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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C.

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

MM Docket No. 92-258

COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

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SUMMARY

Time Warner Entertainment Company, L.P. ("TWE") has taken the position that being compelled to carry leased access (commercial use) and public, educational and governmental ("PEG") programming is a violation of TWE's rights as a First Amendment speaker. See Time Warner Entertainment Company, L.P. v. FCC, Civil Action No. 92-2494 (D.D.C. filed Nov. 5, 1992). Yet, because TWE and its divisions will be affected by any rules issued by the Commission concerning these types of programming, it offers the following comments.

To accomplish Congress' goals, TWE believes the Commission should promulgate rules that:

- ° provide for channel blocking procedures that reflect the technological and programming realities of the cable industry;
- ° permit cable operators to require certification, notice and indemnity regarding indecent material from commercial use program providers;
- ° recognize that many PEG channels are not administered by cable systems, but instead are administered by an agency of the local government or by a community access organization;
- ° permit cable operators and community access organizations to require certification and indemnity from PEG program providers;
- ° establish a procedure whereby disputes regarding prohibited PEG programming are resolved; and
- ° adopt a definition of "indecent" and "sexually explicit" material that incorporates a community standard "for the cable medium" as measured by the "average cable user" on a nationwide basis and judges material within the whole program and the merit of the work.

TWE believes the recommendations set forth above fully comport with Congressional policy and would best serve the public interest.

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MM Docket No. 92-258

COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

Time Warner Entertainment Company, L.P. ("TWE") respectfully submits the following comments regarding the Notice of Proposed Rule Making ("NPRM"), released November 10, 1992 and relating to the implementation of Section 10 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act").

Introduction

TWE is a partnership, which is primarily owned (through subsidiaries) and fully managed by Time Warner Inc., a publicly traded Delaware corporation. TWE is comprised principally of three unincorporated divisions: Time Warner Cable ("TWC"), which operates cable television systems; Home Box Office, which operates pay television

programming services; and Warner Bros., which is a major producer of theatrical motion pictures and television programs.

TWC, which is the TWE division most affected by Section 10 of the 1992 Cable Act, owns and operates cable systems in approximately 1,000 franchise areas throughout the United States. As required by the Cable Communications Policy Act of 1984 (the "1984 Cable Act") and many local franchises, these systems carry both leased access and public, educational and governmental ("PEG") access channels. Because of this, TWC and its divisions are directly impacted by the Commission's proposed rules relating to indecent programming and other types of material on cable access channels.

One striking example of a TWC cable operator that will be immediately and directly affected by the Commission's rules is Time Warner Cable of New York City ("TWCNY"), which serves, among other parts of that City, over 250,000 subscribers in the southern portion of Manhattan. TWCNY's Manhattan system has over 70 channels and offers more than 10 leased access and 5 PEG channels. 1/ On both its leased access and PEG channels TWCNY is required

1/ In 1993, TWCNY is committed to provide 9 PEG channels.

under the 1984 Cable Act to carry programming that may at times be indecent, which it otherwise would not choose to provide. Indeed, on leased access Channel 35 TWCNY has at least five hours daily of "adult" programming from at least 9 producers offering sexually explicit programming. Most of the adult programmers offer one or more programs on a daily or weekly basis on time they lease by agreement from TWCNY in periods from 13 to 78 weeks.

For example, TWCNY is required to carry on Channel 35 in Manhattan a series entitled "Midnight Blue" twice a week from midnight to 1:00 a.m. Portions of "Midnight Blue" include excerpts from sexually explicit video cassettes and films showing in graphic detail intercourse, masturbation and other sex acts. The commercials shown on "Midnight Blue" advertise sex-oriented products and services, such as "escort services", "dial-a-porn" telephone lines and Screw Magazine ("Midnight Blue"'s print counterpart). On Channel 35, each day from 10:00 p.m. to 4:30 a.m. is usually fully booked with sexually explicit programming and the demand for additional time remains high. Most of these programs are provided on videotape and require the system to handle and process dozens of video cassettes every week.

In addition, various other TWC cable systems carry programming that is considered by some viewers in their

localities to be indecent. For example, TWC's system in Austin, Texas was provided programming by a public access programmer that combined nude scenes from a movie, photographs of aborted fetuses, and a man shooting himself in the head. TWC's cable system in Indianapolis, Indiana has carried on its public access channel "safe sex" programming, which includes sexually graphic descriptions. And, TWC's cable system in Cincinnati, Ohio has carried on its public access channel nude sports programming supplied by a nudist organization.

In its pending action against the Commission, Time Warner Entertainment Company, L.P. v. FCC, Civil Action No. 92-2494 (D.D.C. filed Nov. 5, 1992), TWE takes the position that the leased access and PEG channel requirements (Sections 611 and 612 of the 1984 Cable Act (47 U.S.C. §§ 531, 532) and Section 7(b)(4)(B) of the 1992 Cable Act), as well as the must carry channel requirements (Sections 4 and 5 of the 1992 Cable Act) unconstitutionally compel it to speak in a manner that it would not otherwise choose. This is a violation of TWE's rights as a First Amendment speaker. In addition, TWE challenges the leased access, PEG and must carry requirements because they seize, without adequate compensation, substantial portions of its facilities (an average of roughly more than 30% of TWC's systems' channel capacity) and transfer control of that capacity to other

speakers. This is a violation of the Takings Clause of the Fifth Amendment. In submitting these Comments, TWE specifically reserves, and does not waive, its constitutional rights, and these Comments are filed without prejudice to TWE's constitutional challenges.

Notwithstanding TWE's position on being forced to carry leased access and PEG programming, but recognizing that the Commission must act pursuant to the obligations imposed by the 1992 Cable Act, since TWE and its divisions will be further burdened directly by any rules issued by the Commission, it offers the following comments regarding the proposed rules for carriage of material that is indecent on leased access channels and material that is obscene, indecent or solicits or promotes unlawful conduct on PEG channels.

I. Proposed Rules Regarding Indecent Programming on Leased Access Channels.

Section 10(b) of the 1992 Cable Act directs the Commission, within six months from October 5, 1992, to promulgate regulations limiting the access to indecent programming on leased access channels, to the extent that cable operators have not voluntarily done so pursuant to Section 10(a), by (i) placing all indecent programming on a separate channel, (ii) blocking the channel unless the

subscriber requests access thereto in writing, and
(iii) requiring programmers to inform cable operators in advance if the programming they are providing is indecent.

A. The Definition of "Indecent" 2/

Section 10(b) of the 1992 Cable Act does not define "indecent". The Commission is proposing to adopt the definitional language of Section 10(a) as the definition of indecent. The definition should, as proposed, incorporate a community standard "for the cable medium". Additionally, the rule should make clear that the standard is that of the "average cable viewer" on a nationwide basis, much as the Commission has done in the broadcast area. 3/

2/ Although TWE discusses below the proper definition of "indecent", nothing herein concedes that it is constitutionally permissible for the government to prohibit or restrict the carriage of indecent programming on cable television.

3/ See In re Infinity Broadcasting Corp., 3 F.C.C. Rcd. 930, 933 (1987), remanded on other grounds sub nom. Action for Children's Television v. FCC, 852 F.2d 1332 (D.C. Cir. 1988) ("[T]he purpose of 'contemporary community standards' [is] to ensure that material is judged neither on the basis of a decisionmaker's personal opinion, nor by its effect on a particularly sensitive or insensitive person or group. . . . Hence, in a Commission proceeding for indecency, in which the Commission applies a concept of 'contemporary community standards for the broadcast medium,' indecency will be judged by the standard of an average broadcast viewer or listener.") (footnotes omitted)

Moreover, the rule should also include an indication that in judging whether the material is patently offensive, it must be judged within the context of the whole program and the merit of the work. The Commission has recognized this approach in the broadcast area. 4/ Any reluctance to give the merit of the work significant weight

4/ See Infinity, 3 F.C.C. Rcd. at 932:

"16. As we stated in our April rulings, and as we re-emphasize today, the question of whether material is patently offensive requires careful consideration of context. The Supreme Court has said that the term 'context' encompasses a 'host of variables'. These variables, whose interplay will vary depending on the facts presented, include, as the Court noted, an examination of the actual words or depictions in context to see if they are, for example, 'vulgar' or 'shocking,' a review of the manner in which the language or depictions are portrayed, an analysis of whether allegedly offensive material is isolated or fleeting, a consideration of the ability of the medium of expression to separate adults from children, and a determination of the presence of children in the audience.

"17. The merit of a work is also one of the many variables that make up a work's 'context,' as the Court implicitly recognized in Pacifica when it contrasted the Carlin monologue to Elizabethan comedies and works of Chaucer. But merit is simply one of many variables, and it would give this particular variable undue importance if we were to single it out for greater weight or attention than we give other variables. We decline to do so in deciding the three cases before us. We must, therefore, reject an approach that would hold that if a work has merit, it is per se not indecent. At the same time, we must reject the notion that a work's 'context' can be reviewed in a manner that artificially excludes merit from the host of variables that ordinarily comprise context." (footnotes omitted)

in the determination of indecency in the broadcast area should not impede such an approach in the cable medium.

There are good reasons to adopt for cable television a definition of "indecent" more narrow than those developed by the Commission for application to broadcast programming and telephonic communications. Cable television is not freely available like broadcast television or radio, viewers have affirmatively to subscribe to get it and cable television lends itself well to opt-out mechanisms such as lock box devices and signal scrambling. 5/

Therefore, TWE respectfully submits that subpart (a) of the proposed rule read:

"(a) A cable operator may enforce prospectively a written and published policy of prohibiting on leased access channels programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs, in a patently offensive manner, as measured by contemporary community standards for the cable medium, and when judged in the context of the entire program, including the program's overall merit."

5/ There are authorities rejecting as unconstitutional on grounds such as those stated in the text the extension to cable television of overbroad definitions of indecent programming. See, e.g., Cruz v. Ferre, 755 F.2d 1415 (11th Cir. 1985); Community Television of Utah, Inc. v. Roy City, 555 F. Supp. 1164 (D. Utah 1982); see also Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434, 1453-54 (D.C. Cir. 1985), cert. denied, 476 U.S. 1169 (1986); Cox Cable Communications, Inc. v. United States, 774 F. Supp. 633, 636-37 (M.D. Ga. 1991) (tending to extend to cable television the robust First Amendment protection accorded to the print media).

B. Blocking of Indecent Programming

Section 10(b) requires cable operators to place on a "single channel" all indecent commercial use programming and then to block that channel. Congress' clear intention in passing this provision was to limit children's access to indecent programming, and not necessarily to limit the amount of indecent programming that a cable system could carry to that which may fit on one channel. The Commission, therefore, should make clear that cable operators may, if they choose, place indecent commercial use programming on more than one channel as long as any channel that is designated for indecent programming is blocked.

To block a channel designated for indecent programming requires certain technical adjustments that will vary from system to system depending on a system's technological development. Because of the differences in system technologies that exist, the choice of the mechanism to accomplish blocking should be left to the cable operator. In addition, because the blocking will generate potentially burdensome technical and administrative expenses, cable operators should be allowed to recoup these expenses from either subscribers or program providers.

Even in systems that are fully addressable, and which can thereby block channels by the relatively straightforward approach of scrambling the signal, it will take time

to make the necessary technical adjustments and to permit the operator to notify subscribers if it wishes. Moreover, certain local authorities require advance notice before an operator can make certain changes to its service or programming. ^{6/} Operators will need sufficient lead time to put in place the blocked channel. Therefore, TWE proposes that operators with addressable systems have at least 180 days from the effective date of the rule to comply.

As recognized by the Commission, to date the problem of blocking programming not desired by the subscribers has been addressed by supplying a locking device to subscribers, pursuant to Section 624(d)(2)(A) of the 1984 Cable Act (47 U.S.C. § 544(d)(2)(A)). There has been no showing that these locking devices have been ineffective in keeping indecent programming from children. With this mechanism available, and to accommodate the technological problems, the rule should permit systems that are not fully

^{6/} See, e.g., New York Executive Law § 824-a(1) (1992) ("Every cable television company shall notify the [state] commission of any network change or significant programming change no later than the later occurring of forty-five days prior to the network change or significant programming change or five business days after the cable television company first knows of such change.").

addressable to be in compliance within 10 years from the effective date of the rule. ^{7/}

Additionally, in certain areas channel capacity constraints may result in indecent programming being cablecast on the same channel as non-indecent programming. On other systems where there is little indecent programming, the operator may prefer not to devote an entire channel to such programming to avoid leaving large blocks of fallow time on the channel. Therefore, the rule should make clear that the channel need be blocked only during the times indecent programming is being carried. If operators cannot have this leeway, producers of non-indecent programming may well have difficulties selling advertising since such programming will be viewed only by those interested enough to request access to the channel. Moreover, certain providers of non-indecent programming may not want time adjacent or near to indecent programming. These circumstances make it important that the system operator also be able to limit the time periods during which indecent programming may be cablecast, so as not to interfere with non-indecent programming and to minimize the blocking and unblocking of the

^{7/} This is similar to the 10-year delayed compliance date with the buy through prohibitions in § 3(b)(8)(B) of the 1992 Cable Act.

signal during the day. Such restrictions are consistent with the power granted to the operator by Section 10(a) to bar all indecent programming if it so chooses.

Similarly, in certain systems, such as TWCNY's Manhattan system, more than one programmer may request a particular time slot and want to cablecast indecent programming in that slot. If the operator has provided only a single blocked channel for indecent programming, 8/ the rules should permit the operator to choose one programmer over the other for cablecast on that single channel without facing the possibility of having to defend against an action for denial of access under Section 612(d) or (e)(1) of the 1984 Cable Act (47 U.S.C. § 532(d) or (e)(1)), or for denial of access or imposing unreasonable terms and conditions of carriage by relegating one producer to an allegedly less desirable time slot on the channel. 9/

8/ Since, as noted above, an operator may bar all indecent programming, it surely may not be required to offer additional channels for indecent leased access programming above what it has voluntarily chosen to provide.

9/ Subsections (d) and (e)(1) of § 612 provide as follows:

"(d) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court

Therefore, TWE respectfully suggests that subpart (b) of the proposed rule read as follows:

"(b) All programs intended for carriage on channels designated for commercial leased access use under this section and identified by the program provider as indecent shall be placed on one or more channels designated by the cable operator for indecent programming, except for such programs prohibited by the cable operator pursuant to paragraph (a) above. A cable operator shall block any such channel at least during

finds that the channel capacity sought by such person has not been made available in accordance with this section, or finds that the price, terms, or conditions established by the cable operator are unreasonable, the court may order such system to make available to such person the channel capacity sought, and further determine the appropriate price, terms, or conditions for such use consistent with subsection (c), and may award actual damages if it deems such relief appropriate. In any such action, the court shall not consider any price, term or condition established between an operator and an affiliate for comparable services.

"(e)(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section. Records of previous adjudications resulting in a court determination that the operator has violated this section shall be considered as sufficient for the showing necessary under this subsection. If the Commission finds that the channel capacity sought by such person has not been made available in accordance with this section, or that the price, terms, or conditions established by such system are unreasonable under subsection (c), the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c)."

the times when indecent programming is being carried except for subscribers requesting access to such channel in writing. The cable operator may group time slots to be made available for indecent programming in order to facilitate the administration and the sale of time on these channels without such action constituting the exercise of editorial control subject to 47 U.S.C. § 532(c)(2).

(1) For cable systems that are fully addressable, this paragraph (b) is effective 180 days after publication in the Federal Register.

(2) For cable systems that are not fully addressable, this paragraph (b) shall not apply until the earlier of:

(A) the time at which the cable system is fully addressable; or

(B) 10 years after the effective date of this rule.

(3) In those circumstances where the time requested by the program provider is already under contract, the cable operator shall offer the program provider time available on the channel as close as possible to the time requested. If no other time is available, the cable operator is entitled to refuse to carry the programming on its system until capacity is available for indecent programming, upon further application by the program provider.

(4) In those circumstances where two or more program providers request the same time period on a channel designated for indecent programming, the cable operator can select which program provider will program that time period without such action constituting the exercise of editorial control subject to 47 U.S.C. § 532(c)(2)."

C. Program Provider Must Give Notice By Certification

Section 10(b) of the 1992 Act requires that program providers notify the cable operator regarding

indecent programming they intend to offer in order to trigger the operator's obligations to restrict access to such programming. It is essential, to protect the cable operator from undeserved liability, that the rules require that this notice be clearly set forth in writing and timely and that the cable operator be able to rely on it. In cable systems such as TWCNY's Manhattan system as an example, to date most indecent programming has been contained in series programming where the program provider contracts for time (in 1/2-hour, hour or larger blocks of time on one or more specific days each week) for periods of from 13 weeks to as long as 18 months. 10/ Once the time has been contracted for, the program usually is cablecast on a specific channel for the duration of the contract. Programmers should not be permitted to change their minds during the contract period and give notice of intention to submit indecent programming thereby requiring a possible change in channel placement of their programming. Although in Manhattan most contracts permit the system to relocate the program, such moves are disruptive for subscribers and costly to the operator, and

10/ While these programmers lease time at a specified price, as the legislative history makes clear, the form of transaction for purchasing the time is not limited to a lease, but can include "fees per subscriber, profit sharing or any combination of these arrangements". 130 Cong. Rec. H12239 (daily ed. Oct. 11, 1984) (statement of Rep. Wirth).

while sometimes necessary, are usually avoided. Therefore, if a series program provider is able to insert and give notice of indecent programming within the series term whenever it desires, and the series is not already on the blocked channel, there could be serious administrative, scheduling and expense burdens on the operator.

To address these issues, the rule should permit the operator to require each leased access program provider to give the statutory notice at the time it contracts for time on the system in the form of a certification that the program provider will not include obscene material and either plans to include indecent material or will not include indecent material in its programming for the duration of the contract period. 11/

As part of the Commission's rules it should be made clear that the operator's insistence upon the certification cannot form the basis for an action by the programmer under Section 612(d) or (e). Moreover, once a blocked channel is filled, the operator should be able to require this certification to avoid any administrative problems should an indecent program be submitted and cablecast by a program provider not on a blocked channel. As it is,

11/ This is true if the programmer contracts only for a one-time slot or contracts for a series of time slots.

operators, having been deprived of their immunity from liability for obscene programming on leased access and PEG channels while being forced to put on programming they would not choose in the first place, are already dealing with an intolerable burden.

Additionally, the proposed rule requires the statutory notice be given "no later than seven days prior to the requested carriage". This time minimum of advance notice is relevant primarily for programmers obtaining only a one-time slot on the blocked channel since series programmers will have given notice in their on-going contracts. Since in certain systems accommodating indecent programming may require changes in schedules, sufficient flexibility in the notice period should be given to permit these changes to be accommodated within the normal scheduling time frame and to be reflected in any guides offered by the system to subscribers that list the programming at issue. Some cable guides present schedules for a week's worth of programming, which are typically prepared two weeks in advance and some present schedules for a month's worth of programming, some of which must be prepared two months in advance. ^{12/} Because individual

^{12/} For example, TWCNY's pay-per-view programming line-up must be prepared two months in advance. In practice, this

cable systems will need different lengths of prior notice, the rule should make clear that cable operators are allowed to require that notice (in the form of the required certification) be given a reasonable amount of time prior to the requested carriage, depending on their individual needs.

The notice should be required to be in writing to avoid later confusion or unnecessary disputes. Retention of these notices should be for a period of 18 months which is consistent with other similar record retention requirements in the cable area. 13/

The Commission also has asked whether the operator should be held harmless from liability if it does not receive timely notice from the program provider. Since the cable operator is already immune from civil and criminal liability for indecent programming cablecast on leased access channels (47 U.S.C. § 558), TWE assumes this concern relates to possible sanctions by the Commission for a violation of this new rule.

The operator should be held harmless in those circumstances because without such assurance, cable

means, for example, that the November line-up must begin production on September 1.

13/ See 47 C.F.R. § 76.225(c) (1991) (Commercial Limits in Children's Programs); 47 U.S.C. § 503(b)(6)(B).

operators might feel compelled to prescreen all or portions of leased access programming to try to insure that no indecent programming is included--a task that is expensive, far from easy and has proven troublesome even for justices of the Supreme Court. The burden and expense of such prescreening outweighs whatever additional comfort that might give to the Commission that indecent programming would not inadvertently be made available. Indeed, leased access programming may be delivered live or by satellite feed instead of by presubmitted videocassette making notice even more critical. Moreover, failure to provide this immunity would be inconsistent with the objective of the statute to place the burden in this area squarely on the program provider.

Finally, the Commission should specifically authorize the cable operators to require indemnity from program providers for breach of their notice or certification obligations. If program providers breach their certifications, cable operators, through no fault of their own, could suffer both liability and legal expense. Accordingly, that expense should be placed on the party at fault--the program provider that breached its representations.

TWE respectfully proposes that subpart (c) be modified and supplemented as follows:

"(c) Cable operators are authorized to require program providers on leased access channels that lease or otherwise contract for time to certify to cable operators, a reasonable time prior to cablecast determined by the cable operators, that they plan to include indecent material as defined in paragraph (a) above in their programming or that they will not include any indecent material as defined in paragraph (a) above in their programming for the duration of the lease or contract period. Cable operators are also authorized to require program providers to certify in their contracts that they will not include obscene material in their programming. Such certification can be required to be in the contract for time or in some other available manner, at the cable operators' discretion. Cable operators are also authorized to require program providers to indemnify cable operators completely for any liability or expense the cable operators may incur in relation to the programming submitted for cablecast.

"(d) The failure to limit indecent programming to a blocked channel as required by this rule shall not subject the cable operator to sanction by the Commission unless it is demonstrated that the operator had received the required written notice from the program provider in a timely fashion."

II. Proposed Rules Regarding Public, Educational and Governmental Access Channels.

Section 10(c) of the 1992 Cable Act directs the Commission to promulgate regulations that enable cable operators to prohibit on PEG channels programming that "contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct". As was stated in the NPRM, Section 10(c) does not require cable operators to prohibit such programming, it simply makes

clear that cable operators have the right to do so if they choose.

The proposed rule, however, needs certain clarifications. First, the rule fails to recognize that many PEG channels are not administered by cable systems, but instead are administered by an agency of the local government or a community access organization. For example, in Erie, Pennsylvania, a Public Access Authority, established by the City Council pursuant to State legislation, completely administers public access channels; in Indianapolis, Indiana, a Citizens Advisory Committee, established by franchise, consults regarding appropriate programming on PEG channels; and in Austin, Texas, Austin Community Television Inc. completely administers three public access channels. 14/ The proposed rule, therefore, should be amended in its reference to "[a] cable operator" to refer instead to "[a] cable operator or organization designated in the franchise or by the franchising authority to oversee the operation of public, educational or governmental access facilities on a system".

14/ In addition to these three public access channels, Austin also has one educational channel administered by a local community college, two educational channels administered by a local school district, one governmental channel administered by the county and one governmental channel administered by the City of Austin.

Second, the NPRM recognizes (p. 6 n.11) the congressional intent that "sexually explicit" as used in Section 10(c) should be interpreted to mean "indecent" as used with respect to the leased access restrictions. The proposed rule, however, uses the "sexually explicit" term. Not all sexually explicit programming is indecent. To avoid any confusion, TWE proposes that the rule use "indecent" as defined in the leased access rules instead of the term "sexually explicit". 15/

Third, the rule should reflect, as the NPRM recognizes, that a cable operator or local access organization may enforce its policy of prohibiting the defined programming by requiring certification by PEG users, in their contracts for PEG access or otherwise, that their programming does not fit into any of the rule's three defined categories. This approach promotes Congress'

15/ The use of terminology in this area is difficult and important and one's ability to understand it is not made easier by the language of the Cable Act. For example, note 3 of the NPRM states that Section 15 "relates to the provision of unsolicited sexually explicit programs on 'premium channels'". However, the statute's text only refers to programming that has been rated R, NC-17 or X by the Motion Picture Association of America, and the R rating is not equivalent to "sexually explicit" or "indecent" material. An R rating may be bestowed on a film for "hard language, or tough violence, or nudity within sensual scenes, or drug abuse". Jack Valenti, *The Voluntary Movie Rating System* 9 (1991).