

ORIGINAL RECEIVED

FEB 15 1993

Before the  
Federal Communications Commission  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section 17 )  
of the Cable Television )  
Consumer Protection and )  
Competition Act of 1992 )  
 )  
Compatibility Between )  
Cable Systems and Consumer )  
Electronics Equipment )

ET Docket No. 93-7

REPLY COMMENTS OF VIACOM INTERNATIONAL INC.

1. Introduction

These Reply Comments are being filed on behalf of Viacom International Inc. ("Viacom").<sup>1/</sup> Viacom believes that in one critical aspect, relating to a standard for digital transmissions, the record thus far developed in the above-captioned proceeding does not adequately address the public interest in insuring that digital communications are able to flow freely along the electronic superhighway. Without adequate open digital transmission standards, artificial barriers could be

<sup>1/</sup> Viacom is a diversified entertainment and communications company, and many of its operations will be affected by whatever action the Commission takes in this proceeding. For example, Showtime Networks Inc., a wholly-owned subsidiary of Viacom, owns the premium programming services Showtime, The Movie Channel, and FLIX. MTV Networks, a division of Viacom, owns the advertiser-supported programming services MTV: Music Television, VH-1/Video Hits One, and Nickelodeon (comprising the Nickelodeon and Nick at Nite programming blocks). Viacom also owns Showtime Satellite Networks Inc., which packages Showtime, MTV, and third-party program services for distribution to owners of home television receive-only earth stations nationwide. Viacom, either directly or indirectly, is affiliated with the advertiser-supported cable programming services Comedy Central, Lifetime Television, and All News Channel, as well as with Prime Sports Northwest, a regional sports service in the Seattle-Tacoma, Washington, area. In addition to programming, among its other interests Viacom owns cable systems serving approximately 1,100,000 subscribers in five states.

No. of Copies rec'd 029  
List ABCDE

introduced at the entry and exit ramps that would enable parties controlling those ramps to function as gatekeepers, with the power to extort unreasonable admission charges or impose anticompetitive terms and conditions for entry or exit. As set forth below, Viacom believes that, because the characteristics of digital transmission systems are still undefined and evolving, it is premature for the Commission at this time to adopt an implementation standard for digital transmissions. Such a standard should be adopted only after comments are received on the standard currently being developed by the Cable-Consumer Electronics Compatibility Advisory Group. The Commission can and should nevertheless adopt "rules of the road" now that will insure that when such a standard is adopted, digital transmission systems will at a minimum provide barrier-free access to and interoperability with the various distribution systems along the electronic superhighway.

## II. Discussion

In its Notice of Proposed Rule Making in this proceeding, the Commission recognized that, in order to avoid future compatibility problems that could arise with the introduction of digital transmission methods by the cable industry, it would be necessary to standardize the method used to transmit digital signals. The Commission therefore requested suggestions for a "regulatory plan that would require completion of a digital cable transmission standard in a manner that would allow for timely and efficient introduction of consumer products that could receive

service under the new standard."<sup>2/</sup> Viacom participated in the work of the Cable-Consumer Electronics Compatibility Advisory Group ("C3AG") and supports C3AG's Comments filed in this proceeding on January 25, 1994. In response to the Commission's request for suggestions for a regulatory plan concerning digital transmission standards, C3AG proposed the following:

The digital cable television environment is developing quickly, and the Advisory Group anticipates that much will be achieved within the coming months. As indicated in the Notice, the Advisory Group has established a timetable for defining digital transmission and tuner specifications by year-end 1994. Already the Joint Engineering Committee's Digital Subcommittee has begun the important task of investigating on-going digital standards activities both domestically and internationally. A report of their findings will lay important groundwork for the Advisory Group; the report from the JEC is expected by mid-1994. We would anticipate that this in turn could serve as the basis for a Supplemental Notice of Proposed Rulemaking.

C3AG Comments at 23 (footnotes omitted). C3AG thus provided, as the Commission requested, a regulatory plan for the completion of a digital transmission standard. It did not provide, and the Commission did not request, the specific details of any such standard, which are currently under review and consideration by C3AG.

Some other parties did not address in their comments the Commission's request for suggestion of a regulatory plan for the adoption of digital transmission standards. Instead, they opposed the adoption of any digital transmission standards. For example, General Instrument Corporation ("GIC") stated:

---

<sup>2/</sup> Notice of Proposed Rule Making ("NPRM"), ET Docket No. 93-7, FCC 93-495, released December 1, 1993, at Paragraph 34.

. . . GIC strongly urges the Commission to refrain from imposing national digital transmission or security standards on cable providers. No one knows or can adequately predict how this technology will develop; extensive government involvement at this point could inadvertently derail the dramatic progress being made and seriously threaten U.S. competitiveness in the digital video arena. Consequently, the Commission should proceed with extreme caution with respect to the regulation of these emerging digital technologies.

GIC Comments at 33. The same refrain is found yet again in identical words in the Comments of Tele-Communications, Inc. ("TCI"):

. . . TCI strongly urges the Commission to refrain from imposing national digital transmission or security standards on cable providers. No one knows or can adequately predict how this technology will develop; extensive government involvement at this point could inadvertently derail the dramatic progress being made and seriously threaten U.S. competitiveness in the digital video arena.

TCI Comments at 34. Similarly, Home Box Office ("HBO") argues that the Commission should permit digital transmission technology to evolve in the marketplace without regulatory intervention:

Based on its experience with other evolving television technologies, HBO believes that whatever standardization process proves necessary for widespread deployment of digital transmission systems will be accomplished most efficiently through normal marketplace evolution.

HBO Comments at 3.

As reflected by Viacom's participation in and agreement with the Comments of C3AG, Viacom believes that it is premature to adopt the specifics of digital transmission standards now. That does not mean, however, that there is no appropriate role at this time for the Commission to play with respect to digital transmission. It is important that the Commission clarify now that the future development of such standards must take place

within the framework of open access to the technologies and interfaces used by various transmission systems, with no person or entity being permitted to become the gatekeeper to any transmission medium through its control of closed proprietary technology.<sup>3/</sup> In recent testimony at a Congressional oversight hearing on interactive video systems held in connection with pending communications legislation, Edward D. Horowitz, Viacom Senior Vice President and Chairman and Chief Executive Officer of its broadcast division, in a discussion about set-top converter boxes, set forth the principle that Viacom believes should be equally applicable here:

I think it is imperative that in examining particular aspects of the [National Information Infrastructure ("NII")]--such as the set-top box--we affirm the principle that any proprietary system must not have the effect of preventing or restricting the ability of programmers to gain access. The set-top box must be able to accommodate all sources of information and various transport formats, if it is to be truly compatible with other elements of the telecommunications superhighway. This linkage is vital to a National Information Infrastructure built with open architecture. Any company that suggests it is building an open system, but is placing a proprietary transport layer on its data signal is not--in fact--creating an electronic superhighway with open access.

. . . . .

If the first set-top boxes, which can process digital compression, use a proprietary, closed compression technology, such as, but not limited to, GI[C]'s DigiCipher II, or fail to come into full compliance with agreed upon industry standards, such as [main level, main profile, full resolution, with B-frames] MPEG2, they have the ability to create a bottleneck along the telecommunications superhighway. Lawmakers should be concerned about any proprietary

---

<sup>3/</sup> To the extent that any open access technologies rely on proprietary patents, Viacom does not object to the payment of a license fee for use of the technology, so long as the technology is open for use by all and the license fee is reasonable.

system which has or may have the effect of preventing or restricting the ability of programmers to gain access.

See Testimony of Edward D. Horowitz before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce of the United States House of Representatives (the "House Committee"), February 1, 1994 at 3-4, 5-6 (emphasis in original).

The same point was made in testimony by the President of Sun Microsystems Laboratories:

The Government alone can guarantee access and choice, by mandating barrier-free interfaces. To do this the Government should: (1) Designate critical NII interfaces as barrier-free. Sun recommends that the FCC establish a broad-based committee made up of representatives from government, industry, consumer groups, and academia, to identify the critical NII interfaces which must remain barrier-free; and (2) Set the policy: legislatively define what constitutes barrier-free.

Testimony of Wayne Rosing before the House Committee, February 1, 1994, at Summary.

Other parties in their comments in this proceeding have supported the desirability of digital standards insuring barrier-free access to and/or interoperability of different transmission systems. For example, American Telephone and Telegraph Company ("AT&T") states:

. . . AT&T proposes that the Commission issue a broad-ranging Notice of Inquiry addressed to interfaces among equipment in the home and to transmission and information processing standards for future digital multimedia products and services. That Inquiry should seek comment on the circumstances in which Commission mandated standards are needed. The Inquiry should also seek comment on what Commission initiatives and regulations would afford consumers the greatest choice and permit providers to succeed on the merits of their offerings rather than by control of totally closed systems and interfaces.

Comments of AT&T at 3-4. Similarly, the Bell Atlantic Telephone Companies ("Bell Atlantic") state:

Adoption of a Decoder Interface standard that does not adequately address the needs of all video transport technologies could hinder the development of competing services that use new technologies. Bell Atlantic therefore urges the Commission to ensure participation by all types of video transport service providers in setting digital transmission and compression standards.

Bell Atlantic Comments at 2-3.

If the Commission now adopts rules of the road requiring open access and interoperability, the public interest would be served. For example, competition among equipment manufacturers - - which might only occur with the adoption of such rules -- would result in lower prices both to distribution systems and to consumers. Further, mandated open access would inhibit the owners of closed technologies and/or the users of those technologies from functioning as gatekeepers. Without such rules, programmers, even if able to gain access, would face the likelihood of higher costs (at least some of which will be passed on to consumers) and reduced revenues, with a resulting adverse impact on program quality and diversity.

It may be that the parties opposing digital transmission standards in this proceeding are ignoring the critical distinction discussed above between the need to adopt rules of the road now, which establish barrier-free access at the interfaces to the electronic superhighway, and the need to defer decision on specific issues of implementation. However, even if the concerns of such commenters are with implementation, Viacom believes that those concerns are exaggerated. The two principal concerns raised by those opposing digital standards relate to

whether a digital implementation standard for scrambling can be developed and how the Commission will treat new technologies developed after the adoption of a digital implementation standard. Viacom believes that in the digital domain "smart card" technology will permit the operation of different scrambling systems on a secure basis while still permitting open access and interoperability.<sup>4/</sup> With respect to new service offerings developed after the adoption of digital implementation standards, Viacom agrees with the Comments of C3AG:

The Decoder Interface is being designed in a fashion which should easily be able to accommodate new scrambling methodologies and other new services. As part of the FCC process, the hardware manufacturers and the cable and consumer electronics industries envision establishing new procedures whereby new services and scrambling methodologies can be tested for compatibility with the Decoder Interface. This process can help to prevent new compatibility problems from developing.

C3AG Comments at 12-13. To the extent that new service offerings may develop that are incompatible with any digital implementation standard adopted by the Commission, the same rules of the road should apply: access should be barrier-free and the interfaces with the electronic superhighway should be interoperable.

Finally, virtually all of the parties to this proceeding have opposed the Commission's proposal in the NPRM to require cable operators to provide without separate charge to their subscribers descrambler/decoders and/or any additional equipment

---

<sup>4/</sup> See also Comments of Time Warner Entertainment Company, L.P. at 13; Comments of Hewlett-Packard Company at 4-5. Viacom also agrees with comments filed in this proceeding indicating that in the analog domain security systems will of necessity continue to be built into converter boxes without significant interoperability between scrambling systems.

that may be needed to process scrambled and/or digital video service through the Decoder Interface. Viacom is particularly concerned that the Commission's proposal is inconsistent with the principle, which is an integral part of the rate regulation provisions of the 1992 Cable Act and the Commission's implementing regulations, of separating distribution systems from the customer premises equipment used by subscribers to receive transmissions from those systems. As Commission experience with the unbundling of customer premises equipment from the transmission system in the telephone area demonstrates, unbundling produces significant public interest benefits in terms of wider choice and lower prices to consumers. Viacom believes that the same benefits are likely to result and the ability of transmission systems to act as gatekeepers will be minimized if charges for equipment used with the Decoder Interface are also unbundled, standards enabling multiple manufacturing sources to provide equipment compatible with digital transmission systems are adopted, and the rates transmission systems charge when they provide the equipment to subscribers are regulated on the same cost of service basis as other customer premises equipment used by cable subscribers. Viacom therefore opposes the Commission's proposal to require cable operators to provide such equipment as part of the transmission system without separate charge to subscribers.

### III. Conclusion

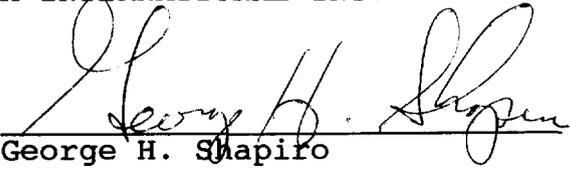
For the foregoing reasons, Viacom agrees with C3AG that the development of an implementation standard for digital

transmission is feasible and desirable but that the details of such a standard should only be adopted after comments are received on the standard currently being developed by the C3AG Advisory Group. Until then, Viacom urges that, when the Commission acts on the short-term compatibility measures proposed in the NPRM, the Commission also specify essential requirements, or rules of the road, that will mandate that any digital standards to be adopted in future proceedings will assure free access to the entry and exit ramps of the emerging electronic superhighway. Those requirements must at a minimum include open, barrier-free access to and interoperability with the transmission systems along the electronic superhighway.

Respectfully submitted,

VIACOM INTERNATIONAL INC.

By:

  
George H. Shapiro

  
Robert D. Primosch

ARENT FOX KINTNER PLOTKIN & KAHN  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5339  
(202) 857-6022

Its Attorneys

February 16, 1994

**CERTIFICATE OF SERVICE**

I Maureen C. Gordon, hereby certify that on this 16th day of February, 1994, I have caused to be served by first-class mail, postage prepaid, a copy of the foregoing "Reply Comments of Viacom International Inc." to the individuals listed below:

Phillip L. Verveer  
Francis M. Buono  
Willkie Farr & Gallagher  
Three Lafayette Center  
1155 21st Street, N.W.  
Suite 600  
Washington, DC 20036-3384  
Counsel for General Instrument  
Corporation

Michael M. Hammer  
Francis M. Buono  
Willkie Farr & Gallagher  
Three Lafayette Center  
1155 21st Street, N.W.  
Suite 600  
Washington, DC 20036-3384  
Counsel for Tele-Communications Inc.

Benjamin J. Griffin  
Matthew J. Harthun  
Reed Smith Shaw & McClay  
1200 18th Street, N.W.  
Washington, DC 20036  
Counsel for Home Box Office

Arthur H. Harding  
Howard S. Shapiro  
Fleischman & Walsh  
1400 16th Street, N.W.  
6th Floor  
Washington, DC 20036  
Counsel for Time Warner Entertainment  
Company, L.P.

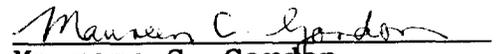
Waller S. Ciciora  
James E. Bonan  
45 Hulls Farm Road  
Southport, Connecticut 06490-1027  
Co-Chairmen, Cable-Consumer  
Electronics Compatibility  
Advisor Group

Betsy L. Anderson  
The Bell Atlantic Telephone  
Companies  
1710 H. Street, N.W.  
Washington, DC 20006

Mark C. Rosenblum  
Kathleen F. Carroll  
Ernest A. Gleit  
American Telephone & Telegraph  
Company  
Room 3261B3  
295 North Maple Avenue  
Basking Ridge, N.J. 07920

Cynthia Johnson  
Government Affairs Manager  
Hewlett-Packard Company  
900 17th Street, N.W.  
Suite 1100  
Washington, DC 20006

Wayne Rosing  
President,  
Sun Microsystems Laboratories  
2550 Garcia Ave.  
Mail Stop UPAL02-401  
Mountain View, CA 94043

  
Maureen C. Gordon

February 16, 1994