

JUN 17 1993

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

MM Docket No. 92-259

REPLY

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules,¹ hereby replies to the pleadings filed by The National Cable Television Association ("NCTA") and Time Warner Entertainment Company, L.P. ("TWE") in opposition to WCA's petition for partial Commission reconsideration of the *Report and Order* (the "R&O") in the captioned proceeding.²

In its petition, WCA urged the Commission to revise newly-adopted Section 76.64(e) of the Rules to eliminate the requirement that a wireless cable system operator secure retransmission consent from local broadcasters when the operator retains ownership and control over the VHF/UHF rooftop antennas it employs to

¹47 C.F.R. § 1.106 (1992).

²*Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, FCC 93-144, MM Docket No. 92-259 (rel. March 29, 1993)[hereinafter cited as "R&O"].

No. of Copies rec'd
List A B C D E

0411

provide subscribers access to locally available broadcast signals at no charge.³ As WCA established in its petition, the “ownership and control” test of Section 76.64(e) will have a significant negative impact on the financial ability of many wireless cable operators, without advancing any legitimate policy objective.⁴

At the outset, it is telling that not one broadcaster has opposed WCA’s petition. Apparently, the broadcasters agree with WCA that retransmission consent is inappropriate where a multichannel video programming distributor is making local broadcast programming available at no charge through a VHF/UHF antenna mounted on the subscriber’s premises. That should come as no surprise, however -- the Report of the Senate Committee on S. 12 clearly stated that “[B]roadcast signals will remain available over the air for anyone to receive without having to obtain consent.”⁵

It is equally significant that neither NCTA nor TWE challenged the two factual predicates underlying WCA’s petition: (1) that wireless cable operators provide VHF/UHF antennas to subscribers as an amenity, imposing no greater monthly charge

³See Petition of Wireless Cable Ass’n Int’l for Partial Reconsideration, MM Docket No. 92-259 (filed May 3, 1993)[hereinafter cited as “WCA Petition”].

⁴To the extent that the “ownership and control” test is intended to assure wireless cable subscribers the ability to continue reception of local broadcast signals after wireless cable service is terminated, WCA has suggested that the Commission can meet its objective without unduly burdening the wireless cable operator by requiring that any VHF/UHF antenna installed by the wireless cable operator be made available for purchase by the subscriber upon termination of service. *See id.* at 10-11.

⁵S. Rep. No. 102-92, 102d Cong., 1st Sess. at 26 (1991)

on those subscribers who are provided with a VHF/UHF antenna than is charged consumers who supply their own VHF/UHF antenna; and (2) that requiring wireless cable operators to transfer title to and control over VHF/UHF antennas to avoid retransmission consent fees will impose an unnecessary financial hardship.⁶ Moreover, neither NCTA nor TWE addressed, much less refuted, WCA's showing that the "ownership and control" test of Section 76.64(e) is unnecessary to achieve the underlying goal of protecting a broadcaster's retransmission consent rights when a charge is made for access to its programming.

Rather, NCTA and TWE mischaracterized WCA's petition as a request that the wireless cable industry be afforded special treatment not available to other multichannel video programming distributors.⁷ That simply is not true. The relief requested by WCA in its petition is for the Commission to amend Section 76.64(e) by deleting the second sentence thereof.⁸ Grant of that relief will permit any multichannel video programming distributor, including a cable operator, to provide consumers with VHF/UHF antennas and afford access to local broadcast signals at no charge, without

⁶See WCA Petition, *supra* note 3, at 5-7.

⁷See Opposition of Time Warner Entertainment Co., L.P., MM Docket No. 92-259, at 15-16 (filed June 7, 1993); Opposition of Nat'l Cable Television Ass'n, MM Docket No. 92-259, at 8-9 (filed June 7, 1993).

⁸See WCA Petition, *supra* note 3, at 11.

incurring retransmission consent obligations.⁹ In short, neither NCTA nor TWE have presented any reason why the Commission should require any multichannel video programming distributor to divest ownership and control of the VHF/UHF antennas used to provide subscribers with access at no charge to local broadcast signals.

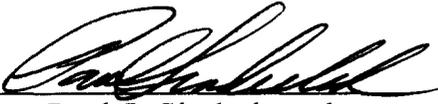
WHEREFORE, for the reasons set forth above and in WCA's petition, WCA urges the Commission to reconsider the *R&O* and amend Section 76.64(e) by deleting the second sentence thereof so that no retransmission consent will be required when a multichannel video programming distributor installs a rooftop VHF/UHF antenna used to access local broadcast signals at no charge, even if the distributor maintains ownership and/or control over the antenna facilities. In the alternative, the Commission should rule that no retransmission consent will be required when a distributor maintains ownership and/or control over the VHF/UHF antenna used to

⁹The idea that cable operators might want to provide consumers with VHF/UHF antennas is hardly far-fetched. The cable industry itself has cited A/B switches as a solution to the current stalemate between broadcasters demanding retransmission consent payments and cable operators that have foresworn paying retransmission consent fees. It is certainly possible that some cable operators would want to provide VHF/UHF antennas to their subscribers, in addition to A/B switches, particularly where the cable operator removed the subscriber's own VHF/UHF antenna upon the installation of cable service.

access local broadcast signals at no charge, so long as the subscriber has the right to purchase the antenna facilities upon termination of service.

Respectfully submitted,

THE 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

Its Attorneys

June 17, 1993

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Reply to be served on this 17th day of June, 1993 by depositing true copies thereof with the United States Postal Service, first-class postage prepaid, addressed to the following:

Daniel L. Brenner
Michael S. Schooler
Diane B. Burstein
1724 Massachusetts Avenue, N.W.
Washington, DC 20036

Robert D. Joffe
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

Brian Conboy
Theodore Case Whitehouse
Willkie Farr & Gallagher
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20036

A handwritten signature in black ink, appearing to read 'Candace J. Lamoree', written over a horizontal line.

Candace J. Lamoree