visit ICTA's web site www.icta-online.org to view a comparison prepared by SBCA of HR 1554 and S. 247 which were the bases for provisions in the final Act signed by President Clinton.

New Members

An expansion of the ICTA Board resulted in several new MDU members joining ICTA. Joining ICTA as Associate/MDU organizations are: Greg O'Berry, Sr. Vice President – AMLI Residential Properties; Kathleen Keating, Vice President – Archstone Communities; Steve Beltran, Vice President – EPT Management Company; Lori Reeves, President – Forest City Residential Properties; and Sue Ansel, Vice President – Gables Residential Trust.

Other new members include: Scott Skokan of Bozzuto & Associates, a property management company based in Greenbelt, MD; Jeff Maxwell, CEO – 4Com, Inc., based in Minneapolis, MN; Fred Guinta of New York based Telestar Systems, Inc. and Brian Kushner, President of TheResidentClub.Com, an ISP located in Austin, TX.

Doug Truckenmiller

In early December, Doug Truckenmiller joined the executive management team at WSNet in Austin, Texas as Executive Vice President and Chief Operating Officer. Doug is responsible for overseeing all of the company's operations, including programming and equipment sales, marketing, technical services, customer service and information technology. Originally trained as an electrical engineer, Doug has nearly 30 years of management experience in the telecommunications and private cable industries. He is the former Chief Operating Officer of a leading private cable management company Global Interactive Communications, and he has also served as the Chief Technical Officer for LodgeNet Entertainment Corporation. WSNet is the nation's leading provider of MDU private cable programming solutions.

Mandatory Access

The state legislatures are active again. Mark Armstrong, Managing Director, at SBVS, informed us that the Kansas legislature is considering S 54. It is a mandatory access bill. ICTA sent a letter to Chairman Carl Holmes of the Kansas House Utilities Committee strongly recommending that the Committee reject S 54 and the House substitutes. As in other states, ICTA believes the bill to be unconstitutional, it discriminates against video service providers who do not have municipal franchises and it would decrease rather than increase competition in the video services market for MDUs.

In early 1999, we reported that Georgia HB 669 was dead. While that bill is presently dormant, we have heard that it may make a comeback. ICTA members operating in either of these states are asked to keep an ear to the legislative grapevine for movement or action on these bills and any others which may be introduced.

ICTA members are encouraged to keep abreast of what is happening in the state legislatures of their service areas. In addition to sending letters opposing mandatory access legislation, ICTA works closely with National Apartment Association members to oppose legislation of this type.

Jim Honiotes

Jim has accepted the position of Vice President Marketing and Communications for International Channel Networks, a division of Liberty Communications in Denver, CO. ICN is a collection of American basic, premium and digital cable television networks that specialize in programming from around the world, in the language of their origin. Jim may be contacted at his new email address -- jhoniotes@i-channel.com or by direct phone at (303) 712-5459.

New Member – New Breed

John Craig and Michael Hassan of Marina Del Rey, CA, have been in the Private Cable Operator business since 1985 when they founded a billing company, Telepro Communications, Inc., to manage billing and customer service coordination for MDUs.

John and Michael also started Priority Systems to take advantage of DBS technology. Priority Systems has over 4,400 homes passed, is looking for full time sales people for ROEs and is seeking to purchase ROEs in the clustered areas served.

Good service and market differentiation is critical if PCOs are to survive and prosper with so many giants as competitors. Priority Systems understands that and hence the reason for their strategy of joint venturing with a local PCO/SO company to maintain a local presence in all of their ROE projects. For differentiation, Priority Systems also offers water submetering, as many of the elements in that business are the same as in the TV business. Same customers, same RF technology needed to remotely read water meters and both products bring revenue and expense relief to the property managers/owners.

A unique offer that Priority Systems makes if they are able to get the water submetering and TV contracts with a property owner, is to bear all the expense to install both state of the art systems at no cost to the property owner. Thus the property owners could not only see a reduction in his water bill of 75% but then receive revenue from the TV system installed by Priority Systems. A double win for the property owner and two long contracts for Priority Systems.

Telepro Communications, Inc. the billing company is capable of handling the billing for 6,000 different utility markets throughout the US as well as TV set top rentals and cable packages.

Priority Systems has financial resources available for building MDU projects, water or TV, and with the billing company to handle billing, reporting and customer service coordination it expects to grow to over 100,000 homes passed in the next five years.

For the PCO industry to survive, Priority Systems believes all providers need to work together in clustered areas so that PCOs can guaranty superior service and value for the property owner/manager.

For more information about Priority Systems or Telepro Communications, contact: Michael Hassan at mhassan@mediaone.net or via telephone at (310) 305-7216.

Future *ICTA Notes* will include descriptions of member companies. If interested, please call Bill Burhop at (202) 364-0882

StarCom
Satellite Technologies, LLC

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August 2, 1999

Chairman William Kennard
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

RE: Cable Services Bureau Draft Rule and Order, Concerning Exclusive Contracts, Mandatory Access Statutes, and Perpetual Contracts

Dear Chairman Kennard:

On behalf of my company, StarCom Satellite Technologies, LLC, and all private cable operators (PCO's), I would like to share some experiences and concerns with you and hopefully shed some light on the importance of exclusive contracts and the anti-competitive effect of perpetual contracts and mandatory access statutes.

StarCom was formed in late 1998, and consists of three attorneys, a CPA, a commercial real estate development expert and a cable expert. We have become very aware and worried with the current legal scheme in which our industry operates. StarCom's purpose is to attempt to acquire a market share in the private cable industry by differentiating our services from those offered by the franchise operator. Our corporate premise is to provide cable subscribers a superior level of customer service, along with the integration of new technological innovation and lower monthly rates. A private cable operator can accomplish all of these goals.

Today our company can offer landowners and tenants high-speed Internet access (10Mbps), remote hook-up, disconnection, and up-grades, eliminate set-tops, as well as provide 24-hour servicing and technical expertise. We can provide all of these services at rates lower than the basic service offered by the franchises. In the multi-dwelling unit (MDU) market, the PCO can compete.

However, in order to compete, the PCO must negotiate with the landowner an exclusive contract. The exclusive contract is a necessity in our industry to ensure that the PCO can recoup its capital expenditure. Generally, StarCom can offer a vastly superior product, but we require 5-7 years to recover our capital investment at each site, mandating an exclusive term of 7 years or more. If we are unable to secure an exclusive contract for a period long enough to recover our investment, our company cannot undertake the financial risk. The reality of the situation is that without the utilization of an exclusive agreement our ability to compete financially with the franchise is eliminated.

It is economically infeasible to offer even the same standard of service provided by the franchise if the PCO has to face competition on the site itself. This is especially true for the small PCO that cannot compete with the economic might of the franchise that can easily take a loss on the property until the PCO is forced out. Without the exclusive contract, StarCom will likely dissolve as will most PCO's. Currently, utilizing the exclusive contract, StarCom is thriving and providing exceptional quality to its subscribers.

The economic power of the franchise is the PCO's greatest nemesis. Not only can they "out last" a PCO in an economic battle of attrition without an exclusive contract; they are utilizing their financial muscle to legislatively protect themselves from the competitive threat of the PCO. The franchises are supporting mandatory access legislation in nearly all the states. Is this to ensure that the subscriber has a choice of service? Of course not. The franchise that rigorously supports a bill that promoted competition would essentially be cutting its own throat. Mandatory access statutes serve the same purpose as eliminating an exclusive contract. They take away the PCO's ability to compete, or even emerge as a viable alternative.

Franchises know that a PCO cannot compete on the MDU level. Absolutely no PCO can afford to place nearly two hundred thousand dollars in equipment on a property where the franchise can enter or remain. The subscriber will be left with the same choice he has now. None. Legislatively, the states with such statutes have created a mandatory permanent easement on each MDU property, which has been granted to a private cable franchise. Today tenants in MDU's have a choice of either the franchise, a DBS system, or a PCO at certain properties. If mandatory access statutes are permitted, the PCO choice will be eliminated.

Mandatory access is anti-competitive for it eliminates the property owners' ability to choose an alternative, and superior service provider, like StarCom. The effect of mandatory access statutes is contradictory to the intent of deregulation. Mandatory access merely protects the current monopolies enjoyed by the franchise providers.

Finally, and most importantly, the perpetual contract is the most anti-competitive tool being used by the franchise. StarCom regularly receives calls and referrals from MDU owners, who are very upset with their franchise cable provider, as are their tenants. Tenants and landowners are becoming fed-up with expensive service, little or no up-grades in services, and waiting at home for a service technician that never arrives. StarCom would like to pursue a relationship with these owners, who recognize our ability to solve all of these concerns and provide a superior product. However, it is always disappointing to have to explain to the MDU owner that they cannot *ever* remove the franchise cable company because they have signed a perpetual contract.

Most recently StarCom was contacted by a very large MDU who desired our services. However, after researching the issue, the MDU owner realized that the previous owner of the property had signed a perpetual contract with a large franchise 25 years ago. Although the contract appears definite in term, ending when the franchise ends, in reality it is perpetual. StarCom has often found that the perpetual contract was the *only* option presented to the landowner. They were faced with the choice of either signing the perpetual agreement, without modification, or not receiving cable and risk loosing their tenants to the owner across the street whom did sign.

A solution to the perpetual contract issue has begun to take shape. Florida has recently employed the use of a "fresh-look" doctrine, allowing the landowner and franchise authority to take an equitable look at the perpetual agreement. Under this doctrine the franchise authority can look at the performance of the contract and ensure that the franchise has reaped a profit from the property, while allowing the landowner to protect his property by providing the best service and seek out other providers. Such a solution protects the interests of both the franchise and landowner, while allowing competition to emerge where it previously would not have existed.

In conclusion StarCom, an up and coming PCO, respectfully requests that you to adopt rules that have an actual competitive effect. The exclusive agreement is a necessity in order for the PCO to survive. Elimination of mandatory access and perpetual contracts is the only way to ensure that the goals behind deregulation are advanced. Who has the subscribers' best interests in mind in the MDU? Certainly it is the landowner, who risks loosing tenants. The landowners are aligned with the PCO's in all of these issues. Please consider the best interests of the landowners and the subscribers. If their interests are truly protected, the PCO's will be in turn.

Thank you for your consideration.

Sincerely,

Christopher L. Day
Chief Executive Officer

STARCOM
SATELLITE TECHNOLOGIES, LLC

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December 13, 1999

Honorable William E. Kennard
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: The Facts About Private Cable Versus Franchise Cable

Dear Chairman Kennard:

In today's media frenzied environment, it is difficult to understand all of the new technologies available in the communications market place and how apartment tenants are best served. The purpose of this letter is to put all of the buzzwords into simple and easy to understand terms to increase competition for benefit of the apartment community resident. It is important to understand three things when it comes to the cable television market - financial implications, differences in technology and franchise monopolies.

First let's look at the financial model of a private operator versus a franchise operator:

Baseline Criteria
200 Units
95% Occupied
75% Penetration rate for subscribers
143 subscribers

	Private Operator	**Franchise Operator**
Headend Building HVAC Electrical Ventilated	$15,000	$0.00

	Private Operator	Franchise Operator
Infrastructure Wiring Joint Trench 625 Flooded Cable	$12,000	$12,000
Building Wiring for Each Unit RG 6 Quad Shield Homerun to Each Unit	$24,000	$24,000
Distribution Equipment Amplifiers Power Supplies Miscellaneous	$5,000	$5,000
Headend Equipment Receivers Demodulators Racks 60+ Channels	$45,000	$0.00
Local Channel Equipment	$5,000	$0.00
iCentral Interdiction Remote Hookup/Disconnect Eliminates Set Top Box Cost To Consumer	$28,000	$0.00
High Speed Internet Router Server Cable Modems	$35,000.00	$0.00
Total	$169,000.00	$41,000.00

The above costs are typical for an apartment community. As you can see, private operators have significantly more costs in serving an apartment community than the franchise. Private operators can offer many services and guarantees that many franchises cannot or will not.

The following is a brief listing of these examples:

	Private Operator	Franchise Operator
Guaranteed High Speed Internet at 1.5Mbps	YES	NO
Internet Certification at Peak Usage	YES	NO
Private Fiber Internet Backbone	YES	NO
Internet With Local Content Page	YES	NO
iCentral Interdiction	YES	NO
DirecTV/Echostar Overlay	YES	NO
Community/Security Channel	YES	NO
Set Top Box Expense to Consumer	NO	YES
Force Subscriber to Stay Home for Repairs	NO	YES
Disruption of Digital Service	NO	YES
Optimum Signal Level Guarantee	YES	NO
Property-by-Property Flexibility	YES	NO

Many private operators are ex-franchise employees or ex-developers who saw a need to increase the level of service that has been long ignored by the franchise operator. They have also seen the ability to provide many services that the franchise cannot. For example, private operators can offer high-speed Internet access to many properties where the franchise is unable to offer such services.

After reviewing the above financial model and seeing a listing of the superior flexibility of the private operator it is important to address how and why the playing field needs to be leveled. Approximately 30% - 40% of apartment properties are tied up in perpetual contracts today. Many of these contracts bind owners who wish to seek alternative providers due to poor service levels offered by the franchise.

Other owners are dealing with franchise operators who are not honest. For example, a Fort Wayne, IN property owner was promised many upgrades if they signed a long-term contract. These upgrades have not been implemented and the contract was executed over 5 years ago. An Indianapolis, IN property owner specifically told the franchise he did not want to enter into any contract and therefore purchased and installed the cable at his own expense. 12 months later the property owner learned that the franchise went back onto the property and coerced the Property Manager into signing a long-term contract for giving her free cable. Another property owner in Hoboken, NJ wants to offer the Golf Channel to his tenants but the franchise will not offer it. All of these owners want to improve communication services to their residents but are being threatened with a lawsuit by the franchise.

Furthermore, it is becoming prevalent that some franchises, i.e. in California and Michigan, are filing lawsuits against property owners who implement private cable systems even where they have no contract for provision of services simply as a means to tie the property up in litigation. They utilize this tactic as a means to dissuade landowners from implementing private services and as a financial attack on private operators. These bad-faith tactics are becoming commonplace.

The property owner's and the resident's best interests are coincidental. This is where the decision capability must be placed. The property owner wants 100% occupancy. The best way to achieve this is by allowing the provider with the best services onto the property whether it is the door mat service company or the communications provider. From the above financial model it is easy to determine why private and franchise operators cannot compete on the same property at the same time.

The deregulation that has occurred in the last several years is a step in the correct direction. However, the franchises are still trying to ignore this legislation and pass new legislation at the state level negating the federal legislation. For example HB 1601 was introduced in Indiana last year. In paraphrase this bill stated that if the franchise ever placed cable on a property they could never be kicked off – no matter how poor their service may be.

At your home you have only two options – franchise or a small dish system. As private operators we are trying to introduce a third option for the apartment community industry. We look forward to your assistance with leveling the playing field. We greatly appreciate your time in addressing these important issues.

Sincerely,
STARCOM SATELLITE TECHNOLOGIES, LLC

Christopher L. Day
Chief Executive Officer

C: Mr. Carl Kandutsch, Cable Services Bureau
Ms. Royce Dickens, Deputy Chief, Policy and Rules Division, Cable Services Bureau
Ms. Eloise Gore, Cable Services Bureau
Mr. David Goodfriend, Officer of Commissioner Ness
Mr. Thomas C. Power, Office of the Chairman
Mr. Rick Chessen, Office of Commissioner Tristani

May 24, 2000

'00 MAY 24 PM4:08

Betty:

Here is the stuff I mentioned yesterday.

First the letter to Jack Nicklaus.

The PGA Distinguished Service Award will be presented to Jack Nicklaus on Wednesday, August 16 during the 82nd PGA Championship at Valhalla Golf Club in Kentucky. In previous years President Clinton has written a letter of congratulations to the winner. The PGA of America has asked my help in securing a letter for this year. Since it is Jack Nicklaus I thought the President might like to send a letter this year as well. I know it would mean a lot to Jack Nicklaus to have a letter from the President.

Here are some details.

Carolyn - Can you do first par?
B

The letter should be addressed to:

Mr. Jack Nicklaus
11397 Old Harbour Road
North Palm Beach, Florida 33408

The letter needs to be delivered by July 31 to:

Jamie Roggero
The PGA of America
100 Avenue of the Champions
Palm Beach Gardens, Florida 33410

Delivery by July 31 will give them the time necessary to have the letter mounted and framed so that they can present it on August 16.

I have attached a press release for background. Let me know if you need more information.

The second item is a letter and copy of a video that I worked on. It is an exercise video for children. Rather than a traditional exercise video, there is a story attached to this one that includes exercises that the kids can do. The story also features the President asking Cindy Crawford for her help in getting kids in shape. My kids love it.

I have included a letter from me and a copy of the video.

5-24-00

Send to Burkhardt?
Yes ✓
No ____

Thanks for your help with this.
Love,
Danny

PGA NEWS

IMMEDIATE RELEASE
March 7 , 2000
Contact: Jamie Roggero
(561) 624-8446
jroggero@pgahq.com

The Professional Golfer's Association of America
100 Avenue of The Champions
Box 109601
Palm Beach Gardens, Florida 33410-9601
Telephone: (561) 624-8400
Fax: (561) 624-8448

**JACK NICKLAUS NAMED RECIPIENT OF
2000 PGA DISTINGUISHED SERVICE AWARD**

PALM BEACH GARDENS, Fla. –Jack Nicklaus, whose historic impact on the game of golf incorporated more than 30 years of dominating play and a passion for designing quality courses, has been named recipient of the 2000 PGA Distinguished Service Award.

Nicklaus, 60, will receive the award on Wednesday, Aug. 16, during the 82nd PGA Championship week at Valhalla Golf Club in Louisville, Ky.

The PGA Distinguished Service Award honors an individual who has perpetuated the values and ideals of The PGA of America. The honoree is selected on the basis of his or her humanitarian qualities, including integrity and good sportsmanship, as well as love and enthusiasm for the game. Former award winners include Herb Graffis, Bob Hope, President Gerald Ford, Gene Sarazen, Byron Nelson, Arnold Palmer, Patty Berg, Frank Chirkinian, President George Bush and Paul Runyan. Last year's honoree was Bill Dickey, president and founder of the National Minority Junior Golf Scholarship Association.

"The name Jack Nicklaus is synonymous with golf," said PGA of America President Will Mann. "As a player, course designer, a family man and humanitarian, Jack Nicklaus is a legend and most deserving of the PGA Distinguished Service Award."

Nicklaus, has 70 official PGA Tour victories, including 18 professional major championships – six Masters, five PGA Championships, four U.S. Opens and three British Opens – and two U.S. Amateur Championships. Nicklaus will be one of 150 of the world's greatest players competing in the 82nd PGA Championship at Valhalla Golf Club, a course he designed in 1986. Ranked No. 68 in the nation, Valhalla is one of 184 that Nicklaus has either designed, co-designed or redesigned in his career.

Nicklaus joined the Senior PGA Tour in 1990 and owns 10 victories, including the 1991 PGA Seniors' Championship at PGA National Golf Club's Champion Course, a site he redesigned in late 1989.

– more –

"To say the least, I am very proud and honored to receive The PGA of America's Distinguished Service Award, and to be in the company of such great past recipients," said Nicklaus. "The PGA of America is our parent organization, and I have a deep appreciation for the job that the PGA club professional does in promoting the game of golf at all levels.

"I suppose with this recognition, The PGA of America is saying thank you for the part I played in helping grow a game for which I have a great passion and respect. I am very honored and flattered by that."

Nicklaus was a member of six U.S. Ryder Cup Teams, compiling a 17-8-3 overall record. Though he was Captain of two U.S. Teams (1983 and 1987), Nicklaus is perhaps best remembered for his first Ryder Cup competition and his display of sportsmanship on the final day. In 1969, Nicklaus conceded a par putt to England's Tony Jacklin on the 18th green at Royal Birkdale Golf Club in Southport, England. The conceded putt resulted in the first draw in Ryder Cup history. The gesture is widely regarded as one of the most poignant moments in all of sport.

Nicklaus and his wife, Barbara, who was the 1998 PGA First Lady of Golf award winner, live in North Palm Beach, Fla. They are the parents of five children: Jack II, Steven, Nancy Jean, Gary, Michael and 11 grandchildren.

-- 30 --

Darryl K. Williams 45 Hemlock Drive Milton, Massachusetts 02186
Day Phone: (781) 849-5555, Ext. 255 Evening Phone: (617) 333-6834

President William Jefferson Clinton
The White House
1600 Pennsylvania Avenue
Washington D.C.

c/o Ms. Betty Curry

May 5, 2000

Recommend sending letter from Deputy Scheduler. Ok to pen.

'00 MAY 24 PM4:08

Dear Mr. President:

I am a supporter of yours for seven years. My faith in the way you've run the country — and continue to for the duration of your term — hasn't swayed my allegiance in the least. Actually, if your schedule had permitted, I was hoping to make your acquaintance with the National Consortium last April with Dr. Richard E. Lapchick.

In fact, it's my belief you may be receptive to the enclosed information which conveys a unique personal quest to educate society. Unfortunately, for nearly a decade of tirelessly trying to put forth a strong vehicle of love, humanitarian and compassion (traits this country desperately need) instead, their focus has been that of hatred, scandal and insensitivity.

As the First Lady has exclaimed: *"It takes a village."* I've been a villager for many years with the hopes of positively affecting millions with my plight: the publication of *"Triumph of the Spirit."*

Please find enclosed:

5/24/00

- Two page query letter
- *Sporting News* article

Send to Burkhardt? for reply
Yes ✓
No ____

Sincerely yours,

Darryl Williams

Darryl Williams

Enclosures

G.

You want a role model? You got one

A victim and a victor, Darryl Williams sets a wonderful example for student-athletes

Richard **LAPCHICK**

National Student-Athlete Day was celebrated around the country this week. It is a day set aside to celebrate the good that student-athletes do in their schools and communities. Although his playing days are long since over, no one has given more back, or paid a higher price, than Darryl Williams.

His playing-field experiences had to be applied to the game of life at a premature time. Having survived a life-threatening situation, he has since become a voice for the human rights of all people. Darryl represents all victims of racial hatred in the United States and simultaneously represents the spirit of self-empowerment and forgiveness that is so desperately needed if we are to go beyond the hatred that caused his victimization.

Fifteen years after the attack, young Boston student-athletes know about Darryl Williams. Darryl was a 15-year-old from Roxbury making his first varsity football start. He caught a pass that gave his visiting Jamaica Plain High School a 6-0 halftime lead over Charlestown High. September 1979 seemed like a good time for Darryl. He had visions of going to the NFL. As Jamaica Plain gathered in a huddle before the second half, a sniper finished his dreams. Darryl's career was over, but at least his life was saved. His fate that day was probably the product of the court-ordered busing that had placed Boston on national television as a center of racial hatred and violence.

Darryl Williams returned to Charlestown 11 years later. "I don't understand why people do the things that they do," he said. "I think they were trying to kill somebody black. Why? Why?"

After the attack, which nearly killed him and left him without the use of his arms and legs. . . after all the broken promises of medical and financial support . . . Darryl looks at life with an attitude that surprises many people. Most, black and white alike, assume that he probably hates whites. Not Darryl, who says, "I'm not going to blame every white person because three whites attacked me. There are bad whites and bad blacks. I can't hate a whole race of people because some are bad."

Indefatigable spirit: *Williams makes anyone he touches believe anything is possible.*

Darryl dreams of and works for something else. "My dream is to live in a world in which racism doesn't exist anymore; just have racism be a bad, bad distant memory. Because if we don't start getting ourselves together, trying hard to get rid of that poison which is racism, we won't have anyone else to blame but ourselves. We can just look in the mirror and say, 'Well that's the person who did it.' "

Darryl is Boston's — and perhaps America's — best example of a living hero for the cause of racial equality. Having paid a heavy price for his platform, Darryl brings his inspiring message to thousands of Americans. Many are student-athletes who see how quickly the sports dream can end. But that is not what Darryl communicates to them. His very presence symbolizes hope for meaningful life after sports.

In many ways, he reminds me of a lesser-known Nelson Mandela, who emerged from 27 years in prison full of love instead of hate, reaching out instead of turning away. Darryl Williams, now a student at Northeastern University on a special Presidential Scholarship, and an employee in the Massachusetts State Lottery, reaches out every day. Darryl treasures the fact that he is a student again. "I consider myself blessed to have such good friends to support me and will always remember Northeastern President John Curry for awarding me a scholarship. My fellow students at Northeastern have been very helpful and reassuring. I feel at home there." He makes anyone he touches feel at home and believe that anything is possible.

The student-athletes that we recognized on National Student-Athlete Day give our country hope at a time when the lives of so many of our youth are mired in despair. No one gives more hope than Darryl Williams. These student-athletes have direction and purpose and see there is reason to believe in themselves. America should be very proud of them. But none more than Darryl Williams. ◆

Richard Lapchick is director of Northeastern University's Center for the Study of Sport in Society and a regular columnist for THE SPORTING NEWS.

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Query Letter: Triumph of The Spirit

Before the devastating rash of school shootings: Scotland, Kentucky, California, Georgia, and, Littleton, Colorado, there was Charlestown, Massachusetts. Boston Herald journalist, and, noted author, Joe Fitzgerald, uses his literary expertise to write *Triumph of The Spirit:* an inspirational epic.

The story begins with Darryl Williams sitting in his wheelchair, while delivering a speech to ten thousand screaming junior & high school students at the home of the Boston Celtics and Bruins: Fleet Center. Then, the story gradually shifts to the day when he sustained crippling injuries that put him in the wheelchair.

It was September 28, 1979, a predominantly black high school football team, Jamaica Plain, were the visiting opponents for Charlestown High School. Darryl Williams was a fifteen year old star sophomore wide receiver for Jamaica Plain. Darryl, a reluctant benefactor of the mean and off times depressing streets of Roxbury, Massachusetts, desires making a success of himself. Enabling him to take he and family out of the degradation of this most violent and negative environment.

Although, he received much cheer for his football prowess, he was graced with other talents: music, writing, basketball, science, and, arts & crafts. He was quiet and unassuming, yet was constantly subjected to peer pressure and separatism from close friends: they made him feel like an outcast: never supportive of his goals: harshly ridiculing his dreams. Consequently, he remained steadfast with the silent belief, he possessed the skills befitting of a success story rising up out of the ashes of environmental despair. He dreamed, his God given talents would provide the means to a self-sufficient end. In the Charlestown game, his dreams came to an abrupt halt: Darryl was shot in the neck by a racist gunman: he's paralyzed from the neck, down.

Award winning Boston Globe sportswriter, and, author, Dan Shaughnessy, asserts: "he's the victim of one of the most senseless hate crimes of our time." Darryl was subjected to hate even during his hospitalization: receiving death threats from the Klu Klux Klan, and, assaults from patients and hospital staff. He would receive empty promises of support from politicians posturing for cameras. People made attempts to swindle him out of his wheelchair accessible home. His insurance company would provide meager compensation of support, only to reduce it to an even embarrassingly lower figure.

A shyster Attorney would halfheartedly represent him in a gross negligence lawsuit against the city and state of Boston, Massachusetts. His shooting was the subject of an FBI investigation, and, a possible Boston police coverup loomed. After years of psychological abuse, he faced an unfamiliar world: all he knew about independence and survival was predicated on physical mobility. He struggles to understand his new condition.

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Darryl's conflict: moving on after the horrid act which disabled him. He amassed plenty of experiences, which ultimately led to an epiphany: stop self-loathing, stop self-blame for the injury, learn to accept others, stop pushing loved ones away, and, use unique platform to inspire. Boston Herald journalist, and, author, Joe Fitzgerald contends: "Darryl has paid a high price for his credentials!" Director of The Center for the Study of Sport in Society, author, and, correspondent for The Sporting News, Dr. Richard E. Lapchick states: "Darryl reminds me of a young Nelson Mandela: who emerged from prison with love in his heart; not hate."

As he restructures his life, Darryl graduates from high school, attends three colleges while simultaneously maintaining employment: Dragon Systems, a computer company, Massachusetts State Treasury, Massachusetts State Lottery Commission, and, facilitator & motivational speaker for The Center for the Study of Sport in Society, where his topics include: school success, low self-esteem, stereotyping, peer pressure, cultural diversity, race relations, and, victims of wasteful ways of living, i.e., drug abuse and domestic violence. Ultimately, believing his paralysis was a "badge of honor" from God.

He has delivered hundreds of speeches to thousands across the country and Alaska. He also has participated in New York based Global Vision's human rights videotape, and, the PBS documentary: "Rights and Wrongs." His credentials commands immediate respect upon entering an auditorium, classroom or arena: audiences are silent: hanging on every word. Though, he's been described as a motivational speaker, he considers himself a "Drive Specialist:" helping people realize their uniqueness. Igniting personal drive rather than the temporary emotion of motivation.

Customarily, people are skeptical, cynical and inconsiderate when they hear of a celebrity who suffered adversities: it's usually hard to identify with a celebrity. Darryl Williams is an ordinary individual fraught with extraordinary adversities. The targeted audiences will be receptive and vast. For, *Triumph of The Spirit* covers multi-levels of interests. Millions who have difficulty moving on after suffering an adversity, those who can identify with a person having ample potential for success, only to have it painfully taken away, those seeking strength, sufferers of peer pressure, those who seek humanitarian compassion, and, sufferers of the burdensome label; "outcast."

Triumph of The Spirit chronicles Darryl Williams' twenty years of experiences, which ultimately led to the triumph of his spirit.