

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

In the Matter of )  
)  
TELEPHONE COMPANY- )  
CABLE TELEVISION )  
Cross-Ownership Rules, )  
Sections 63.54-63.58 )  
)  
and )  
)  
Amendments of Parts 32, 36, )  
61, 64, and 69 of the )  
Commission's Rules to )  
Establish and Implement )  
Regulatory Procedures for )  
Video Dialtone Service )

CC Docket No. 87-266

RM-8221

DEC 16 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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**COMMENTS OF VIACOM INTERNATIONAL INC.**

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## SUMMARY

The extent to which VDT systems will come to provide programmers such as Viacom a meaningful multichannel video outlet -- and thereby provide the American viewing public with the promised benefits of multichannel video competition -- will turn, in no small part, on the Commission's resolution of two fundamental issues raised by the Third Further Notice. As described below, these issues go to the heart of the programming business: the programmer's control over the use of its product and the programmer's access, free of artificial barriers, to various means of distribution to consumers.

We address first the open access issue directly implicated by the Third Further Notice's channel capacity inquiry. If the Commission's VDT policy is to provide a real opportunity for competition among program packagers on a common-carrier video platform, the Commission must ensure that the entire VDT system -- including in particular any necessary set-top boxes (or any element of the VDT network serving equivalent functions) -- will be free of gatekeepers or any other artificial barriers both on the path to and within the consumer's home. Viacom therefore urges the Commission, first, to require that any technical specifications or parameters necessary to reach consumers

over a VDT system be made publicly available, and, second, to ensure that payment of the prescribed tariff for access to the basic platform would entitle the user to carriage over the full reach of the VDT network, including any set-top box or functionally equivalent element provided by a VDT operator or its affiliate.

We then briefly address the fundamental issue of programmer control over carriage of its service, which appears to have been overlooked in the Third Further Notice's "channel sharing" line of inquiry. Procedures devised to allow channel sharing for the sake of spectrum efficiency -- which Viacom acknowledges is a legitimate concern -- must recognize that programmers should have the right to determine both who may carry, or "share" carriage of, their program services and the terms of such carriage on the VDT platform.

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**COMMENTS OF VIACOM INTERNATIONAL INC.**

Viacom International Inc. ("Viacom") hereby submits its comments on the Third Further Notice of Proposed Rulemaking in the above-captioned "video dialtone" ("VDT") proceeding.<sup>1</sup> The extent to which VDT systems will come to provide programmers such as Viacom a meaningful multichannel video outlet -- and thereby provide the American viewing public with the promised benefits of multichannel video competition -- will turn, in no small part, on the Commission's resolution of two fundamental issues raised by the Third Further Notice.<sup>2</sup> As described below, these issues go to the

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<sup>1</sup> Memorandum Opinion and Order and Third Further Notice of Proposed Rulemaking, CC Docket No. 87-266, RM-8221 (released Nov. 7, 1994) ("Memorandum Opinion and Order" or "Third Further Notice").

<sup>2</sup> Viacom is a diversified entertainment and communications company, with various interests that could be (continued...)

heart of the programming business: the programmer's control over the use of its product and the programmer's access, free of artificial barriers, to various means of distribution to consumers. Viacom believes that the Commission would best preserve these interests and also advance the public interest in this emerging video distribution system by (1) taking further steps to ensure that the VDT platform operates as a truly barrier-free, competitive outlet, and (2) explicitly

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<sup>2</sup>(...continued)

directly affected by how the Commission resolves critical issues in this proceeding. Viacom's MTV Networks division ("MTVN") owns the advertiser-supported program services MTV: Music Television, VH1, and Nickelodeon (comprised of the Nickelodeon and Nick at Nite programming blocks). Viacom's wholly-owned subsidiary Showtime Networks Inc. ("SNI") owns the premium program services Showtime, The Movie Channel, and FLIX, and Viacom's wholly-owned subsidiary MTV Latino Inc. owns the advertiser-supported program service MTV Latino, which is distributed domestically and to Latin American territories. In addition, Viacom (through its subsidiary Paramount Communications Inc. or other wholly-owned subsidiaries, or through wholly-owned subsidiaries of affiliated entities) holds partnership interests in the advertiser-supported program services Comedy Central, USA Network, Sci-Fi Channel, All News Channel, and All Prime Sports Northwest and in the MSG Network. Viacom also owns Showtime Satellite Networks Inc., which licenses the SNI, MTVN and a variety of third-party program services to owners of home television receive-only earth stations nationwide. Further, Viacom also owns cable systems serving approximately 1.1 million subscribers and is engaged in: television and radio broadcasting; the production and licensing of syndicated and network television programming and interactive media; the production, distribution and exhibition of theatrical motion pictures; the retail distribution of music and video cassettes; the ownership and operation of professional sports franchises; the ownership and operation of amusement parks and arenas for live entertainment; the publication and distribution of education, business and trade books; and the licensing and merchandising of trademarks.

recognizing that any "channel sharing" mechanism it authorizes would not usurp the programmer's control over the licensing of its product.

**I. THE COMMISSION SHOULD ENSURE THAT THE VDT TRANSMISSION PATH TO THE CONSUMER'S TELEVISION SET BE FREE OF ARTIFICIAL BARRIERS TO OPEN ACCESS**

The Commission's latest Memorandum Opinion and Order in this proceeding appropriately focuses on guaranteeing that multiple video program packagers obtain access to each VDT system: "Without this requirement, video dialtone would not be as effective in achieving our goal of fostering a diversity of information sources to the public."<sup>3</sup> As the Third Further Notice clearly recognizes, the VDT rules' common-carrier foundation would be undermined if, in the real world, meaningful open access for competing program packagers and program services was thwarted by a VDT system's channel capacity constraints or network design.<sup>4</sup> This principle --

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<sup>3</sup> Third Further Notice at 16, ¶ 33 ("This goal was and remains one of the key purposes of our video dialtone policy.").

<sup>4</sup> Consequently, the Commission generally affirmed its requirement that VDT operators expand the capacity of their platforms to meet demand, because

the expandability of video dialtone systems is a critical factor in reducing the ability of LECs to discriminate in their provision of video dialtone service. Specifically, it precludes LECs from limiting capacity or avoiding further investment in their video dialtone systems in order to insulate

(continued...)

requiring truly open access at all points in the system necessary for any program service to reach consumers -- is essentially the predicate upon which the Commission has based its expansion of the role of telephone companies into the provision of video programming.<sup>5</sup>

The Commission has expressly recognized that channel capacity constraints can impede access and thus prevent the VDT platform from emerging as a competition-enhancing, common-carrier service. The Third Further Notice acknowledges, however, that channel capacity alone cannot secure the benefits of competition if, for example, set-top boxes operate to thwart meaningful access to consumers.<sup>6</sup> Although the Third Further Notice highlighted cost as a potential barrier posed by digital set-top boxes, the Commission should also recognize that the design of such boxes can even more directly facilitate anticompetitive action by firms capable of acting as gatekeepers on VDT

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<sup>4</sup>(...continued)  
certain video programmers from competition.

Memorandum Opinion and Order at 17, ¶ 36; see also Third Further Notice at 125, ¶ 268 (ensuring sufficient capacity is a "key element" in the VDT policy).

<sup>5</sup> Memorandum Opinion and Order at 16-17, ¶ 33 ("Indeed, without this requirement, it is not clear that video dialtone service would differ materially from channel service, which telephone companies were able to provide to cable operators even before we adopted the video dialtone framework.").

<sup>6</sup> Third Further Notice at 126, ¶¶ 268-69.

systems. Indeed, the term "set-top box" should be understood here as a generic reference to any element in a given VDT platform that provides the network intelligence or is otherwise necessary to gain access through the last portal to the consumer's receiver, whether that element resides inside or outside the consumer's home. This barrier can bestow upon a VDT operator -- and any favored program packager -- the power to effectively limit competition by denying or handicapping rival packagers or programmers' access to consumers through the existing VDT set-top box (thereby leaving rivals to attempt to convince consumers to pay for a second converter) or by imposing anticompetitive terms and conditions in exchange for granting such rivals access to the technology.<sup>7</sup>

Because of such concerns, Viacom has long championed the principle of ensuring open access to and from all points along the nation's developing electronic infrastructure.<sup>8</sup>

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<sup>7</sup> Cf. Telephone Company-Cable Television Cross-Ownership Rules (Second Report and Order), 7 FCC Rcd. 5781, 5806 (1992). "[V]ideo dialtone can only meet the goals the Commission has expounded if it is easy to use . . . especially for consumers."

<sup>8</sup> See Reply Comments of Viacom International Inc., ET Docket No. 93-7 (filed Feb. 16, 1994) ("Viacom Equipment Compatibility Comments"); Testimony of Edward D. Horowitz, Senior Vice President, Viacom International Inc., before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, U.S. House of Representatives, February 1, 1994. Copies of the documents are appended as Attachment A and Attachment B, respectively.

The Commission, too, has recognized in another proceeding the importance of fostering "compatibility" in consumer video electronic equipment to ensure that consumers enjoy the full benefits of competition in these markets.<sup>9</sup> As Viacom explained in the Cable Consumer Equipment Compatibility proceeding, while the Commission appropriately refrained from establishing particular equipment standards in the early stage of technological development, it was nonetheless imperative for the agency to make clear 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>10</sup>

Just as we urged open access in the Cable Consumer Equipment Compatibility proceeding, Viacom likewise calls for barrier-free access to set-top boxes employed with VDT systems. As a practical matter, the VDT mandate for basic video common-carriage service may be rendered moot unless the technology necessary for the consumer to translate the stream

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<sup>9</sup> Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 (Consumer Equipment Compatibility), 9 FCC Rcd. 1981 (1994) ("Cable Consumer Equipment Compatibility").

<sup>10</sup> Viacom Equipment Compatibility Comments at 4-5.

of information, data, and entertainment onto his or her home display mechanism is configured to provide full and easy access for all parties. Indeed, failure to act on this potential access barrier could foil, at the last link in the network, the Commission's push for competing packagers on the VDT platform -- posing an even greater anticompetitive risk as the role of VDT networks in the video marketplace grows.<sup>11</sup>

Programmers -- if they could gain access at all -- would likely face higher costs to make themselves readily available to consumers. Some of these higher costs undoubtedly would be passed along to consumers, while the inevitable drop in programmer revenues would ultimately compromise program quality and diversity. Such an outcome would skew the competition for consumers toward packagers or programmers affiliated with or otherwise favored by the equipment gatekeeper, rather than allow programming to succeed or fail based solely on consumers' collective judgment on the merits of the product.

The Commission should therefore clarify now that the open access principle central to its video dialtone policy will also fully apply to the equipment used by consumers in their homes to connect to VDT systems. As VDT authorizations begin to move apace, it is incumbent upon the Commission to

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<sup>11</sup> The result also could be to inadvertently grant an unfair advantage to the first or the dominant communications entity to place its equipment into consumers' homes.

set the fundamental rules of the road: first, by requiring that any technical specifications or parameters necessary to reach consumers over a VDT system be made publicly available to all seeking carriage on the basic platform; and, second, by ensuring that payment of the prescribed tariff for access to the basic platform would entitle the user to carriage over the full reach of the VDT network, including any set-top box or functionally equivalent element provided by a VDT operator or its affiliate. Without such rules to ensure that communications flow freely to and from all points along a VDT system, the Commission's plan for a barrier-free common-carrier video transport system will be frustrated, the potential for packager competition will be lost, and consumers will be denied the economic and programming benefits promised by real competition.

**II. CHANNEL SHARING RULES MUST NOT INADVERTENTLY UNDERMINE THE PROGRAMMER'S RIGHT TO CONTROL THE DISTRIBUTION OF ITS PROGRAM SERVICES**

The Commission has tentatively embraced the concept of "channel sharing" as a means of making more efficient use of VDT systems' analog capacity which is highly desired by most video program packagers.<sup>12</sup> Viacom has no quarrel with the concept of dedicating, as a technical matter, only one physical channel to a program service offered as part of more

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<sup>12</sup> Third Further Notice at 127-129, ¶¶ 271-275.

than one program package carried on a VDT system. Licensing must come before channel sharing, however. Thus, the administration of channel sharing must not be allowed to encroach upon the fundamental rights of the owner of a program service to determine, as a threshold matter, who shall have any authority to distribute its programming to consumers, as well as the terms and conditions upon which that authority is granted.

While Viacom does not at this point advocate any particular administrative system for channel sharing, it believes that the proposal merits further consideration so long as it is limited to addressing only the technical issues presented by the channel capacity problem. Thus, the Commission should clarify that program services carried on more than one package may be required to "channel share" only where there is a genuine shortage of analog capacity. Even where efficiency needs may warrant the practice, channel sharing also must preserve the feasibility of, and allow the owner of the program service to make the determination with respect to, such customary terms of carriage as the rights granted to a packager to insert local commercial spots into the program material.

Some questions included in the Third Further Notice appear to confuse issues of network management with ownership

rights over program material.<sup>13</sup> Administration of channel sharing is an issue quite distinct from the issue of which program packager may be granted rights to distribute a particular program service. The latter -- including the terms and conditions for such uses -- are properly within the control of the owner of the program service. Neither bona fide technical concerns nor anticompetitive strategies masquerading as technical concerns should impede the programmer's exercise of its authority over the granting of licensing rights. The rules must, therefore, reflect the fact that neither the VDT operator nor a program packager need obtain exclusivity rights to address the real problems of capacity constraints. Viacom thus urges the Commission to design channel sharing rules in a manner that fully recognizes the rights of the owners of program services to control the distribution of their product.

#### CONCLUSION

Critical issues still must be resolved before the FCC can rest assured that VDT will emerge, as the Commission has long envisioned, to be a truly competitive platform for multichannel video packagers. Meaningful open access may

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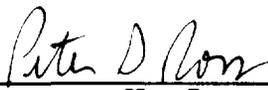
<sup>13</sup> Third Further Notice at 128, ¶ 275 (queries on how programming should "be selected for the shared channels" and on "the terms and conditions on which shared channels should be made available to programmer-customers").

never come to pass unless the Commission recognizes that VDT systems must be free of barriers at all points along the transmission path, including the final link to consumers served by the set-top box. Viacom therefore urges the Commission, first, to require that technical specifications or parameters necessary to reach consumers over a VDT system be made publicly available, and, second, to ensure that payment of the prescribed tariff for access would entitle the user to carriage over the full reach of the VDT network, including any set-top box or functionally equivalent element provided by a VDT operator or its affiliate. In addition, Viacom requests that the Commission explicitly recognize that mechanisms designed to administer channel sharing must not infringe upon the fundamental right of the owners of program services to determine how and on what terms their programming is distributed.

Respectfully submitted,

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December 16, 1994

**ATTACHMENT A**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
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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.

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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:

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<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

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<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

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<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