Joseph A. Post
Attorney

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New York Telephone
A NYNEX Company
1095 Avenue of the Americas
New York, New York 10036
Phone (212) 395-0066

February 16, 1994

Ms. Donna Searcy
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: ET Docket 93-7

Dear Ms. Searcy:

Enclosed please find an original and nine copies of the NYNEX Telephone Companies' Reply Comments concerning compatibility between cable systems and consumer electronics equipment.

Respectfully submitted,

Joseph A. Post

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

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OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992	)	ET Docket No. 93-7
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	

REPLY COMMENTS OF THE NYNEX TELEPHONE COMPANIES

New York Telephone Company

and

New England Telephone and
Telegraph Company

By: Mary McDermott
Joseph A. Post

1095 Avenue of the Americas
New York, New York 10036
(212) 395-0066

Their Attorneys

Dated: February 16, 1994

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REPLY COMMENTS OF THE NYNEX TELEPHONE COMPANIES

New York Telephone Company and New England Telephone and Telegraph Company (the "NYNEX Telephone Companies", or "NTCs") respectfully submit these reply comments on issues relating to compatibility between cable systems and consumer electronics equipment. The NTCs take no position on the appropriateness of the specific compatibility standards, scrambling prohibitions, consumer education mandates, or most of the other requirements proposed by the Commission in its Notice of Proposed Rulemaking. Rather, our reply comments are focused on two narrow issues discussed in certain of the initial comments:

(a) Some of the commenters argue that any standards adopted by the Commission in this proceeding should apply to video dialtone and other applications of emerging technologies to the same extent as they apply to traditional cable operators and cable systems. We believe that such an extension of the scope of the proposed rules would be inconsistent with: the language of

Section 17 of the 1992 Cable Act[1], the conclusions reached by the Commission in its proceedings related to video dialtone, and the strong legislative and regulatory policy favoring technological innovation in the delivery of video programming to consumers.

(b) We support the numerous commenters who argued that the mandated bundling of converter equipment charges into cable network costs is unsound policy.

I. THE COMPATIBILITY REGULATIONS PROPOSED BY THE COMMISSION SHOULD NOT BE EXTENDED TO EMERGING TECHNOLOGIES SUCH AS VIDEO DIALTONE

Certain of the commenters argue that the compatibility requirements that the Commission proposes to apply to cable companies and cable operators should apply with equal force to emerging technologies such as video dialtone.[2] We submit that such an approach would be inconsistent both with the text of the statute that the Commission is implementing in this proceeding and with sound public policy.

The text of Section 17 addresses itself to "cable systems", "cable operators", and "cable service". For example,

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[1]Cable Television Consumer Protection and Competition Act of 1992, Publ. L. No. 102-385, 106 Stat. 1640 (1992), § 17, codified at 47 U.S.C. § 544a.

[2] See, e.g., Comments of Cablevision Systems Corp. at 16-17 ("Whatever obligations are imposed on cable operators in this proveeding should also be imposed on other multichannel video programming distributors . . . ."); Comments of Continental Cablevision, Inc. at 17-18; Comments of General Instrument Corporation at 40-42 ("any video standards adopted by the Commission should be applied equally to all distribution media, including telephone company video dial tone service; TVRO (both C-band and Ku-band); DBS; MMDS at 2 GHz; SMATV; and LMDS at 28 GHz").

parts of Section 17 recite Congressional findings that problems have been created by "control devices required by cable operators" and that "cable operators should use" certain technologies[3]; and require the Commission to consult with representatives of the "cable industry"[4] and to report to Congress "on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cassette recorders"[5]. (Emphasis supplied.) Congress' use of these terms must be interpreted in light of the Commission's previously announced interpretation that video dialtone providers are not "cable operators" providing "cable service", and that a network providing video dialtone functionality is not a "cable system".[6] Clearly, Congress did not intend Section 17 to apply to the provision of video dialtone. This is not surprising, in view of the fact that the section was enacted in response to consumer complaints relating to existing (analog) cable systems.

The Commission's approach to the compatibility issue confirms and supports this limitation. A significant part of the

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[3]47 U.S.C. § 544a(a)(1), (a)(3).

[4]Id. § 544a(b)(1).

[5]Id. § 544a(b)(1).

[6]See Telephone Company-Cable TV Cross-Ownership Rules, 7 FCC Rcd 300(1991), ¶ 51, on recon., 7 FCC Rcd 5069 (1992), ¶¶ 13-25.

record in this proceeding is based upon data developed, alternatives considered, and standards proposed by trade associations within the cable and consumer electronics industries, such as the Cable-Consumer Electronics Advisory Group and the Joint Engineering Committee of the Electronics Industries Association/Consumer Electronics Group and the National Cable Television Association. Thus, the record now before the Commission is not adequate to support the development of standards for applications of different, newer technologies such as video dialtone.

Moreover, it would be unwise to "lock in" existing technologies, and hamper the development of new ones, by the premature development of standards to govern new technologies. Numerous commenters have recognized the difficulties that would be created by any attempt to adopt at this time compatability standards for the digital technologies that cable system operators expect to adopt in the near future.[7] These same concerns apply a fortiori to the development of such standards for the emerging non-traditional video technologies. (It is ironic that the risk of inhibiting technological innovation through premature standardization is recognized even by some of the same parties who urge extension of any compatibility rules

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[7]See, e.g., AT&T Comments at 1-2 ("AT&T urges that any regulations adopted in this proceeding be applied only to today's analog television environment (i.e., one-way video programming). This will assure that the rules do not inadvertently constrain the development of interfaces and standards for future technologies, which will see increasing convergence of digital video, telecommunications, computing, and other types of information processing in the home.")

adopted by the Commission to video dialtone and other technologies.)[8]

Concerns about premature standardization apply with particular force to video dialtone. Video dialtone is in an early stage of its development. As BellSouth noted in its comments (p. 2): "Application of cable rules to developing technologies and service concepts could limit the potential for video dialtone to provide consumer benefits." Indeed, in its Second Report and Order in the Telephone Company – Cable Television Cross-Ownership proceeding, the Commission repeatedly emphasized the need for a flexible regulatory approach to video dialtone and the undesirability of any Commission attempt to freeze a particular technological model as the video dialtone "standard":

> We additionally conclude that the video dialtone framework should seek to further the objective of regulatory flexibility. The record makes clear that the specific services that will be offered or network architectures that will be deployed are not yet certain at this time and thus, regulatory flexibility is key if video dialtone is to develop in accordance with market needs and technological innovations rather than according to Commission mandate.[9]
>
> * * *
>
> While the common carrier platform must therefore offer sufficient capacity to serve multiple service providers on a nondiscrimina-

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[8] See, e.g., Comments of General Instrument Corporation at 15-22.

[9] In the Matter of Telephone Company--Cable Television Cross-Ownership Rules, 7 FCC Rcd 5781, 5805 (1992) (¶ 45).

> tory basis, we emphasize that the technology and network design will be determined by the telephone companies rather than the government.[10]
>
> * * *
>
> It is not our intent, nor our proper role, to specify the technology, network architecture, or functions that a telephone company would offer under video dialtone. Given the rapid pace of technological development in this area, our policy initially sets only the necessary broad regulatory framework and relies upon the technical and market creativitiy of those in the private sector responding to market demand and economics to determine the substance of telephone company video dialtone offerings.[11]

The diversity of video dialtone technologies is also illustrated by the variety of approaches described in the numerous Section 214 filings made to date by telephone companies proposing video dialtone trials and commercial offerings.

Many commenters have described problems which could be created by any attempt to apply the proposed compatibility standards to video dialtone.[12]

The "competitive parity" arguments raised by a number of commenters are not persuasive. The problems identified by the Commission in this proceeding are problems associated with conventional cable systems, and were analyzed based on data pertaining to such systems. Considerations of competitive equity

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[10] Id. 7 FCC Rcd at 5787-88 (¶ 10).

[11] Id., 7 FCC Rcd at 5788-89 (¶ 13).

[12] See, e.g., Bell Atlantic Comments at 2; USTA Comments at 2.

do not require the Commission to apply its proposed measures to a different technology, which may or may not create similar problems, and which may or may not experience significantly greater difficulty in implementing those measures. Traditional print media may compete with cable and broadcast technologies in the delivery of various forms of information and advertising to consumers, but that does not mean that competitive equity requires that electronic media be subjected to environmental or other requirements developed in response to the particular problems of the printing industry.

Finally, it should be noted that a procrustean attempt at this stage to ensure that all new technologies meet a standard developed for the cable industry could encourage the conversion of the cable "box" into a new network bottleneck, a trend condemned by Representative Markey at recent hearings before the House Telecommunications Committee.[13]

The approach taken in these reply comments does not mean that compatibility rules can never be applied to video dialtone. The NTCs support the development and application of

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[13]At hearings held on February 1, 1994, Rep. Markey stated that the "box" of the future should be "open" to consumers, equipment makers, software developers, and information providers; and that it would make little sense to let the box develop into a new network bottleneck. See "TV 'Set-Top' Boxes Must Be Open Gateway, Witnesses Say", Telecommunications Reports, February 7, 1994, at 20.

These remarks are particularly important in view of the statement of Greater Media, Inc., that "[b]ecause theft of service and signals is a pressing problem in our industry, we feel the decoding converter must remain under the control of the cable operator." (Greater Media Comments at 3)

appropriate compatibility and interface standards for video dialtone and other services using evolving technologies. We believe, however, that such standards should not be based on a model applicable to the particular problems created and technologies currently utilized by the cable television industry. The detailed development of appropriate standards must await the further development of video dialtone's technological applications and markets.[14] This approach is consistent with Section 17(d), which requires the Commission to "periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology."[15] When the time is ripe for the promulgation of such standards, they should be developed in consultation with all affected interests, just as the standards here were developed in consultation with the consumer electronics and conventional cable industries.[16]

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[14]See Pacific Telesis Group Comments at 4-5 ("standardizing the system used for digital transmission is in the public interest and will avoid future compatibility problems with the introduction of digital transmission methods"; however "any standards developed at this time will be arbitrary at best and could face consumer rejection or technical obsolescence").

[15]47 U.S.C. § 544a(d).

[16]See USTA Comments at 1-2.

II. CHARGES FOR SET-TOP CONVERTERS SHOULD NOT BE BUNDLED INTO NETWORK COSTS OF CABLE SYSTEM OPERATORS

Paragraph 30 of the Notice of Proposed Rulemaking proposes that

> cable operators . . . provide component descrambler/decoders and any related equipment to subscribers without separate charge for the equipment or installation. Under this approach, installation and rental of component descramblers would be included as elements of the general cable network and therefore would not be recoverable by the cable operator through a separate charge.

In a footnote to the above statement, the Commission notes that

> The rate regulation rules do not allow separate charges for costs associated with the operation of the general cable network. The costs of elements associated with the network therefore are recoverable through subscriber revenues from regulated services offered on cable systems, e.g., tiers of programming services.

As the Commission itself notes, this proposal "departs from our rate regulations regarding unbundling of charges for installation and lease of equipment used to provide service to subscribers."[17] We agree with the numerous commenters who have observed that such a bundling requirement is inconsistent with sound public policy, principally for the reason that it creates a perverse cross-subsidy: basic tier subscribers who have no interest in consumer electronics with advanced capabilities are required to bear the

[17]NPRM ¶ 30 (footnote omitted).

cost associated with the preferences of other consumers who do desire such technology.[18]

III. CONCLUSIONS

For the foregoing reasons, the NYNEX Telephone Companies urge the Commission: (a) to clarify its intent not to apply the proposed regulations to video dialtone service, and (b) to prohibit the bundling of set-top converter charges with cable network costs.

Respectfully submitted,

New York Telephone Company

and

New England Telephone and Telegraph Company

By: Joseph A. Post

Mary McDermott
Joseph A. Post

1095 Avenue of the Americas
New York, New York 10036
(212) 395-0066

Their Attorneys

Dated: February 16, 1994

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[18] See, e.g., Comments of Cable-Consumer Electronics Compatibility Advisory Group at 19; Comments of Cable Telecommunications Association, Inc. at 4-5; Comments of Continental Cablevision at 5-7.

CERTIFICATE OF SERVICE

I certify that I caused copies of the foregoing REPLY COMMENTS OF THE NYNEX TELEPHONE COMPANIES to be served by first class mail, postage pre-paid, on each of the persons listed on the attached service list for ET Docket No. 93-7 on this 16th day of February, 1994.

Joseph A. Post

JOSEPH A. POST

SERVICE LIST: ET DOCKET NO. 93-7

Ms. Donna Searcy
Office of the Secretary
Federal Communications Comm'n
1919 M Street, N.W.
Washington, DC 20554
[BY HAND; ORIGINAL PLUS 9 COPIES]

Ernest A. Gleit, Esq.
AT&T
Room 3261B3
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Fredrick G. Hoffman, Esq.
Howard & Howard, P.C.
1400 North Woodward Avenue
Suite 250
Bloomfield Hills, Michigan 48304

Betsy L. Anderson, Esq.
Bell Atlantic
1710 H Street, N.W.
Washington, D.C. 20006

M. Robert Sutherland, Esq.
BellSouth Telecommunications, Inc.
4300 Southern Bell Center
675 W. Peachtree Street
Atlanta, Georgia 30375

Mr. Walter S. Ciciora
Cable-Consumer Electronics
Compatibility Advisory Group
300 First Stamford Place
Stamford, Connecticut 06092

Mr. Stephen R. Effros
Cable Telecommunications Ass'n, Inc.
3950 Chain Bridge Road
Post Office Box 1005
Fairfax, Virginia 22030-1005

Philip Dropkin, Esq.
Cablevision Industries Corporation
1 Cablevision Center
Post Office Box 311
Liberty, New York 12754

Howard J. Symons, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

Mr. Christopher M. Catotti
Post Office Box 1777
Oviedo, Florida

Mr. W. Austin Ligon
Circuit City Stores, Inc.
9950 Maryland Drive
Richmond, Virginia 23233

Paul Glist, Esq.
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006

Michael S. Schooler, Esq.
Dow, Lohnes & Albertson
1255 Twenty-third Street, N.W.
Suite 500
Washington, D.C. 20037

Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036-3384

Joseph R. Reifer, Esq.
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Ms. Cynthia Johnson
Hewlett-Packard Company
900 17th Street, N.W.
Suite 1100
Washington, D.C. 20006

Benjamin J. Griffin, Esq.
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Mr. Philip V.W. Dodds
Interactive Multimedia Ass'n
48 Maryland Avenue, Suite 202
Annapolis, Maryland 21401

Stephen R. Ross, Esq.
Ross & Hardies
888 Sixteenth Street, N.W.
Washington, D.C. 20006-4103

Mr. David R. Caron
Lakes Region Cable Television
Consortium
c/o Town of Gilford
47 Cherry Valley Road
Gilford, New Hampshire 03246

Ian D. Volner, Esq.
Venable, Baetjer, Howard
& Civiletti
1201 New York Avenue, N.W.
Washington, D.C. 20005

Mr. Julius Szakolczay
Mitsubishi Electronics America, Inc.
2001 East Carnegie Avenue
Santa Ana, California 92705

Dr. Ron D. Katznelson
Multichannel Communication Sciences,
Inc.
5910 Pacific Center Blvd., Suite 150
San Diego, California 92121

Eileen E. Huggard, Esq.
New York City Department of
Telecommunications and Energy,
75 Park Place, Sixth Floor
New York, New York 10007

James P. Tuthill, Esq.
Pacific Telesis Group
140 New Montgomery St., Room 1526
San Francisco, California 94105

James L. Wurtz, Esq.
Pacific Telesis Group
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Mr. O.D. Page, P.E.
Professional Engineers & Affiliates
7536 Spring Lake Drive,
Bethesda, Maryland 20817

Mr. Dane E. Ericksen, P.E.
Senior Engineer
Hammett & Edison, Inc.
Post Office Box 280068
San Francisco, California 94128-0068

Mr. Sueyuki Hirooka
Sharp Electronics Corporation
Sharp Plaza
Mahwah, New Jersey 07430-2135

Michael H. Hammer, Esq.
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.w.
Suite 600
Washington, D.C. 20036-3384

Arthur H. Harding, Esq.
Fleischman and Walsh
1400 Sixteenth Street, N.W.
Sixth Floor
Washington, D.C. 20036

Mr. Charles F. Newby
The Titan Corporation
3033 Science Park Road
San Diego, California 92121

Linda Kent, Esq.
Associate General Counsel
United States Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005-2136

Mr. Stephen Sigman
Zenith Electronics Corporation
1000 Milwaukee Avenue
Glenview, Illinois 60025