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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Before the
Federal Communications Commission
Washington, D.C. 20554

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

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REPLY COMMENTS OF

Columbus Community Cable Access, Inc. (ACTV 21)

FCC - MAIL ROOM

The comments filed by the cable industry in this proceeding indicate that, if cable companies are given broad authority to implement the regulations adopted by the FCC pertaining to programming on access channels, many of them will exercise it broadly, even if the result is to prevent the use of access channels altogether.

Such a result cannot possibly be reconciled with the basic purposes of the Cable Act, which include promoting diversity. As a result, ACTV 21 urges the Commission to reject any proposal that would leave the operator with broad discretion to ban programming on public access channels. Instead, as urged by the Alliance for Community Media and others, the FCC must adopt rules that carefully and narrowly define the circumstances under which access programming can be banned.

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There are several good reasons why this is so (aside from the constitutional and statutory reasons identified in the comments filed by the Alliance for Community Media).

Several operators have suggested that, if they are given the broad authority to review PEG access programming for content, the result will be increased expense and delay in cablecasting programming. Many community programmers in Columbus would be denied the opportunity to speak on the public access channel in a timely fashion. A few examples are: 1) several local community groups would not have been able to respond to and participate in the discussion concerning anti-discrimination and zoning laws proposal by the Columbus City Council; 2) the open and frank health discussions about unsafe sex practices by community groups and health organizations could have been squelched; and 3) programs by and for young people about drug abuse which contain "street language" could have been banned.

Some operators have proposed that they be allowed to pre-screen programming at will. A pre-screening rule, or any rule that permitted the operator to exercise advance approval over programming, could make access unaffordable. A significant percentage of the individuals who use the public access channel in Columbus earn less than \$15,000.00 per year. Additionally, many community organizations and nonprofits which use the access channel have very small operating budgets. FCC-imposed rules mandating indemnification, certification, bonds or liability insurance will place unnecessary financial obligations onto these individuals and organizations which they will not be able to bear. The FCC must not place discriminatory price tags on the public's right to speak on an electronic public forum.

Some operators have suggested that, if they are given broad authority, they will require access centers themselves to make certifications as to the content of programming. However, access center budgets are often fixed as a result of contracts with operators and/or cities, which specify what the access organization can and cannot

do. Allowing operators to impose new obligations on access centers is not required by the amendments to the Cable Act, and would require access centers to take on new tasks without compensation. ACTV contracts with the City of Columbus to provide video training, outreach, promotion, equipment use and program scheduling functions for public access activities on a first-come, first-serve nondiscriminatory basis.

ACTV's annual funding comes, in part, from the 3% franchise fees paid to the City by the two local cable operators, Time Warner Entertainment Company, L.P. and Coaxial Communications Inc. ACTV's City funding has not increased in three years while actual services provided have increased by as much as 77.5%. Added and unnecessary financial burdens for insurance, bonds or staff to perform pre-screening of programs will have a major negative impact on services to the public. There is no reason to allow operators to so interfere with access operations, established and operating by mutual agreement.

Not only would this interfere with speech, the industry has not shown it is necessary to do so. In the course of negotiating the cable franchise, an indemnity clause between the City of Columbus and the cable operators was included in City Code, Chapter 595.08. Also, ACTV's contract with the City also contains an indemnity clause. And another local provision is found in Columbus City Code Section 595.05 (E) which states:

The operator shall have no control over the content and scheduling of access programs other than the prohibition of :

- (1) any advertising material designed to promote the sale of commercial products or services including advertising;
- (2) lottery information;
- (3) legally obscene matter pursuant to applicable Federal, State, or City law.

ACTV is unaware of any actions taken by the cable operators under Section 595.05 (E) within the last 10 years. And it is reasonable to assume that action against "legally

obscene matter" could occur only after a court of competent jurisdiction finds certain "matter" to be "legally obscene."

Additionally, Columbus City Code, Section 595.11 (I) also requires the cable operators to provide "adequate technical means" to prevent reception by subscribers for the type of programming described in the FCC's proposed rules.

There is no reason to replace these agreements (or agreements where the operator has chosen to do without an indemnity) with a national standard, which may present serious legal questions.

For reasons stated above, the Commission should reject proposals by the cable industry that cable companies be granted broad authority to censor PEG programming, and adopt proposals made by the Alliance for Community Media.



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