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

**SEP 23 1993**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Sections 11 and 13 )  
of the Cable Television Consumer )  
Protection and Competition Act of 1992 )  
 )  
Horizontal and Vertical Ownership )  
Limits, Cross-Ownership Limitations )  
and Anti-trafficking Provisions )

MM Docket No. 92-264

To: The Commission

**REPLY COMMENTS OF RAINBOW PROGRAMMING HOLDINGS, INC.**

Rainbow Programming Holdings, Inc. ("Rainbow"), by its attorneys, hereby submits its reply comments in response to the Further Notice of Proposed Rulemaking<sup>1/</sup> in the above-captioned proceeding.

As the Commission has recognized, Congress mandated the establishment of a numerical channel occupancy limit for a narrow purpose: to reserve a percentage of cable system channel capacity for unaffiliated programmers.<sup>2/</sup> Because Congress

<sup>1/</sup> Report and Order and Further Notice of Proposed Rulemaking, In re Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-264, FCC 93-332 (rel. July 23, 1993) ("Further Notice").

<sup>2/</sup> See id. at ¶ 167. As the Commission also knows, Congress acted separately to address any specific anticompetitive conduct associated with vertical integration. 47 U.S.C. §§ 536, 548; see Further Notice at ¶¶ 182, 184.

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recognized the importance of cable operator investment in programming, however, it sought to avoid the arbitrariness of a numerical limit by directing the Commission to "account for any efficiencies and other benefits" associated with vertical integration and to not "impair the development of diverse and high quality video programming."<sup>3/</sup>

As the Commission also understands, the channel occupancy rules must be consistent with Congress's interest in promoting the availability of locally responsive programming.<sup>4/</sup> For that reason, the Commission concluded that an exemption for local and regional programming services was especially appropriate: "Such local and regional cable networks are responsive to the needs and tastes of local audiences and serve Congress' objectives of promoting localism."<sup>5/</sup>

Despite the evident Congressional intent underlying the Commission's proposed refinement of the numerical channel occupancy limit, the National Association of Telecommunications Officers and Advisors, et al. ("NATOA") argues categorically that the channel occupancy rules should apply to as wide a range of

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<sup>3/</sup> 47 U.S.C. § 533(f)(2)(D), (G).

<sup>4/</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(10), 106 Stat. 1460, 1461.

<sup>5/</sup> Further Notice at ¶ 219.

cable operators and affiliated programmers "as possible."<sup>6/</sup> Because its recommendations are unsupported and directly contrary to the expressed intent of Congress, however, they warrant little consideration in the Commission's final formulation of the channel occupancy rules.

NATOA's apparent justification for opposing the proposed exemption -- "most local and regional networks offer primarily sports programming"<sup>7/</sup> -- almost defies comment.<sup>8/</sup> In fact, Rainbow's News 12 Long Island is one of a number of cable operator-supported programming services devoted to news, public affairs, and other locally responsive programming.<sup>9/</sup> Moreover, even if NATOA's characterization of regional programming were true, the Supreme Court has long recognized that coverage of

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<sup>6/</sup> Comments of the National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties, MM Docket No. 92-364, at 6 (filed Aug. 23, 1993).

<sup>7/</sup> Id. at 10.

<sup>8/</sup> NATOA's attempt to raise the specter of "large national conglomerates" dominating the programming market is also wide of the mark. See id. at 10. Congress recognized -- and affirmatively sought to preserve -- the benefits associated with cable operator investment in programming services. 47 U.S.C. § 533(f)(2)(D). A cable operator's interest in other, non-cable related ventures is simply irrelevant to the establishment of channel occupancy rules.

<sup>9/</sup> Other regional news and public affairs programming services include Newschannel 8, Long Island One, and New York 1 News.

local events, including sporting events, serves the public interest.<sup>10/</sup>

NATOA's comments aside, the Commission has correctly recognized that "an exemption is necessary to encourage continued [multiple system operator] investment in the development of local and regional cable networks."<sup>11/</sup> Through cable operator investment, programmers such as Rainbow have been able to produce locally- and regionally-oriented programming that simply did not exist before. Moreover, the continued viability of local and regional programming services requires ongoing investment and support by cable operators.<sup>12/</sup> Because Congress recognized the value of such programming services, and sought to assure their continued development, the Commission should adopt its proposal to exempt local and regional programming services from the final channel occupancy rules.

#### Conclusion

For the reasons stated herein and in Rainbow's initial comments, the Commission should account for the benefits

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<sup>10/</sup> See Comments of Affiliated Regional Communications, Ltd., MM docket No. 92-264, at 4 (filed Aug. 23, 1993) (quoting United States v. Midwest Video Corp., 406 U.S. 649, 668-69 (1972) and National Broadcasting Co. v. United States, 319 U.S. 190, 203 (1943)).

<sup>11/</sup> Further Notice at ¶ 219.

<sup>12/</sup> Exempting local and regional networks from the channel occupancy limits is also consistent with the Commission's conclusion that regional subscriber limits would unnecessarily undermine the beneficial efficiencies associated with regional concentration, including the "development of local and regional cable programming." Id. at ¶ 137.

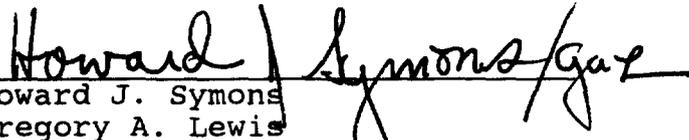
associated with vertical integration and Congress's desire to promote the availability of diverse and locally responsive programming in tailoring the final channel occupancy rules. In particular, the Commission should exempt local and regional programming services from the numerical channel occupancy limit.

Respectfully submitted,

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