

since Congress has recognized that the economics of coaxial cable make coaxial cable overbuilds improbable,⁵² disincentives to the development of low cost distribution technology will most certainly frustrate the stated goal of the 1992 Cable Act “in promoting a diversity of views provided through multiple technology media.”⁵³

Moreover, the notion that low-cost distribution technologies should be saddled with higher programming costs is anathema to the overriding purpose of the 1992 Cable Act -- to drive the prices consumers pay for programming towards costs through the introduction of competition. Because they employ a more efficient distribution technology, wireless cable operators can offer lower rates to subscribers.⁵⁴ Absent far more than the ambiguous Kerrey/Inouye colloquy, the Commission cannot lawfully ascribe to Congress a desire to permit programmers to capture the cost savings of new technologies through higher rates and deny consumers the benefits of those rates.

F. While Programmers May Certainly Establish Standards Relating To Signal Quality and Piracy, They Must Apply Those Standards On A Technology-Neutral Basis.

In another attempt to justify policies that favor the cable MSOs that control it, Turner Broadcasting System, Inc. (“TBS”) insists on repeating the long-discredited myths that wireless cable is technically inferior and subject to piracy.⁵⁵ WCA refuted those

⁵²1992 Cable Act, § 2(a)(2).

⁵³*Id.* at § 6.

⁵⁴See WCA Comments, *supra* note 10, at 10.

⁵⁵See TBS Comments, *supra* note 21, at 11-12.

myths long ago, and need not repeat here the analyses by independent sources establishing that the technical quality of wireless' signal is superior to most cable systems and that wireless' heavy investment in addressability has rendered it less vulnerable to piracy than are coaxial cable systems.⁵⁶ Indeed, WCA finds it ironic that, despite the wretched signal quality of many cable television systems, TBS has apparently never attempted to impose quality control standards on them

Suffice it to say that it is consistent with Section 628 for programmers to establish reasonable signal quality and piracy standards so long as those standards are applied to all technologies equally.

III. CONCLUSION.

The problems that Congress found after years of examination are clear: monopoly cable operators are abusing their market power over programmers to the detriment of non-cable MVPDs. What Congress expects of the Commission is clear: "[t]he conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable and extending

⁵⁶ See, e.g. Shooshan & Jackson, Inc., *Home Video Programming: How Secure From Piracy?*, at 14 (July 8, 1988) ("wireless cable is considerably more secure than a number of video distribution media and is as secure, if not more secure than conventional cable."); Harter, "Wireless or Wired Cable: Comparable Technologies?," General Electric Comb and Division, at 1 ("MMDS performance can meet and even exceed cable in fundamental performance areas like received signal level, carrier-to-noise ratio and non-linear distortion products. Also, MMDS equipment can provide all of the bells and whistles of a cable system like addressability, scrambling and stereo broadcasts.").

programming to areas not served by cable.”⁵⁷ Now, it is up to the Commission to reject the discredited excuses advanced by the cable monopoly to justify its years of misconduct and adopt rules assuring operators of wireless cable and other alternative distribution system access to the cable programming subscribers demand on fair and reasonable terms.

Respectfully submitted,

WIRELESS CABLE ASSOCIATION
INTERNATIONAL, INC.

By:



Paul J. Sinderbrand
Dawn G. Alexander

Sinderbrand & Alexander
888 Sixteenth Street, N.W.
Suite 610
Washington, D.C. 20006-4103
(202) 835-8292

By:



Nicholas W. Allard

1001 Pennsylvania Ave., N.W.
Suite 1300
Washington, D.C. 20004
(202) 637-2286

Its attorneys

February 16, 1993

⁵⁷H.R. 102-862, 102d Cong., 2d Sess., *reprinted at* Cong. Rec. H8308, H8332 (Sept. 14, 1992).