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National Cable Television Association

David L. Nicoll
Associate General Counsel
Legal Department

1724 Massachusetts Avenue, Northwest
Washington, D.C. 20036-1969
202 775-3664 Fax 202 775-3603

May 7, 1996

EX PARTE

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.- Rm. 222
Washington, D.C. 20554

Re: CS Docket No. 96-46

Dear Mr. Caton:

On May 7, 1995, Dan Brenner, Jill Luckett and David Nicoll of the National Cable Television Association ("NCTA") met with Meredith Jones, John Logan, Gary Laden, Rick Chessen and Larry Walke of the Cable Services Bureau.

The matters discussed are covered in NCTA's comments and reply comments in the above-captioned proceeding, and are summarized in the enclosure.

If you have any questions concerning this matter, please contact the undersigned.

Sincerely,

David L. Nicoll

DLN:smp

cc: Meredith Jones, Esq.

Enclosure

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NCTA POSITION-OVS

The Telecommunications Act provides telephone companies (and others) with a choice in the way that they offer cable service to subscribers:

- **If telephone companies want to provide cable service like cable operators (e.g., if they want to exercise editorial control over the same percentage of channels as local cable operators), they can now obtain local franchises the same as incumbent cable operators. That's the choice made by GTE in Central Florida and Ventura County, California; Pacific in San Jose; and Ameritech in numerous jurisdictions.**

- **On the other hand, if telephone companies (or others) want to avoid local franchising, they must agree to cede control of up to two-thirds of their capacity to nonaffilliates for use on a nondiscriminatory basis, and comply with the OVS rules. The purpose of this proceeding is to establish the rules that will balance the twin goals of promoting video competition and offering unaffiliated programmers nondiscriminatory access to the OVS facility.**

Toward these ends, NCTA urges the Commission to:

- **Guarantee programmers nondiscriminatory access to OVS facilities. OVS operators should not gain a competitive advantage, except for the advantages specified by the statute, by virtue of their control over the facility;**

- **Limit the number of channels, so long as channel capacity is scarce, that an OVS operator may select to one-third of the activated channels, exclusive of must carry and PEG requirements, but including the shared channels;**

- **Ensure rates charged to programmers for access to the OVS facility are just and reasonable, and do not discriminate unreasonably;**

- **Provide for selection of the channel administrator based upon the collective determinations of the programmers using capacity on the system;**

- **Provide for classification of channels, exclusive of must carry and PEG channels, as "shared" only when programmers agree to the sharing arrangement;**

- **Prohibit, until effective telephone service competition is a reality, the joint marketing of telephone and OVS facilities or programming services, unless customers are simultaneously made aware of the video programming alternatives provided by cable operators;**

- **Adopt effective cost allocation procedures;**

- **Establish a separate subsidiary to facilitate detection of cross-subsidy and discrimination;**

- **Permit incumbent cable operators the same choice that is available to incumbent LECs to provide OVS in lieu of franchised cable service; and**

- **Require a demonstration of compliance with Commission policies, regulations and procedures, including cost allocations, prior to certification, and to further require ongoing compliance following certification.**