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Washington, D.C. 20554

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In the Matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992	)	CS Docket No. 94-48
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	

REPLY COMMENTS OF TIME WARNER CABLE

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Summary

Time Warner Cable ("TWC"), a division of Time Warner Entertainment Company, L.P. ("TWE") that operates cable television systems throughout the country, submits these reply comments in response to the Commission's Notice of Inquiry. In particular, TWC offers the following points herein:

- The Commission should recognize that the record compiled in this proceeding evidences significant competition in the delivery of video programming and that such competition should become even more vigorous in the near future.

- The Commission should reject arguments by those commenters urging that the Commission (or Congress) has not done enough to assist non-cable MVPDs and has not adequately implemented measures to restrain the cable industry. Further, it should reject proposals by these commenters for legislative and regulatory changes to provide non-cable MVPDs with additional competitive advantages.

- Various unsupported and conclusory allegations of anticompetitive conduct by TWC should be ignored. TWC has at all times complied with its responsibilitites under the 1992 Cable Act and the Commission's regulations.

- The Commission generally lacks authority to adopt its suggested procedures for future (compulsory) data collection. As a matter of policy, even if it were so empowered, it should elect not to do so.

Introduction

Time Warner Cable ("TWC"), a division of Time Warner Entertainment Company, L.P. ("TWE") that operates cable television systems throughout the Country, submits these reply comments in response to the Commission's Notice of Inquiry ("NOI"). The NOI generally solicits comment on competition-related issues in order to assist the Commission in carrying out its responsibility under the Cable Television Consumer Protection and Competition Act ("the 1992 Cable Act" or "the Act") to report annually to Congress on the status of competition for the delivery of video programming. See 47 U.S.C. § 548(g).

Numerous parties have filed comments in this proceeding. Some commenters, including TWC, emphasize the extent to which competition to cable television from non-cable multichannel video programming distributors ("MVPDs") has emerged, and continues to emerge, since the 1992 Cable Act was enacted. Without any reference to the continued popularity of over-the-air broadcast television, highlights would include the advent of a number of new and well-managed providers of video programming, such as two (or even three) high-power direct broadcasting satellite ("DBS") systems, a number of well-financed multichannel multipoint distribution service ("MMDS") systems and the provision of video

programming by local exchange carriers ("LECs")--whether via a video dialtone platform or directly to subscribers. In sum, the record compiled in this proceeding, at least when objectively reviewed, indicates unequivocally that there is significant competition for the delivery of video programming now and that competition portends to become even more vigorous in the near future. 1/

Not surprisingly, however, certain commenters ignore this evidence and try to paint an entirely different, and bleaker, competitive picture. These commenters praise the 1992 Cable Act for intending to foster competition to cable. However, in their view, the Commission's implementation of the Act has failed to go far enough to assist MVPDs. As a result, their argument goes, competition

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1/ In its opening comments, TWC argued that, to fulfill its obligation to report on the status of competition for the delivery of video programming, the Commission must take into account all substitutes for cable-delivered video programming, including other sources of news and entertainment (e.g., radio and print media), broadcast television (with or without the presence of an MVPD) and videocassettes. In so arguing, TWC pointed out that, unlike the statutory definition in § 3 of the 1992 Cable Act, which clearly delineates factors establishing "effective competition" for purposes of rate regulation, the Commission here has been asked to report on competition for the delivery of video programming without specifically delineated factors. We continue to believe that distinction is important and that the Commission will fail to carry out its mandate--by understating competition for the delivery of video programming--if it ignores substitutes for video programming. However, we do not otherwise reiterate that point herein.

to cable has not emerged to the extent Congress had envisioned and, they maintain, will not so emerge, unless the Commission either imposes additional constraints upon the cable industry or carves out additional regulatory exceptions in certain MVPDs' favor, almost always the particular commenters' own. 2/

TWC respectfully suggests that the true aim of these commenters is merely to lobby the Commission (or Congress) to give them additional competitive advantages. Their effort should be rejected. Far from evidencing any failure by the Commission (or Congress) sufficiently to assist MVPDs, the record compiled in this proceeding is a testament to MVPDs' emergence as a significant competitive presence to cable for the delivery of video programming. And, further regulation of the cable industry would only frustrate an overriding purpose of the Cable Act: "to rely on the marketplace, to the maximum extent feasible". 1992 Cable Act, § 2(b)(2).

2/ In some cases, commenters attempt to support such arguments with anecdotes about how franchised cable operators, including TWC, purportedly have engaged in anticompetitive behavior. TWC believes that the allegations directed against the cable industry generally to be unfounded, but TWC can only respond herein to those comments--baseless and irresponsible--specifically directed against it. As discussed further herein, the simple fact is that TWC has not acted inconsistently with the 1992 Act or the Commission's implementing regulations.

In these comments, we first respond to those commenters who suggest that competition to cable has not emerged to the extent Congress envisioned and that the Commission (or Congress) should do more to assist MVPDs. Next, we respond to those purported instances in which TWC has engaged in anticompetitive behavior. In the last section, we briefly respond to those commenters addressing future data collection procedures.

I. THE RECORD IN THIS PROCEEDING REVEALS SIGNIFICANT COMPETITION TO CABLE.

A. Some commenters incorrectly maintain that non-cable MPVDs do not provide a significant competitive presence to cable.

Some commenters claim that non-cable MVPDs do not presently constitute any competitive presence to cable operators. For instance, Bell Atlantic asserts "[t]hat the unavoidable conclusion of the Commission's 1994 annual report to Congress must be that there is little evidence of increased competition in the local delivery of video programming since 1992". Bell Atlantic 1. According to Bell Atlantic, MVPDs "have made little headway" in competing with cable operators. To the contrary, Bell Atlantic suggests, "the delivery of video programming is becoming increasingly concentrated in the hands of a few large cable operators". Id. at 1,3.

First, it is more than a little ironic that a Regional Bell Operating Company ("RBOC") suggests here that the cable industry is too concentrated and too powerful. As we mentioned in our opening comments, the revenues of any one RBOC dwarf the revenues of even the largest cable multiple system operator ("MSO"). 3/ Moreover, just this week it has been reported that some LECs have been engaged in a pattern of regulatory obstruction designed to protect their monopolies in providing telephone services. 4/ It seems especially ironic that Bell Atlantic--a company which was so close to having completed a merger with the largest cable MSO only six months ago--now takes the position that the cable industry is unduly concentrated.

3/ See Michael Kranz, Whose Highway Is It? Regional Bells Holding Companies Look Into Cable Television and the Information Highway, Mediaweek, April 11, 1994 ("for members of the media industry, LECs' revenues and cash-on-hand make yours look like lunch money").

4/ See Edmund L. Andrews, Bell Companies Use Regulation To Stop Rivals, N.Y. Times, July 24, 1994, at 1 ("Even as the nation's local telephone companies make a final push against long-distance and cable television companies, many of them are using the very regulations that restrict them to block rivals that attack their own businesses."); id. (describing "hardball tactics" that have been aimed at "thwarting new competitors by embroiling them in mind-numbingly intricate legal and business disputes").

Second, even assuming video programming provided by cable constituted a "product market" (an assumption we would dispute, see supra n.1), it is empirically untrue that the industry is unduly concentrated. And, although Bell Atlantic points to two recent cable system acquisitions by MSOs as evidence of increased concentration in the industry, Bell Atlantic 3 (specifying the Comcast--McLean Hunter and Cox Communications--Times Mirror acquisitions), it curiously fails to mention some large and recent acquisitions of cable systems by RBOCs (e.g., U S West Inc.'s recently announced plans to purchase Wometco's cable systems in the Atlanta area and Southwestern Bell's acquisition of the Hauser systems last year in Washington, D.C.).

In any event, Bell Atlantic is plainly wrong to suggest that there is no evidence of a competitive presence from MVPDs. In this proceeding, TWC and a number of other commenters provided such evidence. 5/ Indeed, a number of non-cable MVPD themselves dispel the notion that they do not represent significant competition to cable. See, e.g., DirecTV 2 ("the vehicle to provide essential competition to cable television providers envisioned by the [1992 Cable Act] has been launched"); SBCA 2, 4 (noting that "whether or

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5/ For example, Liberty Media, NCTA, TCI and Home Box Office all provide such evidence.

not a household actually owns a DTH system, most households in North America are 'passed' by satellite signals because of a satellite footprint's national coverage" and indicating that new records are being set as to the number of C-Band units shipped on a monthly basis). 6/

The comments on behalf of the wireless industry provide a good example of a cable competitor's own belief that it constitutes a significant competitive presence to cable. The WCAI states that "there can no longer be any doubt that wireless cable is providing consumers in many markets with a competitive alternative to their wired cable service provider, and will soon be expanding across the country". WCAI 2. 7/ According to the WCAI, there are now about 143 wireless systems in operation serving about 550,000 subscribers. In contrast, when the 1992 Cable Act was enacted, there were only about 45 wireless systems

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6/ SBCA indicates that a significant percentage of dish owners are passed by cable and that these dish owners nonetheless prefer direct-to-home satellite service over cable for a variety of reasons. SBCA 6.

7/ Although not mentioned in WCAI's comments because the Commission's action occurred after opening comments were filed, new rules concerning channel loading of Instructional Television Fixed Service ("ITFS") channels will go a long way to alleviating a major problem cited by WCAI--limited availability of channel capacity. See In re Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service, MM Docket No. 93-106, FCC 94-147 (July 6, 1994).

serving about 350,000 subscribers. Id. Citing experts, the WCAI projects in excess of 3.2 million subscribers by the year 2000. Id. at 3. The WCAI also recounts how the investment community has embraced its technology. WCAI 4 ("Wall Street loves wireless"). 8/

Some commenters nonetheless attempt to denigrate the competitive capabilities of non-cable technologies. For example, Bell Atlantic suggests that DBS service will not effectively compete with cable because such systems will not transport local programming. Bell Atlantic 4. As noted above, DirecTV obviously does not agree with that assessment. See DirecTV 2 ("the vehicle to provide essential competition to cable television providers envisioned by the [1992 Cable Act] has been launched"). 9/ Further, additional evidence adduced in

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8/ In a similar vein, CellularVision, an LMDS provider in the New York City area, files comments touting the delivery of video programming by its technology. CellularVision characterizes LMDS as a high quality, low cost multichannel distribution alternative, with "numerous advantages over cable". CellularVision 4 (listing purported advantages). According to CellularVision, "the public response to the promise of the CellularVision LMDS system has been enthusiastic and supportive" and the promise of the LMDS technology "has been validated by the investment . . . by leading companies in the communications industry". CellularVision 5, 6.

9/ DirecTV has been offering subscribers service that includes over 20 cable programming services for less than $20 per month.

this proceeding belies Bell Atlantic's position that DBS is not a competitive video programming provider. See, e.g., Liberty Media 2 ("[a]ccording to the DBS operators, their services were 'off to a flying start'"); SBCA 16 (noting that DirecTV's initial results "have been highly successful" and that DirecTV "projects 600,000 subscribers by the end of this year"). 10/

DirecTV itself, as a high-power DBS provider, attacks the competitive capability of Primestar, which at present represents the only medium-power DBS provider. DirecTV proposes that, because Primestar is owned by cable operators and because it is to receive digital programming via TCI's "headend in the sky", Primestar is "merely an add-on to local cable systems". DirecTV 13. DirecTV predicts that it is "highly unlikely that Primestar will ever develop into a real alternative to cable television". Id.

DirecTV is certainly not Nostradamus. First, Primestar has indicated that, with conversion to digital

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10/ DirecTV comments that the program-access provisions have been of "critical aid" to it and that it has obtained many vertically integrated programming services since the enactment of the Act. DirecTV 4. DirecTV and others, however, allege that DirecTV has improperly been denied some vertically integrated services, including Home Box Office and Cinemax, as a result of an exclusive contract entered into between Home Box Office and another high-power DBS provider, United States Satellite Broadcasting ("USSB"). On that issue, TWC respectfully refers to the reply comments submitted in this proceeding by Home Box Office.

compression, 37 channels are now available to its subscribers and 77 channels should be available at the end of this month. Primestar 5-6. 11/ Thus, Primestar's channel capacity exceeds that of most cable systems--a situation that will likely continue for some time. An MVPD that provides more channels to its subscribers cannot be characterized as "merely an add-on" to a cable system providing fewer channels. Indeed, DirecTV considers its channel capacity to be one of its most salient selling features. DirecTV 16 (noting that its marketing has focused upon the increased programming choices it provides). Second, Primestar projects to have 200,000 subscribers by the end of this year and as many as 5 million by the end of the decade. Primestar 5. Those subscriber numbers, including necessarily as they do significant numbers of subscribers in areas served by cable, cannot be dismissed as not representing any "real alternative" to cable.

Bell Atlantic also suggests that plans for municipal overbuilds have not "come to fruition" because some "municipalities have been stymied by the delaying tactics of incumbent cable operators". Bell Atlantic 4. Bell Atlantic is wrong. Municipal overbuilds are not common

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11/ By 1996, Primestar projects to have 150 channels available. Primestar 6.

for at least two reasons. First, most municipalities recognize that operating a cable system is a risky endeavor with the potential to expose the public fisc to significant and ongoing financial loss. These risks are even more pronounced, given that cities lack any expertise in operating cable systems. Second, most municipalities recognize that, unlike police or fire protection, cable service is not a necessary service and it is therefore not appropriate for public government to undertake to provide it. 12/

B. Some commenters erroneously maintain that the Commission and Congress have not adequately furthered the interests of non-cable MVPDs or sufficiently restrained the cable industry.

A number of commenters use this proceeding to argue that the Commission and, in some cases, Congress, have

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12/ Bell Atlantic mentions in passing TWC's litigation with the City of Niceville, Florida, a municipal overbuilder. However, that litigation was not a "delaying tactic" by TWC. To the contrary, TWC sought to vindicate its due process and First Amendment rights. It is fundamentally unfair that the regulator of a cable system may be its competitor at the same time. The 1992 Cable Act, although providing in § 7(c) (codified at 47 U.S.C. § 541(f)) that municipalities have the right to operate cable systems, only serves to augment this fundamental unfairness by insulating municipalities from any liability to a cable operator for damages in § 24(a) (codified at 47 U.S.C. § 555(a)). TWE has challenged the constitutionality of these provisions and proceedings are now on appeal before the Court of Appeals for the District of Columbia. See Daniels Cablevision v. United States, 93-5290 (and consolidated cases).

not adequately furthered the interests of non-cable MVPDs. In addition, these commenters often suggest that additional regulatory restraints upon the cable industry are in order. TWC responds below to particular positions taken by certain commenters.

1. Comments of Liberty Cable.

In a broad-side attack upon the Commission, Liberty Cable submits comments that bemoan the Commission's failure to be an aggressive advocate on its behalf and generally indict the Commission for failing to advance the interests of non-cable MVPDs to the extent Liberty Cable would deem appropriate. Among Liberty Cable's criticisms of the Commission's efforts are the following:

- "the Commission's failure to consistently nurture competition has played a critical role in delaying the introduction of meaningful competition in the video marketplace to the detriment of the American consumer" (Liberty Cable 5);

- "the Commission's failure to take consistently aggressive action to nurture competition to cable monopolists" (Liberty Cable 2);

- "[s]ince passage of the Act, the Commission has failed to take an aggressive, pro-competitive stand in many of its cable decisions. When relief has been forthcoming, the Commission has often not provided competing MVPDs with the kind of expeditious relief necessary to enable competition." (Liberty Cable 19);

- "[i]f there is ever to be any real competition, the Commission must be more

> aggressive in promoting the growth of competing MVPDs, more nurturing of their nascent competitive efforts, and more responding to MVPD's [sic] concerns" (Liberty Cable 27).

To support its attack upon the Commission's efforts to implement the 1992 Cable Act, Liberty Cable offers some ways in which the Commission could be more "pro-MVPD". For example, Liberty Cable attacks the Commission for supposedly being dilatory in acting upon complaints or requests for relief submitted by MVPDs. Liberty Cable 19 ("the inability of agency processes to resolve these issues in a timely manner . . . does not promote competition"). But, Liberty Cable should not be so quick to point the finger at someone else. Last fall, TWC petitioned the Commission to have its exclusive contract with Courtroom Television Network ("Court TV") deemed to be in the public interest. During the pendency of that petition (with full knowledge that it had been filed), Liberty Cable filed a program-access complaint generally raising the same issues. Liberty Cable then refused requests, including requests from the Commission, to hold its program-access complaint in abeyance, pending resolution of TWC's exclusivity petition.

As a result, the Commission's adjudication of TWC's petition was delayed by several months. 13/

As another purported example of undue delay, Liberty Cable points to the Commission's regulations concerning bulk rates, which it believes "provide little guidance"; "fail to define exactly what constitutes an 'offer' of a bulk rate"; and thereby gives non-cable MVPDs "little practical relief or guidance". Liberty Cable 20, 21. Liberty Cable also suggests that the Commission "create a specific enforcement mechanism (i.e., complaint procedure) to assure uniformity of [bulk] rates". Liberty Cable 21.

Liberty Cable's position is quite remarkable. First, it chastises the Commission for not acting in a sufficiently expeditious manner to clarify problems it has with the bulk rates regulations. But, it does so without even having filed for reconsideration or clarification of

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13/ Liberty Cable also suggests that Congress could not have intended that MVPDs be required to commit substantial resources to participate in "countless, and seemingly endless" Commission proceedings in order to ensure that their perspectives be taken into account. Liberty Cable 19. There was of course no obligation that Liberty Cable participate in TWC's exclusivity proceeding. It chose to do so. In any event, Liberty Cable fails to offer any alternative to participation by which an interested MVPD's views could be considered. Moreover, Liberty Cable fails to explain why the 1992 Cable Act--establishing a comprehensive regulatory scheme driven by aggrieved entities filing complaints before the Commission--would have intended other mechanisms for dispute resolution.

the Commission's rules on this issue (as set forth in the Third Order on Reconsideration). It is impossible in such complex areas for an agency to resolve every conceivable issue that might arise. Exactly for that reason, the reconsideration process exists and must be invoked by interested parties. Second, Liberty Cable essentially asks the Commission to rewrite the rate enforcement mechanisms Congress specifically created in the 1992 Cable Act. The Commission obviously lacks such power. Third, none of the Commission's proceedings to date have indicated that a separate procedure needs to be created to resolve bulk rate issues. 14/

As another example of how the Commission could be more "pro-MVPD", Liberty Cable complains about the rules implementing § 12 of the Act, supporting a pending request filed by WCAI asking the Commission to amend its rules and afford MVPDs, as opposed to only aggrieved programmers, the

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14/ In that respect, Liberty Cable proposes that "the Commission is the only regulatory body that can provide [it] and other MVPDs with relief from the anticompetitive effects of cable operator bulk rates", because local municipalities will not act against low, even "predatory" prices. Liberty Cable 21. That is simply wrong. TWC's prices are not, and never have been, predatory. Indeed, as noted in TWC's opening comments, the Commission's bulk rate rules preclude TWC even from having price flexibility to meet SMATV competition. Moreover, Liberty Cable cannot point to even a single example wherein a municipality exhibited the type of reluctance to enforce bulk rate rules that it conjectures about here.

right to file complaints. This critique is misplaced. First, § 12 of the Act is designed to prevent MVPDs from imposing upon a programmer improper conditions of carriage. Second, Congress expressly limited the right to file complaints to aggrieved programmers. See 47 U.S.C. § 536(a)(4) (Commission shall "provide for expedited review of any complaints made by a video programming vendor") (emphasis added). Third, one must ask how an MVPD would be injured by a § 12 violation when it is the programmer sustaining injury. To allow third-party MVPDs a tertiary right to fight programmers' battles under § 12 distorts the legal principle of standing beyond recognition. 15/

Liberty Cable also takes umbrage with the Commission for not having as yet resolved its Petition for Reconsideration in the home wiring proceeding, Liberty Cable 24-25, maintaining that the Commission's present rule "does not, in many cases, permit alternative providers to connect subscribers to their systems without destroying the

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15/ Of course, if an MVPD believes that it has improperly been denied access to programming, it has the right to file a complaint pursuant to the program-access regulations. Here, Liberty Cable essentially complains that not enough § 12 complaints are being filed; however, it should be evident that, were third-party MVPDs to be given the right to file § 12 complaints as Liberty Cable asks, there would be no constraint against such MVPDs flooding the Commission with speculative accusations against their competitors.

subscriber's premises (because the wiring is embedded inside walls)". Liberty Cable 24. The WCAI agrees that the demarcation point should be revised to beyond the premises of an MDU resident. WCAI 16.

Even ignoring the tenuous connection between this issue and the NOI, this argument should be rejected. The Commission lacks the authority to provide MDU residents with control over any wiring located outside the confines of an MDU unit. For a more detailed discussion, TWC respectfully refers to its prior submissions to the Commission on this issue. 16/

2. Comments of WCAI.

WCAI reports that housing developments, trailer parks and townhome communities often have refused wireless service unless the wireless provider offers service from a single dish and connects individual units by coaxial cable. WCAI 18. According to WCAI, "wireless cable operators are legally barred from responding to requests for service under

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16/ See, e.g., TWE's Comments and Reply Comments in In re Joint Petition for Rulemaking to Establish Rules for Subscriber Access to Cable Home Wiring for the Delivery of Competing and Complementary Video Services, RM-8380, respectively submitted December 21, 1993, and January 19, 1994; see also Ex Parte Response of TWC to Liberty Cable, submitted by Arthur H. Harding, Esq., to Mr. William F. Caton, December 16, 1993.

such circumstances", because the operator would be required to obtain a franchise. Id.

Although perhaps not entirely clear from this language, WCAI seeks nothing short of Congress rewriting the private cable exception. See 47 U.S.C. § 522(7). 17/ Pursuant to the private cable exception, 47 U.S.C. § 522(7), no franchise is required for "a facility that serves only subscribers in one or more multiple units dwellings under common ownership, control, or management, unless such facility or facilities uses any public rights-of-way". In contrast, where separately-owned buildings are connected by closed transmission paths, whether or not public rights-of-way are traversed, the Commission has deemed that arrangement to be a cable system. The Supreme Court upheld this very rule just last year. FCC v. Beach Communications, Inc., 113 S. Ct. 2096, 2103-04 (1993). The argument WCAI puts forth here--that such an arrangement should not be a cable system--was unsuccessful then, and nothing justifies any different result now.

17/ TWC discussed the private cable exception and the Cable Definition Order, In re Definition of a Cable System, 5 F.C.C. Rcd. 7638, 7639-40 (1990), at some length in its opening comments in the context of indicating that the Commission has conferred an undue competitive advantage by exempting from the definition of cable system those SMATV systems that connect buildings, whether commonly owned or not, by microwave. See TWC 26-29.

At least WCAI recognizes it would need a franchise to operate the type of system it describes. TWC is aware of instances in which Liberty Cable has been providing service under a similar configuration, and done so without a franchise. In these instances, Liberty Cable has installed a microwave receiver in one building and hard-wired that receiver to other nearby MDUs. Although Liberty Cable has admitted engaging in this practice to regulatory authorities, it has claimed that it does not need a franchise, because its "system" does not traverse public rights-of-way. Such an argument is of course contrary to law. Indeed, it is exactly why WCAI seeks amendment here.

II. TWC HAS ACTED CONSISTENTLY WITH THE 1992 CABLE ACT AND ITS IMPLEMENTING REGULATIONS.

Although TWC has in other forums challenged the legality and validity of the heavy-handed cable regulatory scheme that Congress enacted in the 1992 Cable Act (as well as the Commission's efforts in implementing its provisions), 18/ it has at all times acted properly under the statute and the Commission's regulations promulgated thereunder. Yet, in what can only be described as an unmitigated piece of propaganda, Liberty Cable makes a number of accusations--nearly all conclusory and all

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18/ TWC submits these comments without prejudice to any position it might assert in those proceedings.

unsupported--that TWC has acted anticompetitively. 19/ In the few cases where Liberty Cable does make some, albeit cursory, effort to go beyond a mere polemical diatribe, it reports facts erroneously and irresponsibly.

As one example, Liberty Cable indicates that TWC has been circumventing the uniform rates provision by offering bulk discounts on MDUs considering Liberty service. Liberty Cable 10 ("Time Warner's selective offering of reduced rates does not appear to be cost justified, but is rather, a targeted, predatory response to Liberty's marketing efforts"). We have already indicated above that TWC does not offer any service with prices at predatory levels. As for the allegation that TWC has been circumventing the Commission's bulk rate rules with selective discounts, that is simply not the case. The bulk rates that TWC offers in New York City have been approved by New York City and New York State cable regulatory

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19/ See, e.g., Liberty Cable, Summary at i (general comment that "Liberty's experiences with Time Warner in New York City illustrate the anticompetitive environment created by cable operators to quash competition"); id. at 1 (unspecified references to "predatory practices of Time Warner Cable); id. at 8 (conclusory allegation that Liberty "has been hindered in its efforts [to compete in the New York metropolitan area] by the predatory and exclusionary trade practices of its franchised competitors").

authorities. And, those rates do not selectively discriminate from building to building. 20/

In another example, Liberty Cable contends that TWC has unlawfully sought to deny it access to certain programming services. Liberty Cable refers to the Court TV situation--a situation protracted by its litigious behavior--as an example. However, TWC had a legal right to petition the Commission to declare its exclusive contract with Court TV to be in the public interest. As mentioned above, exercising that right is not evidence of anticompetitive animus. To the contrary, it has been recognized often that exclusive contracts have pro-competitive effects. TWC's petition focused exactly upon such effects and the Commission simply did not agree. In any event, Court TV may now provide its programming to Liberty Cable, making the entire point irrelevant.

On the same program-access issue, Liberty Cable also believes that it should have the right to require TWC

20/ Liberty Cable contends that TWC makes "under the table" deals when MDUs are considering switching service providers. As an example, Liberty Cable believes TWC "offered to pay a [sic] MDU landlord for the installation of a one million dollar intercom systems for Stuyvesant Town, an MDU community located in Manhattan". No more need be said here than that Liberty Cable offered to install an intercom system at the MDU community in question. As a result of that offer, TWC discussed a competitive offer with the MDU's management.

to sell it Time Warner's New York 1 News service. Liberty Cable 13-14. Because New York 1 News is not satellite-delivered, however, the program-access provisions of the 1992 Cable Act do not apply to it. Although Liberty Cable concedes that point, Liberty Cable 14 ("[t]he literal language of the Act refers to 'satellite delivered'"), it nonetheless asks the Commission to recommend to Congress that the statute be amended so as to apply to any programming, satellite-delivered or not. As support for that position, it proposes that, with fiber optics, "it is no longer necessary to rely upon satellites to deliver video signals", and that "satellites will become an increasingly inefficient means to deliver video signals". Liberty Cable 14.

Time Warner's New York 1 News is a 24-hour news service, covering New York City news generally not available on local broadcast channels (because they report news in only a few half-hour segments each day). TWC specifically created New York 1 News to fill a programming void for its New York City subscribers and the service was launched at great expense (with a capital investment of several million dollars). 21/

21/ Although the service has yet to achieve a profit Time Warner does expect it to do so at some point during the next several years.