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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	§	
	§	
	§	MM Docket No. 92-258
Implementation of Section 10	§	
Cable Television Consumer	§	
Protection and Competition	§	
Act of 1992	§	
	§	
Indecent Programming	§	
and Other Types of Materials	§	
on Cable Access Channels.	§	

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REPLY COMMENTS OF THE CITY OF AUSTIN, TEXAS

1. The Commission's Notice of Proposed Rule Making (NPRM) lacked sufficient specificity to give interested parties a meaningful opportunity to comment.

The City of Austin is in agreement with the Comments submitted by the ACLU with regard to the Commission's failure to comply with the Administrative Procedure Act (APA). The NPRM merely quoted statutory language without offering any guidance to interested parties. The lack of focus of the comments submitted, as well as their unhelpful litigious tone, indicate that the Commission should issue a revised NPRM in compliance with the APA.

2. Comments submitted by a number of cable operators advocate the adoption of rules which violate the manifest intent of Congress.

The Commission should reject any proposal (e.g. Time-Warner's) to transfer liability for program content to local franchising authorities or local independent access corporations. Such a scheme is against the manifest intent of Congress in enacting Section 10 (d) of the Cable Consumer Protection and Competition Act of 1992. The franchising authorities and access corporations play a vital role in ensuring that a single entity does not have total control over the cable medium, and that speech from a variety of sources may be heard. The cable operators' proposal would interfere with the fulfillment of this goal.

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3. First Amendment Rights are implicated by the Commission's rules.

Because Section 10 and any rules promulgated under it implicate citizens' First Amendment rights, the Commission's rules should be crafted to allow cable operators very little discretion with respect to any program certification process. However, upon certification, the rules should allow any liability for content to transfer to the program provider. Moreover any rules concerning speech for which cable operators are not liable, but which are in the ambit of Section 10, should be narrowly tailored to achieve the government's interest in protecting minors; such rules should allow operators only to implement time, place and manner restrictions on content for which they are not liable.

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