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

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In the Matter of:	)	
	)	
Telephone Company-Cable	)	
Television Cross-Ownership	)	CC Docket No. 87-266
Rules, Sections 63.54-63.58	)	
and		
		[redacted]
Amendments of Part 32, 36, 61,	)	
64 and 69 of the Commission's	)	
Rules to Establish and Implement	)	RM-8221
Regulatory Procedures for Video	)	
Dialtone Service	)	

COMMENTS OF AMERITECH ON PETITIONS FOR RECONSIDERATION

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COMMENTS OF AMERITECH
ON PETITIONS FOR RECONSIDERATION

The Ameritech Operating Companies[1] ("Ameritech" or the "Company") respectfully submit the following comments on the Petitions for Reconsideration filed by Liberty Cable Company ("Liberty Cable") and Comcast Cable Communications, Inc., Cox Enterprises, Inc. and Jones Intercable, Inc. ("Joint Cable Operators"). These Petitions ask the Commission to reconsider various aspects of its Memorandum Opinion and Order released in the above-captioned dockets on November 7, 1994.[2]

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[1] The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Bell, Inc.

[2] Memorandum Opinion and Order on Reconsideration ("VDT Recon Order") and Third Further Notice of Proposed Rulemaking ("Third Notice"), CC Docket Nos. 87-266, RM-8221, rel. November 7, 1994.

Ameritech also filed a Petition for Reconsideration of the VDT Recon Order. The Company's Petition seeks reconsideration of the Commission's channel capacity restrictions and its Part 69 waiver requirements. The Company will respond to comments filed with respect to its Petition in the Reply phase of this pleading cycle.

I.

INTRODUCTION AND SUMMARY

Ameritech's Petition for Reconsideration asked the Commission, inter alia, to allow any programmer on a video dialtone (VDT) platform to utilize, on an on-going basis, the number of analog channels that the market requires to effectively compete with the incumbent cable operator. Liberty Cable makes a strikingly similar argument in the main part of its Petition, and although Ameritech disagrees with the suggestion that programmers should be required to share all of their VDT channels, the market-driven rationale underlying Liberty Cable's main argument deserves serious consideration. The Petition for Reconsideration filed by the Joint Cable Operators, on the other hand, is based on faulty assumptions and proposes a host of additional and unnecessary regulatory requirements on VDT providers. Their Petition should be denied outright.

II.

LIBERTY CABLE'S ENDORSEMENT OF THE ANCHOR PROGRAMMER CONCEPT IS A RECOGNITION OF THE MARKET REALITIES FOR COMPETITION IN VIDEO PROGRAMMING.

Liberty Cable seeks reconsideration of that part of the VDT Recon Order which bars an LEC from allocating "all or substantially all" analog capacity on a VDT platform to a single programmer for use by all other programmers desiring to use that capacity.[3] Liberty Cable asserts that reconsideration on this point is necessary in order to ensure that competition emerges in the provision of video services. According to Liberty Cable:

> [t]o compete effectively with cable television operators, video programmers using a VDT platform must be able to offer consumers a programming service of at least the 65 to 70 channels that cable systems presently offer in most major markets, and they must be able to do so at a price which is comparable to the roughly $25 monthly fee that cable operators charge for a comparable amount of programming.[4]

This could be accomplished in the short term, again according to Liberty Cable, through an analog channel sharing arrangement whereby programmer customers are required to share up to 60 analog channels[5] which carry programming that already has proven to be highly popular.[6]

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[3] Liberty Cable at 1.

[4] Id. at 4.

[5] Id. at 4.

[6] Id. at 6.

In Ameritech's Petition for Reconsideration, the Company cited the following examples of the channel variety offered by cable operators in the midwest:

Community	Cable Operator	Analog Channel Capacity
Indianapolis, IN	Comcast	37
Naperville, IL	Jones	60
Columbus, OH	Time Warner	77
Greenfield, WI	Time Warner	108
Troy, MI	TCI	120

The variety represented in these examples of actual market conditions is fully consistent with Liberty Cable's predictions about the number of channels which the market will demand of a would-be competitor of the incumbent cable operator. Liberty Cable's market analysis deserves serious consideration because one of the Commission's goals in this docket is to increase the prospects of viable competition in the video market and that will require a package of programming which is fully competitive with the incumbent cable operator.

However, while Liberty Cable makes an interesting market-based argument in support of the concept of anchor programming in order to maximize the market capability of a VDT platform with limited analog capacity, it has not presented a convincing argument to support a requirement that programmers <u>must</u> share all of their channels on a VDT platform. Instead, the market should determine the extent to which, if any, the sharing of channels is appropriate.

III.

THE COMMISSION SHOULD REJECT THE PETITION FOR RECONSIDERATION FILED BY THE JOINT CABLE OPERATORS BECAUSE IT IS BASED ON FAULTY ASSUMPTIONS AND PROPOSES UNNECESSARY REQUIREMENTS FOR VDT SERVICE.

In their Petition for Reconsideration, the Joint Cable Operators make unfounded assumptions about VDT platforms and propose a number of unnecessary regulatory requirements for the provision of VDT service. This reflects a concerted effort on the part of entrenched cable operators to delay competition and, accordingly, should be rejected.

A. THE JOINT CABLE OPERATORS BASE THEIR PETITION FOR RECONSIDERATION ON FAULTY ASSUMPTIONS.

The Joint Cable Operators acknowledge that a number of companies, including Ameritech, have successfully challenged the cross-ownership rules on constitutional grounds.[7] But the Joint Cable Operators go on to assert that:

> [t]hese cases raise fundamental questions about the continuing need for video dialtone because these telephone companies may now obtain franchises to provide cable service subject to Title VI of the Communications Act.[8]

Thus, according to the Joint Cable Operators, "the original motivation for video dialtone has largely disappeared."[9] This assumption is unfounded.

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[7] Having acknowledged these court cases, however, the Joint Cable Operators continue to argue that the Commission should ensure "that telephone companies do not violate the programming prohibition ... ." Joint Cable Operators at 3.

[8] Id. at 3.

[9] Id. at 2.

The original motivation for a common carriage video network was the need for competition in the video market. That is no less true now than it was before the courts struck down the telephone company-cable television cross-ownership ban. Indeed, cable operators in this country now have just as strong a hold on the video market as they did in 1992 when the Commission issued its Video Dialtone Order.[10] The fact that telephone companies now are permitted to become cable television providers in their own service areas does not mean that video dialtone should not remain an option, particularly given the digital switching capabilities which may distinguish VDT from traditional cable television. Therefore, the Joint Cable Operators are wrong when they suggest that there no longer is a need to accelerate the introduction of VDT service.

The Joint Cable Operators also assert that the demise of the cross-ownership ban means that LECs may provide video programming but only pursuant to Title VI of the Communications Act.[11] The Commission has announced that this assumption will be examined in the Fourth NPRM[12] and, therefore, it is inappropriate to argue the point now. Suffice to say at this juncture that Ameritech believes this assumption on the part of the Joint Cable Operators is unfounded, as well.

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[10] Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992).

[11] Joint Cable Operators at 4.

[12] Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Fourth Further Notice of Proposed Rulemaking, rel. January 20, 1995 ("Fourth NPRM") par. 10.

B. THE JOINT CABLE OPERATORS PROPOSE UNNECESSARY REQUIREMENTS FOR VDT SERVICE.

The Joint Cable Operators argue that the Commission must limit LEC financial relationships with video dialtone programmers and packagers.[13] They say this is especially important in those cases where a LEC provides a gateway service. To ensure continued compliance with these new limitations, LECs would be required to make public disclosures [and, therefore, disclosure to competitors, including the Joint Cable Operators] detailing information about their plans to provide a gateway and their interests in VDT programmers and packagers. To ensure on-going compliance, the LECs would be required to make these disclosures even after their VDT tariffs are approved. According to the Joint Cable Operators, this mechanism will allow the Commission to ensure that LECs are not engaging in programming over their VDT platforms in violation of the Commission's rules.[14]

However, the Commission's rules on LEC video programming were intended to be consistent with the statutory cross-ownership ban.[15] The courts now have determined that the statutory cross-ownership ban is unconstitutional and may not be enforced.[16] The Commission recently authorized a LEC to

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[13] Joint Cable Operators at 4.

[14] Id. at 4-7, 8.

[15] See, e.g., Fourth NPRM at par. 6.

[16] E.g., Ameritech Corp. v. U.S., 876 F.Supp. 721 (N.D. Ill. 1994).

provide video programming over its VDT platform, at least on a trial basis.[17] For the longer term, the Commission has tentatively concluded that telephone companies should be permitted to provide video programming over Title II video dialtone platforms.[18] Given these developments, the Joint Cable Operators no longer can rely on the programming ban as a basis for their proposal to limit the relationship which an LEC may have with video programmers and packagers.

The Joint Cable Operators also propose a wide ranging set of new and unnecessary regulatory requirements for VDT service. This proposal includes their demand for rigid requirements for Section 214 applications, Part 69 waivers, tariff review plans and tariff filings.[19] These requirements would apply to all telephone companies regardless of the nature of the specific VDT platform or service even though the VDT applications filed to-date "have proposed a variety

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[17] In the Matter of the Application of The Chesapeake and Potomac Telephone Company of Virginia, Order and Authorization, File No. WPC 6834, rel. January 20, 1995.

[18] Fourth NPRM at par. 10.

[19] Joint Cable Operators at 1; 9-17. The Commission previously held that of the information which these parties propose for Section 214 applications are more appropriate for tariff filings. In the Matter of the Applications of Ameritech Operating Companies for Authority pursuant to Section 214 of the Communications Act of 1934, File Nos. WPC 6926, 6927, 6928, 6929 and 6930, Authorization and Order, rel. January 4, 1995 ("Ameritech Section 214 Authorization") at par. 59.

of system architectures with widely varying roles for the telephone companies providing the service."[20]

The Joint Cable Operators argue that these new requirements are necessary "to ensure that video dialtone investments are economically justified, that telephone companies do not violate the programming prohibition and that video dialtone costs are not imposed on captive telephone ratepayers."[21] However, the current Section 214 process is designed to ensure that VDT investments are economically justified and, in fact, the Commission already has evoked that process to satisfy itself that certain VDT investments are economical.[22] Moreover, the Part 69 waiver process was intented to be the vehicle by which the Commission could examine proposals for additional rate elements not defined by the Part 69 rules; detailed examination of cost recovery falls within the scope of the tariff review process, not the Part 69 waiver process.

In addition, new requirements cannot be justified on the basis of the "programming prohibition" because the cross-ownership ban prohibiting programming has been struck down on First Amendment grounds and may not be enforced. New requirements are not needed to ensure against VDT cost subsidization by basic telephone service because that issue already is addressed

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[20] Joint Cable Operators at 2.

[21] Id. at 3.

[22] Ameritech Section 214 Authorization at pars. 43-51.

by the accounting conditions and tariff process which the Commission has prescribed for VDT.[23]

Moreover, the Commission already has determined that "the extent to which the states in which the [VDT] service is proposed authorizes competition for local exchange services is one of the factors which we [the Commission] may consider in the Section 214 review process."[24] Since this review must be undertaken on the basis of the specific terms and conditions of a particular Section 214 application, the Commission should decline the Joint Cable Operators' invitation to specify now exactly how this local competition factor will be weighed in the Commission's Section 214 review.[25]

In sum: the new requirements proposed by the Joint Cable Operators are not necessary to promote the public interest; rather, they seem designed to promote the interest of incumbent cable operators who seek to delay competition from VDT providers.

IV.

CONCLUSION

For the reasons stated in these comments, the Commission (a) should give careful consideration to the market-driven rationale underlying Liberty Cable's endorsement of the anchor programmer concept, but should not require any

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[23] See e.g., Id. at pars. 57-60. As the Commission has noted, in addition to being under price regulation at the federal level, Ameritech now is regulated under a price cap in all five of the states in its service area. (id. at fn. 127) thereby reducing even further any incentive to engage in cross-subsidization..

[24] Ameritech Section 214 Authorization at par. 55; VDT Recon Order at par. 142.

[25] Joint Cable Operators at 12-13.

mandatory channel sharing arrangements, and (b) should reject outright the Petition for Reconsideration filed by the Joint Cable Operators.

Respectfully submitted,

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February 9, 1995

CERTIFICATE OF SERVICE

I, Linda J. Jeske, do hereby certify that copies of the foregoing Comments of Ameritech on Petitions for Reconsideration were sent via first class mail, postage prepaid, this 9th day of Feb., 1995 to the parties of record in this matter.

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