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MAY 29 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REDACTED -**  
**FOR PUBLIC INSPECTION**

May 29, 2002

**By Hand Delivery**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

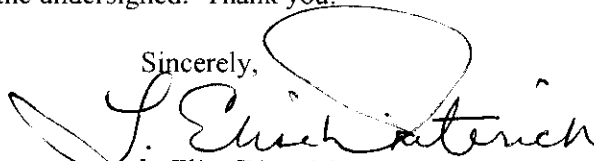
Re: Redacted Version for Public File of Confidential and Proprietary Factual Material In Support of Petition of RCN Telecom Services, Inc., to Deny Applications or Condition Consent, filed April 29, 2002, in MB Docket No. 02-70.

Dear Secretary Dortch:

Attached please find for the public files two (2) copies of the redacted version of confidential and proprietary factual material, which is being filed pursuant to the protective order, DA 02-734, issued by the Commission in MB Docket No. 02-70. This material is submitted in support of the Petition of RCN Telecom Services, Inc., to Deny Applications or Condition Consent, filed April 29, 2002, in MB Docket No. 02-70, as referenced in footnotes 30 and 32 of RCN's Petition. The unredacted, confidential version of these documents has been hand delivered this same date to Roger Holberg and Linda Senecal of the Media Bureau, and a copy delivered to you, as required by the Protective Order.

If you have questions regarding the attached, or regarding RCN's request for confidential treatment of this information, please contact the undersigned. Thank you.

Sincerely,

  
L. Elise Dieterich  
Counsel to RCN Telecom Services, Inc.

Attachments (2)

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List ABCDE

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In its Petition to Deny Applications or Condition Consent, filed April 29, 2002, in MB Docket 02-70, RCN Telecom Services, Inc., stated that it is aware of no less than fifteen (15) contractors in the Philadelphia market – representing virtually all of the viable construction and installation contractors in the area – whom Comcast or, prior to its acquisition by Comcast, Suburban Cable,<sup>1</sup> have prevented or tried to prevent from doing business with RCN. In its Petition, RCN stated that it would provide the names of these contractors, their principals, the names of Comcast personnel who participated in these tactics, and the approximate dates of such incidents. That information follows at the end of this submission.

RCN also stated in its Petition that, of the contractors named below, certain contractors no longer are working for Comcast and since have contracted to work for RCN. These are

Other contractors named below have declined to work for RCN, citing their desire to retain their lucrative Comcast contracts. These include

In at least one instance a large contractor that provides construction services in multiple markets refused to work with RCN in Comcast territory, although it did substantial work for RCN in non-Comcast markets. That contractor is

Exhibit A, attached, is a copy of a 1999 “Confidentiality Agreement and Covenant Not to Compete” between Suburban Cable and one its contractors, which includes at paragraph 7 a non-

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<sup>1</sup> Suburban Cable was an incumbent regional cable operator with franchises throughout the Philadelphia and Harrisburg, PA, markets, which Comcast acquired in January of 2000 as part of its strategy to consolidate and control regional cable “clusters” in the Philadelphia, Baltimore, and Washington, D.C., metropolitan area markets.

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compete clause expressly precluding the contractor from performing work for RCN. As set forth in paragraph 9 of Exhibit A, the non-compete agreement was made binding upon and inured to the benefit of the successors and assigns of the parties thereto. Accordingly, Comcast would have assumed the non-compete agreement when it acquired Suburban Cable in 2000.

Exhibit B, attached, is a copy of an e-mail from Suburban Cable to \_\_\_\_\_, shortly before Suburban was acquired by Comcast, discussing the non-compete clause in \_\_\_\_\_ contract. The e-mail states, among other things:

*“You suggest that Suburban did not have a problem with you working with other area cable companies and you were right, because they were not in direct competition with Suburban Cable as RCN is. Every mile of rear buss plant you build gives RCN, our competitor the ability to take customers away from Suburban Cable. Our company and the Cable industry does[sic] not share the same perspective that you do in regards to competition.*

\* \* \*

*You also know that we will become a part of a larger cluster under Comcast ownership which will span the Tri-State area and south through Baltimore and Washington. You need to know that they have a more intense feeling about competing with RCN than Suburban does, and our intensity is pretty strong.”*

(Emphasis added.) As noted in RCN’s Petition, a number of Suburban personnel responsible for Suburban’s non-compete policy subsequently went to work for Comcast, where the practice of intimidating contractors continued.

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**Contractors:**

**REDACTED – FOR PUBLIC INSPECTION**

**Comcast Personnel Involved in Incidents:**

**Approximate Dates of Incidents:**

The incidents described occurred between March of 1999 and 2001.

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Subject: Re: Recent Problems

Date:

From:

To:

As far as I am concerned there is no conflict between you and I, although there is between and other affiliate companies under your ownership. According to our legal department, you violated section 13 (reference the letter sent to you by Ellis McDanel) of the Non-Compete clause which covered ITI, Inc and all affiliate companies to include Cleaver Cable Construction. This is why our legal department requested the termination of your contract. Most of my group wanted to preserve using your services but have to abide by the companies policy regarding this situation, which is zero tolerance.

You suggest that Suburban did not have a problem with you working with other area cable companies and you were right, because they were not in direct competition with Suburban Cable as RCN is. Every mile of rear buss plant you build gives RCN, our competitor the ability to take customers away from Suburban Cable. Our company and the Cable industry does not share the same perspective that you do in regards to competition. We need our customers, we have been loyal to our customers and our contractors such as yourself. As I remember, you were asked to put together an installation contract for Suburban which means we came to you.

I do not know what the circumstances were involving at any time to that you referenced. You could have called myself or clarify your role. Keith did elude to the fact that there was poor communication between yourself and his team on the project and that there was not a clear cost proposal to do the work. As you know, Suburban is working in upgrading and rebuilding 20,000 miles of plant using as the construction project management. On a few occasions I directed you to them to be able to position yourself for work that will be issued by them and there are many MDU's to tackle over the next two years.

You are correct, you are a business man and as we discussed on the phone you need to make the proper business decisions for your company. In my opinion your business decision should have been to stay with Suburban and become a part of our major project. You also know that we will become a part of a larger cluster under Comcast ownership which will span the Tri-State area and south through Baltimore and Washington. You need to know that they have a more intense feeling about competing with RCN than Suburban does, and our intensity is pretty strong. Why you chose to work for a smaller company such as RCN in light of things to come are more of a short term decision vs looking at the long term in this area with Comcast. Again, you made a business decision for your company and your employee's and that is fine. Suburban had to act on a legal document that you signed for Non-Compete. This is the only reason why Suburban terminated your contracts, because it was in breach.

Should you change your mind and you wish to adhere to the contract between the two companies in regards to the non-competes, please give me a call. Otherwise, I can do nothing to turn this around. This decision came down from the top and we are required to enforce it.

If I don't see you,

I hope you and your family have a Happy Holiday Season.

## CONFIDENTIALITY AGREEMENT AND COVENANT NOT TO COMPETE

This Confidentiality Agreement and Covenant Not to Compete (hereinafter referred to as the "Agreement") is made this 9 day of April 1997 by and between SUBURBAN CABLE TV CO. INC. ("Suburban"), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 200 Croston Boulevard, Oaks, Pennsylvania 19456-0989 (hereinafter referred to as "Suburban"), and John Communications an individual or entity residing or having an office at the address set forth at the end of this Agreement (hereinafter referred to as "Contractor")

WHEREAS, Suburban and its affiliates (hereinafter collectively referred to as "Suburban") are in the business of providing cable television and other communications services (hereinafter referred to as "Cable Services"); and

WHEREAS, Contractor is or may be providing design, construction and/or installation services (hereinafter referred to as "Contractor Services") to Suburban; and

WHEREAS, in providing Contractor Services, Contractor may acquire knowledge of information which constitutes confidential and/or proprietary information and trade secrets belonging to Suburban; and

WHEREAS, certain confidential and/or proprietary information regarding Suburban's business may be transmitted by Suburban to Contractor or otherwise be made available to Contractor in various forms, including but not limited to, models, samples, technical specifications, designs, engineering drawings, schematics, user instruction manuals and documentation, system documentation, functional overviews, screen layouts, report layouts, processing flow charts, business and marketing plans, and other associated information and documentation whether oral or written (hereinafter referred to collectively as the "Confidential Information");

WHEREAS, Contractor agrees to provide for proper safeguards to protect the Confidential Information from unauthorized disclosure, misuse and misappropriation; and

WHEREAS, Contractor agrees not to provide Contractor Services to Suburban's competitors under the circumstances described below.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound, Suburban and Contractor hereby agree as follows:

1. Definition of Confidential Information. As used herein, the term "Confidential Information" shall include all information and data furnished by Suburban, or furnished on Suburban's behalf, to Contractor or otherwise acquired by Contractor, whether in oral, written, graphic or machine-readable form, including but not limited to, designs, procedures, formulas, discoveries, inventions, improvements, concepts, ideas, instruction manuals, technology, customer

Information records, employee names, benefits and compensation, excepting such information and data as the parties agree in writing is not proprietary or confidential. All copies of any Confidential Information that are made by Contractor shall also be considered Confidential Information for purposes of this Agreement. Information made available by Suburban to the general public shall not be considered to be Confidential Information.

2. Non-Disclosure. Contractor agrees to hold the Confidential Information received or acquired from, or on behalf of, Suburban in confidence and not to show or disclose it to any third party without the express written consent of Suburban. Contractor will use its best efforts to safeguard the Confidential Information.

3. Limitation on Access. If Contractor has employees, Contractor shall limit the use of and access to the Confidential Information to the bona fide employees of Contractor whose use or access is necessary to effect the purposes of this Agreement. Contractor shall notify each employee to whom disclosure is made that such disclosure is made in confidence and shall be kept in confidence. Contractor shall enter into appropriate written agreements with its employees to protect the confidentiality of the Confidential Information. Contractor shall also be responsible for any misuse, misappropriation or unauthorized disclosure of the Confidential Information by any of its employees or agents. Contractor will not show or otherwise disclose the Confidential Information to independent contractors or consultants without the express written consent of Suburban.

4. Removal of Notices. Contractor shall not remove any patent, copyright or confidential notice attached to or included in or with any Confidential Information furnished by, or on behalf of, Suburban. Contractor shall reproduce all such notices on any copies of the Confidential Information that are made by Contractor.

5. Use of Confidential Information. The Confidential Information shall be used by Contractor for the sole purpose of performing Contractor Services to Suburban pursuant to any agreement(s) with Suburban. The Confidential Information shall not be used by Contractor either for internal or external use nor shall the Contractor reverse-engineer, disassemble or decompile any of Suburban's technology. Contractor shall not make the Confidential Information available for use by, or for the benefit of, any other party, whether or not for consideration. Contractor shall not use or copy any Confidential Information without Suburban's express written consent.

6. Return of Confidential Information. Contractor will return all Confidential Information in written form, including any copies thereof, to Suburban upon termination of Contractor's Contractor Services to be provided to Suburban or upon the request of Suburban. The provisions of this Agreement with respect to the nondisclosure, misuse and/or misappropriation of the Confidential Information shall remain in full force and effect for a period of three (3) years following the return of the Confidential Information to Suburban.



7. Governor Not to Compete.

(a) Contractor agrees that the provisions of this Section 7(a) shall be effective beginning on the date of this Agreement and ending when Contractor ceases to perform any Contractor Services for Suburban. Neither Contractor nor any of its shareholders, partners, members, executive officers or executive employees will engage in or attempt to engage in or establish any business or perform any Contractor Services in those portions of the States of Pennsylvania, New Jersey and/or Delaware in which cable television services, multichannel multipoint distribution services, master antenna services, satellite master antenna services, direct broadcast satellite services, television receive-only satellite services, open video services, wireline or wireless telecommunication services, or other multi-channel video services, will be or are being provided in competition with Cable Services then being provided by Suburban. As of the date of this Agreement, competitors of Suburban include, but are not limited to, the following entities and their affiliates: Bell Atlantic Corporation, GTE, Conestoga Telephone Company, Commonwealth Telephone Company and RCN Corporation. The terms "engage in or attempt to engage in or establish any business" or "perform any Contractor Services" as used in this Section 7 shall include, but not be limited to, activities which are direct or indirect, on behalf of or in conjunction with others, whether as proprietor, partner, employee, stockholder, principal, agent, consultant, director or officer, or in any other capacity or manner whatsoever.

(b) Contractor acknowledges that the restrictions set forth in this Section 7 are reasonable and necessary to protect the legitimate interests of Suburban. If any court having jurisdiction shall find any part of the restrictions set forth in this Section 7 to be unreasonable or otherwise unenforceable in any respect, it is the intention of the parties that the restrictions set forth in this Section 7 shall not thereby be terminated, but that this Agreement shall remain in full force and effect to the maximum extent (as to time periods, geographical or other relevant factors) that the court shall find reasonable or otherwise enforceable.

8. Injunctive Relief. Contractor acknowledges that Suburban will be irreparably harmed if Contractor's obligations under this Agreement, including, but not limited to, Contractor's obligations under Sections 2, 3, 5, 6 and 7, are not specifically enforced and that Suburban would not have an adequate remedy at law in the event of an actual or threatened violation by Contractor of its obligations hereunder. Therefore, Contractor agrees that Suburban shall be entitled to preliminary and permanent injunctive relief without posting bond, or any appropriate decree of specific performance, for any actual or threatened violations or breaches of this Agreement by Contractor, its employees or agents without the necessity of Suburban showing actual damages or that monetary damages would not afford an adequate remedy.

9. No Assignment. This Agreement may not be assigned by Contractor. The obligations of Contractor under this Agreement shall not terminate upon any attempted assignment. Subject to the foregoing provisions of this Section 9, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

10. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without reference to the

principles of conflicts of laws. Suit under this Agreement shall only be brought in a court of competent jurisdiction in the Commonwealth of Pennsylvania.

11. Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby.

12. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings. This Agreement shall not be modified except in a writing signed by Contractor and a duly authorized representative of Suburban.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SUBURBAN CABLE TV CO. INC.

By:

Name:

Title:

Robert Lawrence  
Robert Lawrence  
Executive Vice President

CONTRACTOR

Signature:

Print Name:

Address:

[Signature]  
R. J. Lewis  
P.O. 1436 Sharon Hill  
PA. 19079

## REDACTED – FOR PUBLIC INSPECTION

In its Petition to Deny Applications or Condition Consent, filed April 29, 2002, in MB Docket 02-70, RCN Telecom Services, Inc., stated that its affiliate, Starpower, has recently received indications that Comcast has made threats against contractors in the Washington, D.C., area, similar to those made historically against RCN's contractors in the Philadelphia area market. Certain of Starpower's local contractors have reported to Starpower in the past few months that Comcast has told them they will lose Comcast's work if they also do work for Starpower. These incidents include the following:

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As a consequence of these threats, \_\_\_\_\_ have expressed to Starpower their concern that Comcast, if it discovered that they were performing work for Starpower, would take retaliatory action against the contractors.

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A proposal and counterproposal to perform work for Starpower were exchanged, and follow-up meetings were held, the culmination of which was a tentative agreement

The parties were at the point of discussing final details of their contract.

However, subsequently and abruptly pulled out of its negotiations with Starpower, citing the concern that Comcast would withdraw its business from in other areas.