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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

Implementation of Section 25)
of the Cable Television Consumer)
Protection and Competition Act)
of 1992)
Direct Broadcast Satellite)
Public Service Obligations)

MM Docket 93-25

REPLY COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

Time Warner Entertainment Company, L.P., ("Time Warner") respectfully submits its Reply Comments in the above-captioned proceeding.

I. INTRODUCTION

Time Warner recommends that the Commission:

- recognize that C-band satellite transmissions are outside the scope of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 ("Act"), 47 U.S.C. Sec. 335, and any Commission regulations adopted under Section 25;
- not apply the Section 25 regulations directly to program services; and
- recognize that neither programmers nor DBS providers have any Section 25 obligations with regard to premium services.

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II. C-BAND SATELLITE TRANSMISSIONS ARE OUTSIDE THE SCOPE OF SECTION 25

All C-band transmissions, including satellite transmissions of programming to cable headends and to home satellite dishes, are exempt from the statutory obligations contained in Section 25. The public interest and other obligations in Section 25 apply only to "providers of direct broadcast satellite service."¹ Section 25 defines a "provider of direct broadcast satellite service" as:²

1) "a licensee for a Ku-band satellite system under part 100 of title 47..."; or

2) "any distributor who controls a minimum number of channels ... using a Ku-band fixed service satellite system"

Thus, by the express terms of the statute, C-band satellite transmissions are outside the scope of Section 25.

All parties commenting on this issue agreed that Section 25 specifically excludes C-band transmissions.³ For example, the Consumer Federation of America ("CFA") found that because the legislative history offered "no additional information, . . . the plain language of the statute operates" to exclude C-band transmissions.⁴

¹ 47 U.S.C. Sec. 335 (a).

² 47 U.S.C. Sec. 335 (b) (5) (A) (i), (ii).

³ See Consumer Federation of America ("CFA") Comments at 2; DirecTv, Inc. Comments at 7.

⁴ CFA Comments id.

The Commission's tentative conclusion that the scope of Section 25 is limited to "DBS services provided in the Ku-band" is clearly correct and should be adopted.⁵

III. THE SECTION 25 OBLIGATIONS APPLY TO DBS PROVIDERS AND DO NOT APPLY TO PROGRAM SERVICES

Individual program services are not required under Section

responsible DBS provider under Section 25.⁸ Likewise, CFA questioned whether the Commission even had jurisdiction over program services delivered via DBS and further suggested that, even if such jurisdiction did exist, there would be no reason to impose Section 25 on programmers, since the Commission already has clear authority to impose the obligations on DBS licensees.⁹

Moreover, to impose Section 25 burdens on DBS programming services would be inconsistent with the Commission's previous practice regarding cable program services. While the equal opportunity rules have been held to apply to cable system operators,¹⁰ the Commission has not imposed such obligations on cable programmers.¹¹ There is no reason to depart from that scheme here.

Similarly, the Commission should make clear that DBS providers may not unilaterally impose reasonable access or equal opportunity obligations upon specific program services. To do so merely would transfer the DBS provider's political programming

⁸ See APTS/CPB Comments at 5-6.

⁹ CFA Comments at 4.

¹⁰ See Political Programming Policies, Memorandum Opinion and Order in MM Docket 91-168, 7 FCC Rcd. 4611, 4612 (1992); see also 47 C.F.R. Sec. 76.205.

¹¹ Under the Commission's rules, only a cable television system which permits a qualified candidate to use its facilities must provide equal opportunities to other candidates. See 47 C.F.R. Sec. 76.205(a).

obligations to program services, a result neither required nor permitted by Section 25.¹²

Finally, the Commission should reject CFA's suggestion that the political candidate should decide what time and channel constitutes reasonable access.¹³ The CFA proposal is contrary to long-established Commission precedent. Historically, the Commission has permitted the broadcaster discretion to satisfy its reasonable access obligations.¹⁴ Political candidates have not been permitted to obtain reasonable access under Section 312(a)(7), or even equal opportunities under Section 315, at a particular time, or during a particular program of their choosing.¹⁵ The Commission has correctly realized that broadcasters must be given flexibility to satisfy their obligations while at the same time ensuring that their program schedule is not unnecessarily disrupted. The very same dynamic applies to DBS providers. Section 25 does not require, nor does

¹² Time Warner does not object, however, to the suggestion of some commenters that DBS providers and programmers could agree by contract that a programmer satisfy the DBS provider's Section 25 obligation. See, e.g., DirectTV Comments at 7-8; PRIMESTAR Partners, L.P. Comments at 6-7; United States Satellite Broadcasting Company, Inc. Comments at 2-3.

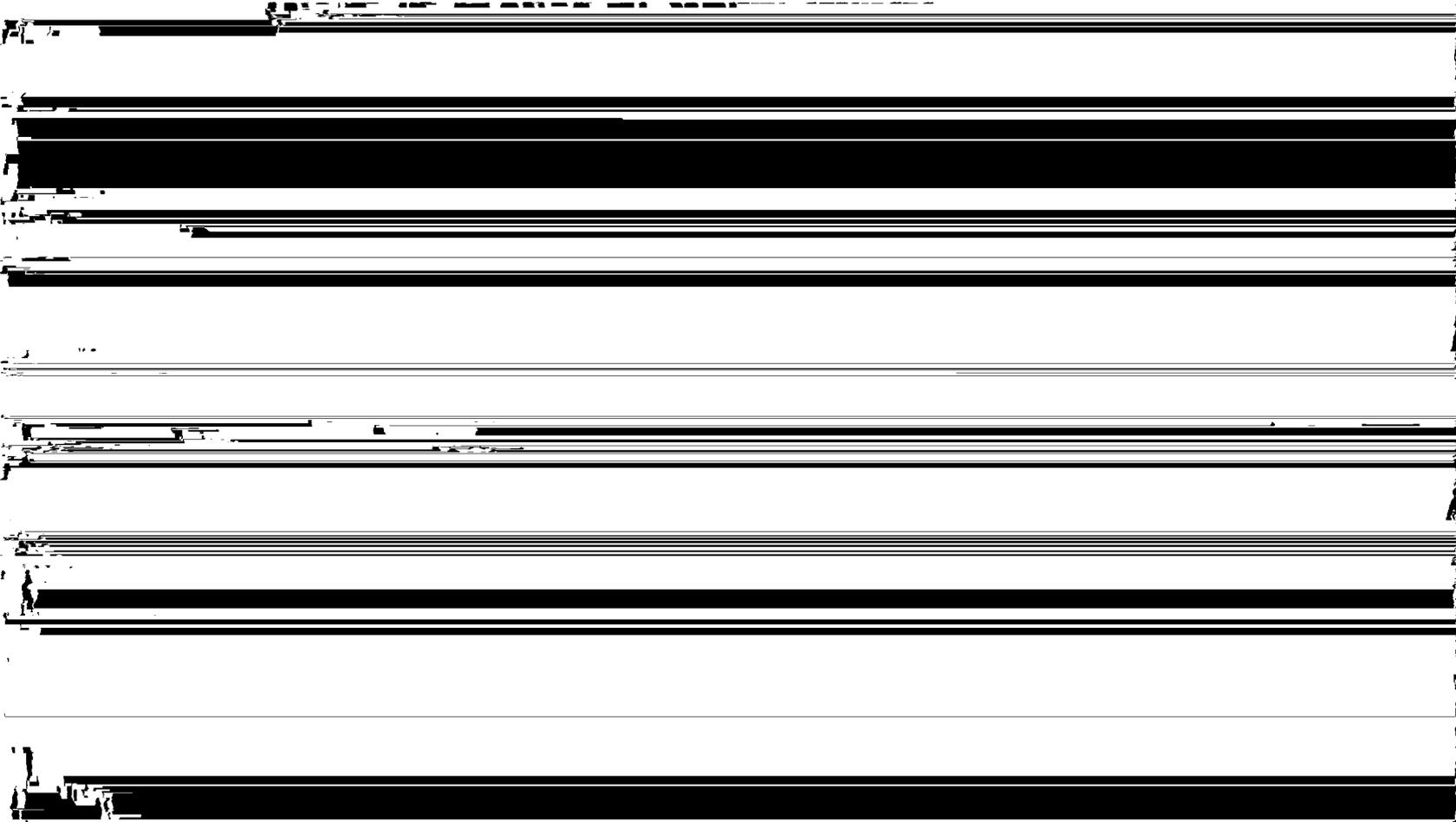
¹³ See CFA Comments at 25-26.

¹⁴ See Political Programming Policies, Report and Order In MM Docket 91-168, 7 FCC Rcd. 678, 681 (1991); see also Notice at 1593.

¹⁵ See Political Programming Policies, Report and Order, 7 FCC Rcd. at 682 ("Section 312(a)(7) was never intended to provide candidate access to specific programming"); Political Programming Policies, Memorandum Opinion and Order, 7 FCC Rcd. at 4611, 4612; see also Notice at 1593-1594.

common sense suggest, that political candidates be given the right to dictate scheduling to DBS providers, or, in effect, to individual programmers. There is no evidence in the record of this proceeding, nor any credible reason to believe that DBS providers would use the discretion afforded them under Section 25 to disadvantage political candidates by scheduling their advertisements at undesirable times or on less desirable channels. At any rate, if such practices develop, the Commission has the discretion to address them in specific instances. To put discretion into the hands of a political candidate to dictate its time and program location would subject DBS service providers to a significantly more onerous obligation than now imposed on broadcasters.

IV. ANY OBLIGATIONS IMPOSED ON DBS PROVIDERS SHOULD NOT BE



Over the last two decades, premium services such as HBO and Cinemax have invested substantial resources and capital to develop a brand identity for their services. A central element of that identity is that the services are commercial-free. Imposition of political advertising requirements would fundamentally alter that identity. There is no reason to impose such a result, since, to the extent that a DBS operator provides advertiser-supported programming, the political advertising obligations can be more-easily fulfilled on these channels.

Moreover, as a practical matter, how can the Commission enforce the lowest unit charge requirements of Section 315 against premium channels if such services do not accept advertising? There is no advertising charge, much less a lowest unit charge, available from which to determine the proper rate. This complication further supports the position of numerous parties in this proceeding that the Section 25 obligations should not be applied with regard to premium services.

V. CONCLUSION

Time Warner respectfully recommends that the Commission adopt regulations to implement Section 25 of the Act consistent with the proposals contained herein and in its initial Comments.

Respectfully submitted,

**TIME WARNER ENTERTAINMENT
COMPANY, L.P.**



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