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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992	)	
Development of Competition and Diversity in Video Programming Distribution and Carriage	)	MM Docket No. 92-265

REPLY COMMENTS OF THE AMERITECH OPERATING COMPANIES

The Ameritech Operating Companies[1] hereby submit these reply comments in the above-captioned docket. The Notice of Proposed Rulemaking released December 24, 1992, ("NPRM") seeks comments on proposed regulations implementing Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992.[2] Initial comments were filed by the Companies on January 25, 1993.

I. INTRODUCTION

Although the legislative history of the Cable Act and the Congressional findings conclusively establish the need to ensure nondiscriminatory access to video programming, the comments filed in response to the NPRM vividly underscore the complexity of this task. Commenters representing a broad spectrum of the industry recognize that nondiscriminatory access to video

[1] The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc., collectively referred to herein as the "Companies."

[2] Cable Television Consumer Protection and Competition Act of 1992, Pub. Law No. 102-385, 106 Stat. (1992) (the "Cable Act").

programming is critical, if there is to be any meaningful competition in video programming distribution.[3] Reversing the course, however, after the cable companies have institutionalized exclusive contracts and other restrictive distribution practices will be extremely difficult to do.

Heeding the calls of consumers nationwide, Congress, by enacting the Cable Act, mandated that the cable industry be radically reformed to protect consumers. A key component of that reform rests on Sections 12 and 19 of the Cable Act. These two provisions are specifically aimed at eliminating discriminatory practices in the distribution of popular video programming.

The Companies, in these reply comments, reiterate their earlier position that competition between cable companies and local exchange companies ("LECs") -- from both a policy and economic point of view -- is the best solution to the problems in the cable television industry, and point out that recent developments strongly suggest that the marketplace is moving in that direction at a rapid pace. However, during the transition to a fully competitive market, the Commission should adopt rules that reflect Congressional intent.

II. ALLOWING MEANINGFUL ALTERNATIVES TO EXISTING CABLE PROVIDERS SOLVES CONSUMER AND MARKET PROBLEMS

Instead of implementing yet another extensive set of regulations and procedures, the Commission should encourage competition in the provision of video programming by defining video programming in a manner that would allow LECs the freedom to offer video content. Re-defining video content in this manner would be the most effective solution to the problems sought to be

[3] *See, e.g.*, Advanced Communications Corporation Comments at 2, Competitive Cable Association Comments at 2-4, Wireless Cable Association International, Inc. Comments at 7, Rochester Telephone Corporation Comments at 2, Coalition of Concerned Wireless Cable Operators Comments at 2 and Telecommunications Research and Action Center and the Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights ("TRAC/WACCI-VCR") Comments at 2.

addressed by Sections 12 and 19 of the Act. If LECs were allowed to offer video content, the very existence of LECs as a distribution alternative would minimize the impact, and perhaps the incentive, to engage in discriminatory distribution practices.

The convergence of cable television and telecommunication services is occurring at a rapid pace. Probably the most notable of all the recent announcements about cable companies planning to offer telecommunication services or telephone companies planning to offer video services was the recent Time Warner announcement that it intends to offer two-way video and telecommunications services early next year.[4] This and numerous other announcements make it clear that trying to maintain that old dichotomy between video providers and providers of telecommunications services is futile.[5] In fact, there is a real danger that uneven regulation -- continuing to keep LECs out of cable while allowing cable companies to provide telecommunications services -- will greatly hurt consumers.

The Commission can facilitate an orderly transition to a fully competitive video marketplace by defining video programming in a manner that would allow LECs to provide video content in competition with cable operators. Acting in this economically justified and forthright manner would promptly bring competition to the video marketplace, along with greater video content diversity and the other consumer benefits that traditionally occur with increased competition -- better customer service, lower prices, and more new services.

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4 Paul Farhi, Time *Warner Plans 2-Way Cable System,* The Washington Post, January 27, 1993, at F1 (copy attached as Attachment A).

5 *See, e.g.,* Geraldine Fabrikant, *Phone Company Breaks Ground By Buying Into Cable Television,* The New York Times, February 10, 1993 (copy attached as Attachment B).

III. DURING THE TRANSITION TO A FULLY COMPETITIVE MARKET FOR VIDEO CONTENT, THE COMMISSION SHOULD ADOPT RULES THAT WILL EFFECTUATE CONGRESSIONAL INTENT

Until there is more competition in the provision of video content to consumers, the Commission must reject the arguments of the entrenched cable operators who would place the burden of proof of discriminatory practices on those seeking access to video content.[6] It is apparent -- based on the evidence of anticompetitive practices by entrenched cable providers -- that any proposed rules that place the burden of proof on those whose access to popular video content has been foreclosed will be totally ineffective.[7]

New entrants and other alternative content distributors have already demonstrated the difficulty in obtaining access to video content currently provided to incumbent cable companies.[8] It was because of the compelling facts presented by nonaffiliated distributors to Congress that the Cable Act was passed. Without question, Congress did not contemplate that these parties would again have the burden of proving that exclusive distribution agreements and other similar practices are in fact discriminatory.

Any rules adopted by the Commission should be simple and straightforward; otherwise, there will inevitably be numerous lengthy, complex, and costly proceedings to determine whether various practices are discriminatory. This will permit continuation of the status quo Congress sought to eliminate.

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[6] *See, e.g.*, Tele-Communications, Inc. Comments at 29 and Liberty Media Corporation Comments at 11.

[7] *See, e.g.*, National Private Cable Association at 6-10 and Liberty Cable Comments at 5-11. The experience of National Private Cable demonstrates that short of total denial of access to programming, even delays in making popular programming available impair competition.

[8] CableAmerica Corporation Comments at 4-8 and American Public Power Association Comments at 4-6.

To further obfuscate matters, the entrenched cable operators and programmers raise several non-issues in an attempt to blunt the effect of the Commission's proposed rules. Totally baseless assertions such as the alleged limited applicability of the Cable Act's restrictions, potential harm to the industry, and vague assertions of technology and size-based cost differentials are simply attempts to avoid the clear mandate from Congress.[9] Some cable companies even go so far as to suggest that the rules be phased in over a period of time beyond that contemplated by the Cable Act.[10] However, the most egregious example of the dire warnings by the cable companies is the suggestion that certain current program offerings may be withheld, if the cable companies are not allowed to maintain discriminatory pricing structures.[11] The Commission should summarily reject these disingenuous assertions of consumer or market harm.

Moreover, the Commission should avoid the tendency to try to specifically identify all prohibited discriminatory practices. This near impossible and time-consuming approach will not be successful, and it would undoubtedly lead to a constant stream of litigation before the Commission and courts over whether a particular practice is or is not discriminatory. The comments of the cable companies make it abundantly clear that cable television operators and entrenched distributors intend to use any ambiguity or oversight to escape regulation or, failing that, to delay the effective date of any new Commission

[9] *See, e.g.*, Group W Satellite Communication ("Group W") Comments at 4, Landmark Communications, Inc. Comments at 3, 22-25, Arts & Entertainment Network Comments at 5-7, E! Entertainment Television, Inc. ("E! Entertainment") Comments at 9 and EMI Communications Corp. ("EMI") Comments at 4-6.

[10] *See, e.g.*, E! Entertainment Comments at 10 and Group W Comments at 9.

[11] EMI Comments at 10.

rules. Tactics such as this will make it more difficult for new programmers to gain access to the market -- to the detriment of the American consumer.

Finally, the Companies agree with those that say that the Commission is re-opening issues that have already been decided by Congress.[12] The Cable Act was passed as a result of Congressional outrage over the distribution practices of the incumbent cable operators. The Commission should not unwittingly circumvent Congressional intent by enacting complicated rules that will lead to lengthy FCC proceedings or court appeals.

IV. CONCLUSION.

The Companies restate the position taken in their initial comments that the Commission should facilitate the development of competition in the video marketplace by defining video programming in a manner that would allow LECs to offer video content. Such a definition would provide the competition the Commission seeks to stimulate in this docket. During the transition period, however, the Commission should adopt clear-cut regulations that reflect Congressional intent.

Respectfully submitted,

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[12] *See, e.g.*, DirecTv, Inc. Comments at 7-9 and TRAC/WACCI-VCR Comments at 2-4.

Attachment A

THE WASHINGTON POST 1/27/93 BUSINESS p. F 1

Time Warner Plans 2-Way Cable System

Variety of Interactive Services to Be Offered

By Paul Farhi
Washington Post Staff Writer

Forget 500 channels.

Time Warner Inc. yesterday said it will build a two-way cable TV system later this year that will offer a vast number of program choices and deliver interactive entertainment, education, home shopping and telecommunications services on demand to ordinary households.

Time Warner, the world's largest media and entertainment company, will rebuild one of its cable systems in suburban Orlando, Fla., to create a "full service network" later this year. It will make the advanced system available to 4,000 residential customers there by early 1994.

Another major cable company, Tele-Communications Inc., said in December that it would use digital compression on its cable TV systems to expand the systems' channel capacity to more than 500 channels by 1994. But Time Warner's new announced system goes further than that.

By coupling computers and digital switches to a standard cable TV system, Time Warner's Orlando system will permit viewers to choose from an unlimited menu of programs and movies and watch their selections instantaneously, the company said. It will also provide access to educational databases, enabling subscribers at home to retrieve information from, say, a medical library or an encyclopedia stored on computer disks.

The company also said the system will provide an unprecedented amount of two-way capabilities, making possible video phone calls, transmission of cellular phone calls, televised teaching, interactive video shopping and electronic game-playing between players in different homes.

Time Warner officials suggested one potential application could be video catalogue services, in which a viewer could electronically "browse" through displays of merchandise, pausing to call up different images of a garment or product that catches the viewer's interest.

"I think this is brilliant," said Eli Noam, director of the Columbia Institute for Tele-Information, a media think tank at Columbia University. "It's pushing the envelope technologically. It moves us not only into the digital era but into a genuinely interactive era in TV as well."

Noam said Time Warner's announcement is "a preemptive counterattack" against the phone industry in the race to provide the next generation of telecommunications services to the home.

Both the cable and telephone industries have been trying to reach this next step without replacing their existing home wiring with higher-capacity fiber-optic lines—a step that will cost billions of dollars.

The phone industry, led primarily by Bell Atlantic Corp., is trying to adapt its networks of copper wires to carry video and sell interactive services to residential customers. Time Warner will replace the main "trunk" lines in its Orlando cable system with fiber, but said it won't need to rip out existing residential lines.

"What makes it economic is that we don't have to wire that last mile" into the home, said Geoff Holmes, Time Warner's senior vice president for technology.

"We're creating a TV architecture that gives people what they want, when they want it. It is channel-less."

The "full service network" makes use of several older technologies—fiber and the digital switches that telephone companies already use to transmit phone calls—and adds in two relatively new devices, video compression and "video servers."

Compression electronically "squeezes" a video image so that more video information can be crammed into an existing transmission conduit.

A video server is essentially a huge computer that stores thousands of images that can be called up

See VIDEO, F4, Col. 1

and deployed whenever an operator desires. By marrying this storage device to the switching system, Time Warner said customers will be able to receive whatever program they like almost instantly.

"This is really the integration of a lot of technologies that have been coming along one at a time," said Richard R. Green, chief executive of Cable Television Laboratories, a cable industry research consortium. "They put it all together."

However, Time Warner left several key questions unanswered. It declined to disclose which company would manufacture the server at the heart of the system. Nor would it discuss when it would deploy the technology in its other cable systems and what it would charge customers for using various services.

With 7 million customers, Time Warner is the nation's second-largest cable company, behind Tele-Communications Inc., with more than 11 million. Time Warner also owns Warner Bros. movie and TV studios, as well as Warner Records, the HBO cable service and Time-Life Books, giving it an ample "software" library to market over its system.

John Field, an analyst with Hanifen, Imhoff Inc., a Denver brokerage firm, said most of the new revenue from such a system would likely come from pay-per-view movie orders. But, he added, it was unclear whether a large market existed for such interactive businesses as games and video shopping.

Attachment B

The New York Times
February 10, 1993

Phone Company Breaks Ground By Buying Into Cable Television

Southwestern Bell Gets Washington Area System

By GERALDINE FABRIKANT

In the first transaction of its kind, a telephone company has acquired a cable television system, signaling the start of a race between the two industries to dominate the delivery of communication services of all kinds to the home.

Both industries want to use their elaborate networks to provide movies on demand, hundreds of channels of television programming and on-line electronic libraries. And advances in technologies, blurring the distinctions between what the two industries can do, have set off a Darwinian contest.

In yesterday's deal, the Southwestern Bell Corporation said it had agreed to buy two cable systems in the Washington area from Hauser Communications Inc. for $650 million in cash and stock. Southwestern Bell provides telephone service in Southwestern states including Arkansas and Texas. Telephone companies are not permitted to buy cable systems in areas where they operate phone systems, but can do so in markets outside their home territories.

A Way to Learn the Business

"Everybody has been waiting for the first move by a telephone company," said Dennis Leibowitz, who follows both the cable and the cellular telephone industry for Donaldson, Lufkin & Jenrette. "They want to get the experience of being in the cable business, and they want to offset the defensive risks that cable will offer competition in the phone business."

The deal also sets the stage for telephone monopolies in one region to raid the territories of others. That is because an advanced cable system could easily be equipped to handle telephone calls and would have something approaching the ubiquitous reach of the traditional local phone company. Southwestern Bell's purchase in the Washington area, therefore, could threaten the local phone provider, the Bell Atlantic Corporation.

In this battle between industries, each side has almost precisely the opposite strengths. Cable companies can transmit huge numbers of television channels, but have little ability to offer two-way interactive services. Telephone companies have sophisticated computerized switching networks that can instantly link people in any two places, but their copper wires have quite limited capacity.

Threat to Local Companies

Southwestern Bell already owns a cellular telephone franchise in the Washington market. Owning a cable system will, therefore, threaten the local phone carrier since cable systems can be used to allow telephone users, including cellular customers, to bypass the local telephone company to get direct access to long-distance telephone companies.

Owning a cable system would also benefit Southwestern Bell in the emerging field of inexpensive low-power wireless pocket-size phones that communicate through a network of antennas situated every couple of blocks. A cable system is more efficient than a telephone system in tying a personal

Continued on Page C2, Column 3

Continued From Page A1

communications system together throughout a metropolitan area.

James S. Kahn, Southwestern Bell's senior vice president for corporate development, said another attraction of the cable business was the advent of technology like digital signal compression, which can put more information and television channels onto the existing cable system.

Most analysts say Southwestern Bell will use the acquisition to experiment with ways to apply advances in telephone technology to a cable system, which it would then try to duplicate in other cities.

The cable industry appeared to be gleeful at the prospects that the telephone companies would be turning on themselves and perhaps away from their fight to overthrow the laws that restrict their ownership of cable operations in their home markets.

James Mooney, president of the National Cable Television Association, said yesterday in a statement, "Speaking personally, and reserving final judgment until we see the details, I'd be surprised if the cable industry opposed the deal."

Analyzing the Price

In the deal, Southwestern Bell acquired two cable systems, in Montgomery County, Md., and Arlington, Va., that have 220,000 subscribers and are expected to generate about $60 million in cash flow this year, according to several executives with knowledge of the transaction. That would put the purchase price at more than 10.5 times cash flow, a lower multiple than the 12 or 13 times cash flow that comparable systems were fetching in the late 1980's when media properties were hot.

But cable executives said Hauser Communications still got a good price — one that reflected the appealing revenues per subscriber.

Several cable executives voiced the hope that Southwestern Bell's move would prompt other telephone companies to also invest in their business. The cable industry, like other parts of the communications sector, has seen a sharp slowdown in transactions since the late 80's and the prices of properties have fallen.

Southwestern Bell has been the most aggressive at buying cellular systems outside its territory, Mr. Leibowitz said. Now, it is proving equally aggressive in the cable arena. In a conference call with analysts yesterday, Southwestern Bell officials indicated that other such deals were possible.

Leaving the Business

With the sale of these two systems, Gustave Hauser leaves the cable business. In September, he sold cable systems in the suburbs of Minneapolis and St. Paul. Mr. Hauser was involved with Warner Communications' Qube system, an experimental cable operation in Columbus, Ohio, in the late 1970's. In 1983 he started his own company.

CERTIFICATE OF SERVICE

I, Jenell Thompson, do hereby certify that copies of the foregoing Reply Comments of the Ameritech Operating Companies have been mailed this 16th day of February, 1993, to the parties on the attached service list.

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