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C-SPAN

Bruce Collins
Vice President and General Counsel

January 4, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Searcy:

Enclosed are one original and nine copies of the
comments of National Cable Satellite Corporation on MM
Docket No. 92-259, Broadcast Signal Carriage Issues.

Sincerely,



Bruce D. Collins

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 4 1993

In the Matter of)
)
Implementation of the Cable Television)
Consumer Protection and competition)
Act of 1992)
)
Broadcast Signal Carriage Issues)

FCC MAIL ROOM

MM Docket No. 92-259

COMMENTS OF THE NATIONAL CABLE SATELLITE CORPORATION

1. Introduction.

National Cable Satellite Corporation, d/b/a C-SPAN ("NCSC") submits its comments on the Commission's Notice of Proposed Rule Making, released November 19, 1992 in the above-captioned docket.

2. Background.

NCSC, as a non-profit corporation created by the cable television industry, is the producer and exclusive distributor of the two information and public affairs television networks known as C-SPAN and C-SPAN 2. The two programming services are available on a 24-hour per day basis via cable television and are devoted entirely to information and public affairs programming, including the live gavel-to-gavel coverage of the proceedings of both the U.S. House of Representatives (on C-SPAN) and the U.S. Senate (on C-SPAN 2), and a variety of other events at public forums around the country and the world. Each program on C-SPAN and C-SPAN 2 is provided to the viewer in its entirety, and without editorial comment or analysis.

3. The Must Carry Rules Violate NCSC's First Amendment Rights.

NCSC is strongly opposed to the aptly-named "must carry" rules that are contained in the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act"), and the implementation of which is the subject of this rule making proceeding. Indeed, NCSC is a co-plaintiff with several other cable program services in a pending federal court action challenging the constitutionality of the rules. NCSC believes the must carry rules, as set out in Sections 4 and 5 of the Cable Act, clearly violate NCSC's free speech rights as guaranteed by the First Amendment.

4. The Must Carry Rules Brand C-SPAN and C-SPAN 2 as "Less Worthy" of Access to the Public than Any Broadcast Licensee.

Through the must carry provisions of the Act, the government is telling the local cable operator in many instances that C-SPAN and C-SPAN 2 must take a back seat for a channel position on the cable system to any broadcast licensee, regardless of its programming or even the extent to which it is viewed locally. This is an unwarranted and unsupported governmental preference to all broadcasters over all cable programming services in the allocation of a limited number of available channels on a cable system. Such impermissible governmental action effectively brands C-SPAN's and C-SPAN 2's public affairs programming as less worthy of access to the public than any other programming that any broadcast licensee might care to put on the electromagnetic spectrum. Government simply does not have the right to make that decision.

5. The Must Carry Rules Do Not Serve the Public Interest, nor Enhance Diversity.

Not only do the must carry rules trample NCSC's First Amendment rights in a blunt and crude manner, in doing so they also impede the stated statutory goals of diversity and service of the public interest. NCSC fails to see how the certain loss of C-SPAN and C-SPAN 2 programming to millions of Americans can possibly advance diversity and the public interest.

6. No Rules that Implement Must Carry Can be Fair to C-SPAN and C-SPAN 2.

In the end, there is no getting around the fact that whenever the must carry rules require that a broadcast licensee be granted a cable channel, there is one less opportunity for either C-SPAN or C-SPAN 2 to reach the public. The certain result is that NCSC is prevented from fulfilling its public service goals in that cable system's community. Given that clash inherent in the unconstitutional must carry requirement, the challenge of the Commission to write rules balancing the interest and right of the public to public affairs programming against the demands of broadcast stations for access to cable channels is

Comments of National Cable Satellite Corp.
MM Docket No. 92-259

simply impossible. The only true and fair balance of those demands will be in a free marketplace of ideas and expression that the must carry rules prevent.

7. Conclusion.

We fully appreciate that in seeking comments in this proceeding the Commission is in search of specific suggestions from us on how the must carry rules might be implemented, and that we have offered none. While we are most respectful of the Commission's statutory duty here, we are loath to offer comments that would suggest any complicity with our own undoing.

NCSC's clear preference is that the must carry rules be struck down by the courts as an egregious violation of the First Amendment rights of both cable operators and of cable programmers. We will continue to pursue such a result in the pending litigation.

Respectfully submitted,

NATIONAL CABLE SATELLITE CORPORATION



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Dated: January 4, 1993