

Before the  
Federal Communications Commission  
Washington, DC 20554

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**DEC 7 1992**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 10 of the Cable )  
Consumer Protection and Competition Act of 1992 )  
Indecent Programming and Other Types of )  
Materials on Cable Access Channels )

MM Docket No. 92-258

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To the Commission:

COMMENTS OF  
MANHATTAN NEIGHBORHOOD NETWORK **FCC - MAIL ROOM**

Manhattan Neighborhood Network submits these comments in response to the above captioned proceeding. The Commission's Notice of Proposed Rule Making invited comments on the enactment of regulations that enable a cable operator to prohibit the use of any public, educational, or government access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.

Manhattan Neighborhood Network is a non-profit organization responsible for administering the public access channels in the Borough of Manhattan. Manhattan Neighborhood Network assumed administrative responsibility for the public access channels in September 1992 after twenty years of administration by the local cable operators. Our experience in operating the public access channels in Manhattan provides us with unique expertise in this matter before the Commission.

- 1) The mission of Manhattan Neighborhood Network is to ensure the ability of Manhattan's residents to exercise their First Amendment rights through the medium of cable television. Manhattan Neighborhood Network encourages participation among the

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diverse racial, ethnic and geographic communities within the Borough and provides people with open non-discriminatory access to cable television for non commercial programming. We believe that our mission supports the intent of Congress in dedicating access channels as the video equivalent of the speaker's soapbox, fostering a diversity of viewpoints to viewers and furthering the goals of the First Amendment. The provisions under consideration by the Commission could seriously impair our ability to fulfill this mission.

2) Public access in New York has a history of providing a voice to people who would not otherwise have a means of public expression. The complexities and conflicts of urban life are often explored on public access providing greater understanding among the people of Manhattan.

3) In Manhattan, as elsewhere around the country, the cable operator has no editorial control over the public access channels. Editorial control by the cable operator or any other entity managing public access endangers the principle of public access. Regulations "for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct" is disturbingly vague. We feel that this provision will threaten people's First Amendment rights and create a chilling effect on the use of public access by potential users in Manhattan.

4) To be sure, Manhattan Neighborhood Network does not support or endorse obscene programming or unlawful conduct. The question is what is the most effective means to deal with programming that may cross the line within the context of the First Amendment. To that end, we believe that local and federal law, along with appropriate judicial review, is the best means for dealing with obscenity and other unlawful conduct should they occur through public access or any other forum. If necessary, these laws can

be effectively enforced against the program producer. We cannot imagine regulations censoring programming in advance that would not compromise public access and abridge speakers' rights under the Constitution.

5) There are currently two public access channels on each of Manhattan's two cable systems with two more channels on each system to be activated in early 1993. Demand for time on the public access channels constantly exceeds supply. Currently, the public access channels carry approximately 590 different programs per week totaling over 300 hours. With the addition of the new public access channels in 1993, we anticipate this number to increase by about fifty percent.

6) Public access programs are generally produced by volunteers. People work with very limited resources contributing mainly their time and talent. Any regulations that would place increased burdens on producers would undoubtedly diminish the use of the public access channels.

7) It is our view that the access provisions under review are unconstitutional. However, if the Commission adopts rules to implement these provisions, the rules should be as specific and as narrowly defined as possible. Cable operators must not be permitted to curtail the legitimate public use of the access channels under a broad umbrella of program regulation.

8) The enforcement of program regulations will cause enormous practical difficulties preventing many programs from taking place at all. The people responsible for public access will be burdened by having to interpret and apply broad regulations to specific programs. The resulting cost for the necessary expertise to make these enforcement decisions will create an expense for both the cable operator and the public access

producer. Such expense could be prohibitive to the public access producer thereby negating the producer's right to speak. Many speakers may never appear on public access for fear that they might be in violation of the regulations.

10) Several programs on Manhattan's public access channels are live and include interaction with the public via telephone. These programs are often forums for lively debate on local and national issues. We wonder how such programs could effectively be screened in advance to comply with program content regulations. Would such regulations pre-empt all such live programs therefore silencing many potential speakers within our community?

11) In 1993, we expect the volume of programs on Manhattan's public access channels to exceed 450 hours per week. Pre-screening programs to comply with cable operator rules would require about twelve dedicated full-time staff people, more than the entire staff currently employed by Manhattan Neighborhood Network. In addition to this added cost, enforcement of regulations would certainly delay programs dealing with timely issues thereby greatly reducing the effectiveness of those programs.

12) The Commission should make sure that the cost for any actions taken by the cable operator under this provision be undertaken at the operator's expense. Of course, the cable subscriber will ultimately bear the added cost.

13) We note with irony the Senate debate leading to the approval of the amendment necessitating the Commission's current deliberations on public access. According to a transcript of the U.S. Senate's debate on January 30, 1992, Senator Fowler referred to the use of public access channels to solicit prostitution through shams such as escort services, fantasy parties and live call-in shows. Senator Wirth elaborated by referring to

the public access in New York City as "the most prurient and, in fact, in many ways grossly illegal access one could imagine." We know of no program on Manhattan's public access channels that solicits prostitution through escort services, fantasy parties, live-call-in shows or any other means. In fact, commercial programming and advertisements of all types are expressly prohibited on public access by Manhattan Neighborhood Network's policy statement.

14) We can not help but think that a serious error was made and that perhaps what Senator Wirth viewed on cable television in New York was the cable operator's "commercial use" or "leased access" channel. We note that Time Warner's "commercial use" or "leased access" channel regularly features advertisements for a variety of adult services. The manner in which the "commercial use" or "leased access" channel is operated in Manhattan should not lead to burdensome and unnecessary regulations imposed upon public access channels here and elsewhere across the country. Although Manhattan Neighborhood Network would not necessarily restrict non commercial programming of a sexual nature falling within the bounds of the First Amendment and applicable law, that type of programming is rare and infrequent. We urge the Commission not to jeopardize the integrity of public access as a First Amendment forum based upon erroneous perceptions or the fear that an isolated program may be potentially offensive to some viewers.

Respectfully Submitted,



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