

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

APR 11 1996
CS Docket No. 96-46

In the Matter of)
)
Implementation of Section 302 of)
The Telecommunications Act of 1996)

CS Docket No. 96-46

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REPLY COMMENTS OF OPTEL, INC.

OpTel, Inc. ("OpTel"), by its attorneys, submits these reply comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding. OpTel, through affiliates and subsidiaries, operates private cable and telecommunications systems providing video programming and shared tenant telecommunications services to residents of multiple dwelling units ("MDUs") in several major U.S. cities.

In the NPRM, the Commission requests comment on a wide variety of issues related to the implementation of new Section 302 of the Communications Act of 1996, which requires the Commission to establish rules for open video systems ("OVS"). In response, the Commission has received numerous comments from cable operators and local exchange carriers ("LECs"). OpTel today provides real competition to both franchised cable operators and LECs. It is important, therefore, that the Commission consider the impact of its new OVS rules on competitors other than the franchised cable operators and the incumbent LECs, as it grapples with the issues raised in the NPRM.

In particular, OpTel believes that two fundamental principles should guide the Commission's implementation of Section 302: (1) The Commission must ensure that OVS systems are operated in a truly non-discriminatory manner; and (2) OVS entry criteria should be broad enough to allow private cable companies and other new entrants to use an OVS format to compete with franchised cable operators and LECs in the multichannel video programming distribution ("MVPD") market.

As drafted, Section 302 involves a trade-off for entities seeking to provide MVPD services through an OVS system — in exchange for being excused from the franchising requirement of Title VI, OVS operators are required to provide non-discriminatory access to programmers. In order for the non-discriminatory access requirement to be meaningful, however, the Commission must establish specific programming allocation

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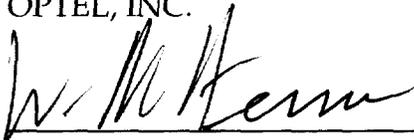
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guidelines for OVS systems. It is not enough to allow OVS operators to implement their own channel allocation schemes subject only to a complaint process.

Moreover, it is essential that private cable companies and other new entrants have the option to operate their systems under the OVS regime. Until the Commission actually promulgates its implementing regulations, of course, it is impossible to determine whether the benefits of the OVS structure will outweigh the costs. There is no reason, however, that LECs, which now may provide video programming by virtually any technologically available means, should have more delivery flexibility than other new entrants into the market. Consequently, OpTel urges the Commission to adopt OVS entry criteria broad enough to allow private cable companies and other new entrants into the MVPD market to use an OVS format if they so choose.

Respectfully submitted,

OPTEL, INC.



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