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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

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RM-8221

**REPLY OF LIBERTY CABLE COMPANY, INC
TO COMMENTS OPPOSING LIBERTY'S
ANCHOR PROGRAMMER/CHANNEL SHARING PROPOSAL**

A few commenters oppose Liberty's proposal that the FCC permit VDT network operators to allow an anchor programmer subject to channel sharing rules. But the five arguments they make in opposition are false as shown below.^{1/}

First, Viacom contends that Liberty's proposal would frustrate the FCC's desire that VDT become an effective competitor in the multi-channel video distribution market. In fact, Liberty's proposal would promote the FCC's competition objective, and Viacom's

^{1/} Liberty filed its petition requesting reconsideration of the FCC's order barring anchor programmers at 9:30 a.m. on January 12, 1995, whereas Section 1.429(d) of the FCC's Rules contemplates that the petition would be filed by 5:30 p.m. the previous evening. The Commission should accept Liberty's petition since no one is harmed and no one has objected to its acceptance. However, if the Commission declines to accept the pleading as a petition for reconsideration, Liberty hereby requests that the agency consider it as comments on Ameritech's petition for reconsideration of the same order.

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contrary conclusion is premised on a demonstrably false assertion of fact. Whereas Viacom assumes that Liberty's proposal would permit just one 60+ analog channel programmer per VDT system,^{2/} Liberty's proposal actually would permit several 60+ channel analog programmers on a typical 75-80 analog channel system. It does this because the anchor programmer would have to comply with the channel sharing requirement that is an integral part of Liberty's proposal. It is Viacom, not Liberty, which wants to prevent VTD from becoming a competitive force. Viacom demonstrates its desire to frustrate competition by insisting in its comments that the agency restrict the number of analog channels individual programmers may offer consumers to a number that is far fewer than consumers will demand in order to switch from cable service to VDT service.

Second, NCTA asserts that it is unnecessary to adopt Liberty's anchor programmer plan in order to promote competition because NCTA claims the Commission held in paragraph 35 of its Memorandum Opinion and Order that video programmers can compete effectively with cable TV by offering substantially fewer than 65-70 channels of programming.^{3/} In fact, the FCC did not make this finding. Paragraph 35 states in its entirety as follows:

"We also reject requests that LECs be permitted to allocate all or substantially all analog capacity to a single 'anchor programmer.' These requests appear to be premised on the assumption that only analog capacity allows a viable alternative to cable service in the short term. To grant these

^{2/} Opp. of Viacom Int'l at 3-6 (Feb. 9, 1995).

^{3/} Comments of NCTA at 4-5 (Feb. 9, 1995).

requests would thus be inconsistent with the common carrier model for video dialtone and our requirement that LECs offer sufficient capacity to accommodate multiple video programmers."^{4/}

There is no way one can conclude from this paragraph that the Commission made a determination about the number of channels necessary to compete effectively with cable TV. At most, the agency speculated in this paragraph that a VDT programmer customer might become an effective competitor by using a combination of digital and analog channels in order to obtain the number of channels necessary to compete effectively with cable. But the agency plainly did not rule that digital channel capacity is an adequate substitute for analog channel capacity in paragraph 35 because later in the same order it called for comments from interested parties on that issue.^{5/} In its petition, Liberty offers substantial evidence that a VDT programmer customer needs 65-70 channels in order to compete effectively with cable and that these channels must be composed entirely of analog channels in the short term because of the uneconomic cost of providing video service to consumers via digital channels. Neither NCTA nor anyone else opposing Liberty's proposal challenge any of this evidence.

Third, NCTA claims that even if VDT programmers need to offer consumers more than 60 analog channels of programming to compete effectively with cable TV, the Commission still should reject

^{4/} Memo. Op. and Order on Recon. (CC Dkt. No. 87-266, Nov. 7, 1994).

^{5/} Id. at ¶¶ 269-70.

Liberty's anchor programmer/channel sharing plan as the way to satisfy this need. Instead, it urges the agency to adopt a rule requiring LECs to construct VDT networks with a capacity of hundreds of analog channels.^{6/} NCTA's solution is naive. No LEC has proposed to construct a VDT network providing hundreds of analog channels, and the Commission never has stated it will force a LEC to do so against its will merely because several VDT programmer customers desire to lease 65-70 analog channels. In fact, the agency already has approved many applications to construct VDT networks which provide only about 75 analog channels.

Fourth, Viacom asks the FCC to reject Liberty's proposal based on its belief that one feature of the proposal is adoption of a new rule forcing all program producers to sell their programming to anchor channel lessees when the producers do not want to do so.^{7/} Liberty's proposal does not require the FCC to adopt any such rule. Certain producers are required by Section 76.1002 of the FCC's existing rules to make available their programming to all multi-channel program distributors, but nothing in Liberty's anchor programmer/channel sharing plan would add to that existing requirement in any way.

Finally, while two LECs (GTE and NYNEX) fully support Liberty's proposal,^{8/} three LECs (Ameritech, Bell Atlantic and

^{6/} Comments of NCTA, supra, at 3-4.

^{7/} Opp. of Viacom, supra, at 10-11.

^{8/} Comments of GTE at 2-4 (Feb. 9, 1995); Comments of NYNEX at 2 n.2 (Feb. 9, 1995).

BellSouth) appear to support the plan only partially. These three LECs favor that part of Liberty's proposal which asks the FCC to permit anchor programmers, but they question that portion of Liberty's proposal which asks the FCC to require the anchor programmer to share its anchor channels with other VDT channel lessees. According to these three LECs, the market, rather than the FCC, should determine the extent to which sharing of anchor channels occurs.^{2/} In fact, Liberty's proposal permits the market to make this decision, whereas the alternative plan of these three LECs lets the anchor programmer make this decision. Under Liberty's plan, anchor channels would be shared only with those VDT channel lessees who desire access to these channels in order to serve their end user customers. Moreover, a programmer desiring access to some, but not all, anchor channels would be free to access only those it desires. In the absence of a channel sharing obligation, the anchor programmer would have a far greater ability to substitute its will for the will of consumers since the anchor programmer would be the only VDT channel lessee with enough channels to compete effectively with the incumbent cable operator serving that community.

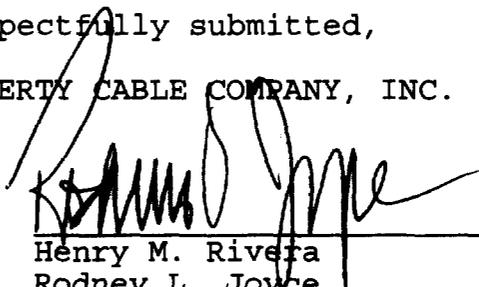
^{2/} See Comments of Ameritech at 4 (Feb. 9, 1995); Comments of Bell Atlantic at 3 n.5 (Feb. 9, 1995); and Comments of BellSouth at 9 n.27 (Feb. 9, 1995).

CONCLUSION

The Commission should allow a LEC to lease up to 60 analog VDT channels to a single programmer customer subject to the channel sharing requirements which Liberty proposes in its petition.

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February 21, 1995

CERTIFICATE OF SERVICE

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