

expectation of earning certain subscriber fees and advertising revenues". (E! at 11) Accordingly, TWE strongly urges the Commission to grandfather any existing carriage arrangements that exceed the limits to avoid disruption of subscriber viewing and contractual relationships.

III. PARTICIPATION IN PROGRAM PRODUCTION

Numerous commenters agreed with the Commission's proposal that, at present, no additional restrictions on the ability of multichannel distributors to engage in the creation or production of video programming are warranted. (See NPRM ¶¶ 56-60; Discovery at 20; TCI at 58-59; TWE at 61; Viacom at 19-20; Liberty at 11; NCTA at 37-38) Commenters addressing the issue of limitation on program production emphasized that the other behavioral and structural provisions of the 1992 Cable Act already fully address the concerns of Congress. (See, e.g., NCTA at 37; Viacom at 20, TCI at 58; Liberty at 10; Discovery at 20) Viacom explained that "multichannel video distributors in general, and cable operators in particular, have been at the forefront of developing new program services". (Viacom at 20) Additional limits, therefore, may be contrary to the congressional goals of encouraging diversity and new

programming. Accordingly, the Commission should not place any limits on participation in program production.

Three commenters argued that limits on participation are warranted. (See INTV at 14-15; NPCA at 14; LCC at 6-7) ^{20/} INTV suggested that the Commission should "limit participation in programming to those services already owned by cable systems" or "impose limits on the financial interests [large operators] may have in the development of program product". (INTV at 14-15) Similarly, the National Private Cable Association ("NPCA") argued that the Commission should prescribe a "limitation on the degree to which cable operators may participate in programming". (NPCA at 18) Liberty Cable Company ("LCC") contended that the regulation adopted should prohibit any multichannel video programming distributor from any involvement in production "unless the cable operator makes programming available to other MVPDs (on the same terms and conditions as the programming is available to the operator's system or to other cable systems)". (LCC at 6-7)

INTV, NPCA and LCC do not offer any coherent rationale for prohibiting cable operators from creating video programming. For example, LCC's concern that

^{20/} The MPAA reserved comment on the issue of limitation on participation in program production. (MPAA at 10-11)

multichannel distributors will be denied access to programming is directly addressed by Section 19 of the 1992 Cable Act. As NPCA recognized, additional restrictions would not be necessary depending "upon the scope of other restrictions . . . adopted by the Commission". (NPCA at 18) Because other provisions of the 1992 Cable Act already fully address the concerns of Congress and these commenters, there is simply no reason to place additional restrictions on cable operators that would only serve to diminish the quality and diversity of programming available to the public.

CONCLUSION

TWE urges the Commission to adopt subscriber limits under which a cable operator's cable subscribers could not account for more than 30% to 40% of all multichannel video subscribers nationally. Such an approach to the subscriber limit will ensure that operators lack power to impair program distribution while preserving efficiencies created by some degree of horizontal concentration. TWE continues to believe that the Commission should adopt attribution criteria that focus on control. TWE also continues to believe that the Commission should have sole authority to enforce the subscriber limits and should

With regard to channel occupancy limits, TWE urges the Commission to permit cable operators to devote at least 50% of their activated channels to programming in which they have an attributable interest, especially if a stringent attribution standard is adopted. As with the subscriber limits, TWE continues to believe that attribution criteria should focus on control. If stricter attribution criteria are adopted, and particularly if the stringent 5% attribution standard recently promulgated under Section 19 is imposed, then it will be all the more important to set the limit at a high level. Employing the strict 5% standard adopted in regulations under Section 19 has especially great potential to interfere with subscriber satisfaction and to stem the flow of investment into new programming. In this connection, TWE urges the Commission to exempt from any channel occupancy limit those programming services that have achieved a distribution level of 40% or more among nonaffiliated operators, and to establish a channel capacity threshold above which channel occupancy limits would no

longer apply. Enforcement of the channel occupancy limits should be on a complaint basis only.

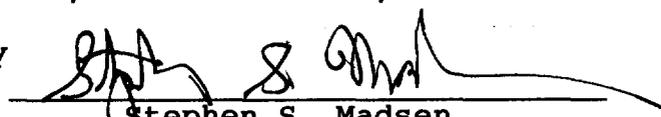
Finally, no additional restrictions on the ability of multichannel video programming distributors to engage in the creation or production of programming are warranted.

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Respectfully submitted,

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