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BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Implementation of Sections 11 and 13 )  
of the Cable Television Consumer )  
Protection and Competition Act of 1992 )

MM Docket No. 92-264

OPPOSITION OF NATIONAL CABLE TELEVISION ASSOCIATION, INC.  
TO MOTION TO LIFT STAY

NATIONAL CABLE TELEVISION  
ASSOCIATION, INC.  
1724 Massachusetts Ave., N.W.  
Washington, D.C. 20036

(202) 775-3664

December 27, 1993

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**OPPOSITION OF NATIONAL CABLE TELEVISION ASSOCIATION, INC.  
TO MOTION TO LIFT STAY**

The National Cable Television Association ("NCTA") files this opposition to the Motion to Lift Stay filed on December 15, 1993, by the Center for Media Education ("CME") and Consumer Federation of America ("CFA"). CME/CFA request lifting the stay of the effective date of the horizontal ownership limits established in the FCC's Second Ownership Report and Order. See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits, FCC No. 93-456 (released October 22, 1993).

In the Second Ownership Report and Order, the Commission concluded that:

[i]n view of the recent federal district court decision holding that the Commission's statutory authority to adopt horizontal ownership limits is unconstitutional, and to avoid potential confusion and uncertainty during the period of judicial review [it would stay] the effective date of the horizontal ownership rules until final

judicial resolution of the District Court's decision.

Second Report and Order at ¶ 3 (footnote omitted). See Daniels Cablevision, Inc. v. United States, No. 92-2292 (D.D.C. September 16, 1993), appeal docketed, (D.C. Cir. November 15, 1993) (holding that the horizontal ownership rules are unconstitutional). For the reasons discussed below, the stay of the effective date of the horizontal ownership limits should remain in effect until final resolution of the appeal filed in Daniels.

The Commission does not routinely grant stays of the effective date of its rules. See 47 C.F.R. § 1.106(n). That it chose to grant one here evidences the surpassing strength of the case for a stay.

The Commission evaluates petitions for stay under well-settled principles. To support a stay, proof is required that: (1) there is a likelihood of prevailing on the merits; (2) the industry will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest will be served. See, e.g., Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket No. 92-266, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5585 (1993). Even if this stay were requested by a third party, the stringent burden of proof for granting the stay would be met. In cases such as

this, where the Commission imposed the stay sua sponte, the grounds for maintaining the stay are even more compelling.

First, as evidenced by the decision in Daniels, it is far from clear, much less likely, that the rules establishing subscriber limits will be upheld. Second, irreparable injury will result if cable systems are prevented from lawfully expanding their operations. Third, continuance of the stay pending appeal of the Daniels decision will not result in harm to other interested parties, such as video programmers and the public. Cable systems that choose to expand beyond the 30% limit do so at their own peril. Should the Act's ownership provisions and the Commission's horizontal ownership rules be found constitutional, the Commission can require that any cable operator exceeding the 30% limit divest. Finally, the public interest clearly favors grant of the stay. As the Commission correctly recognized, a stay would avoid potential confusion and uncertainty during the period of judicial review.

For the foregoing reasons, NCTA respectfully requests that the Commission deny CME/CFA's Motion to Lift Stay.

Respectfully submitted,

**NATIONAL CABLE TELEVISION  
ASSOCIATION, INC.**

*Daniel L. Brenner/LPP*  
Daniel L. Brenner  
Loretta P. Polk

1724 Massachusetts Ave., N.W.  
Washington, D.C. 20036

(202) 775-3664

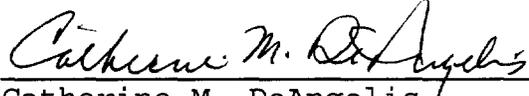
December 27, 1993

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CERTIFICATE OF SERVICE

In reference to the above-captioned filing, I hereby certify that, on December 27, 1993, copies of the National Cable Television Association's Opposition to Motion to Lift Stay were served by First Class Mail, postage prepaid, to the following:

Angela J. Campbell  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Avenue, N.W.  
Washington, D.C. 20001

  
Catherine M. DeAngelis