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NYNEX

May 8, 1996

Ex Parte

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

RE: CS Docket 96-46

Dear Mr. Caton:

Yesterday, Mr. B. Pfeiffer, Mr. D. Rowe, Mr. G. Udwin and I, representing NYNEX, met with Mr. C. Wright, Ms. S. Tetreault and Ms. A. Katz, with the Office of the General Counsel. The purpose of the meeting was to discuss NYNEX's positions in the Open Video Systems proceeding, CS Docket 96 - 46. The attached material was used in the discussion.

The NYNEX representatives described how NYNEX's OVS would be available for affiliate and non-affiliate programmers and packagers to bring their services directly to end user customers. Also, NYNEX proposed that the FCC focus on certification and an explicit input process, coupled with an output test, in lieu of detailed "Title II" regulation as the determinant of non-discrimination and fair access. Finally, the FCC was urged to take a "lite regulation" approach in considering rules for OVS.

Sincerely,



Attachment

cc: Mr. C. Wright
Ms. S. Tetreault
Ms. A. Katz

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NYNEX Recycles

Open Video Systems

Letting Competitive Market Forces Work

Open Video Systems

- MVPD Competitive Positioning
- OVS Competitive Positioning
- “OVS Lite” Regulation Process
- OVS Access to Programming

MPVDs -- Competitive Positioning

- The Video Programming market is not competitive--
 - » Wired Cable is still the primary and dominant vehicle for providing Video to homes:
 - ... “In most markets, a single cable system remains the primary distributor of multichannel video programming services...[existing] competitive rivalry ... is insufficient to constrain the market power of incumbent cable systems.” FCC Dec 1995 Competition Report -
 - » “Cable Overbuild” has not been a workable business model.
- LEC VDT did not survive Title II Regulation and Cable Company opposition.

MPVDs -- Competitive Positioning

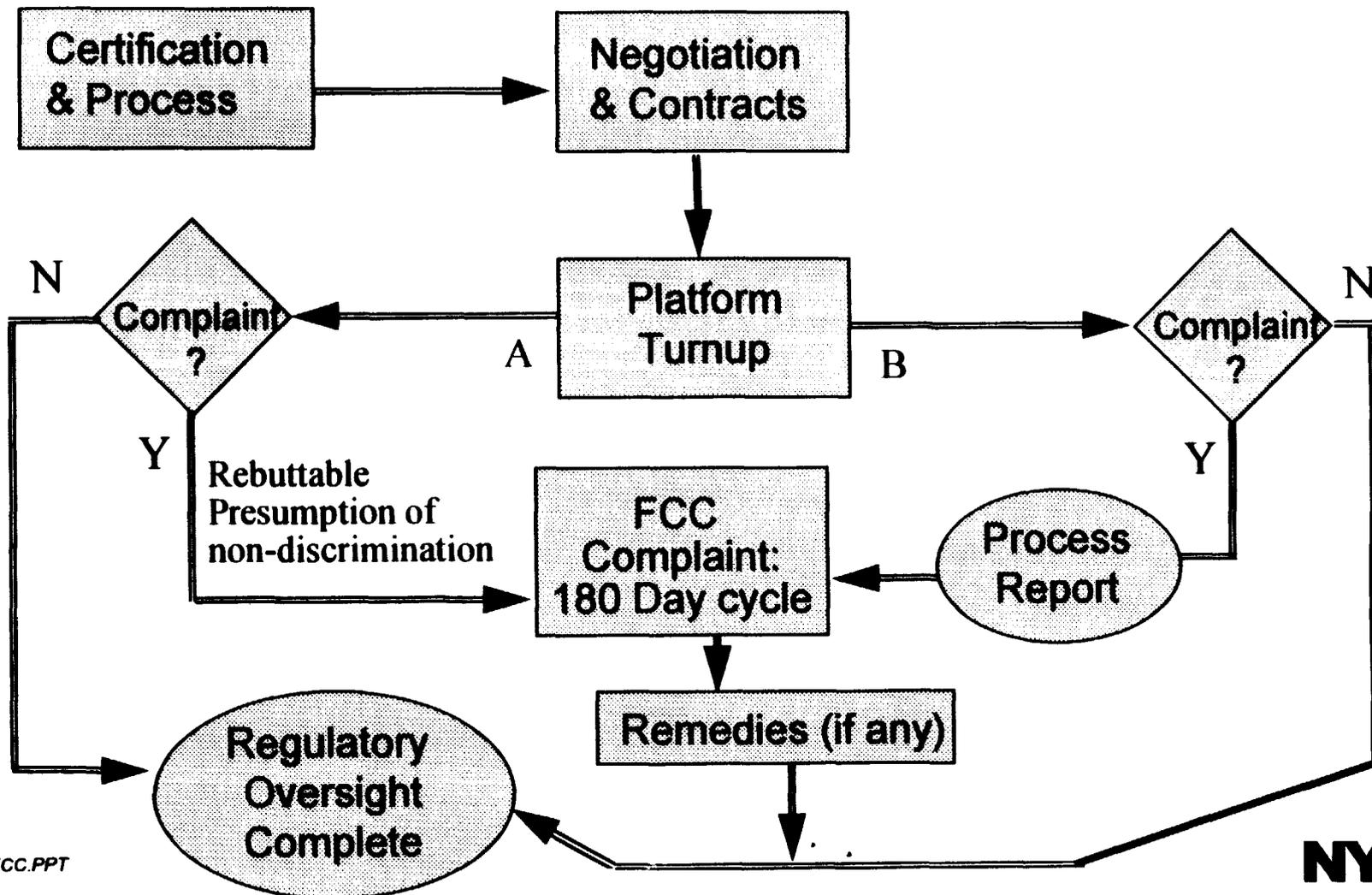
- o Congress is looking for more competitors --
 - » OVS has the potential to bring wireline competition to the MVPD marketplace --
 - “...the conferees hope that this approach [reduced regulatory burdens of Sec. 653] will *encourage* common carriers to deploy open video systems and introduce *vigorous* competition in entertainment and information markets.” Conference Report
- o FCC Rules that encourage OVS “overbuild” will enable:
 - Price Competition for Cable Companies
 - Access Opportunities for Programmers
 - Customer Choice of Providers/Programs
 - Economic Incentive for LEC Broadband Buildout

OVS -- Competitive Positioning

o Rules can be flexible --

- » “Title II like” prescriptive rules and other front-loaded regulation for untested OVS services and technologies would severely chill the building of OVS -- and thus keep those who “suggest” them as the only providers of wired video programming.
- » Municipalities and Franchise Authorities must not be allowed to re-create the franchise process “thru the back door” of fees, permits and PEG channels.
- » The Commission should rely on its Certification & complaint resolution powers to create a open and non discriminatory system.

Open Video Systems -- Process Flow



Open Video Systems -- Input Processes

- **Public Notice** -- Announcement of OVS in Trade Press & Newspapers
- **Solicitation** -- Open Enrollment Period for Programmers --
 - say 3 Months
 - Re-opener (if capacity limited) every 5 years
- **Published Technical Interfaces** --
 - Specifications for STBs & Navigators
- **Published, non-discriminatory qualifications for**
 - Programmers' Participation.
 - Rate Card for Qualified Participants.
- **Compliance with FCC Cost Allocation, PEG, & other Rules.**

Open Video Systems -- Output Test

o Possible Outcomes --

A - OVS has Unaffiliated Programmer/Packager who markets to End Users.

B - OVS has only affiliate programmer's packages available.

Open Video System -- Complaint Process

- Upon Complaint to the FCC
 - » Remedies after the fact and FCC ruling only.
 - » Burden of Proof is on the complainant.
- If Outcome “A”, then there is a rebuttable presumption of a non -discriminatory platform.
- If Outcome “B”, then OVS Operator is required to provide FCC with a “Process Report” detailing its Notice and Enrollment Process if Complaints are filed.
- FCC Deals with any resulting Complaints using Sec. 653 (a) (2) to provide programmer remedies.

Open Video System -- Resolution

o Process Report to FCC --

- » Triggered by Complaint & Similar to “Trial Report”
- » Expository Material from Input Process:
 - Public Notice; Solicitation; Published Interface Information (Technical & Commercial).
- » Details of Programmers Contacted & Negotiations Pursued.
- » Details of Carriage offered.
- » Details of Compliance with Cost Allocation, PEG, etc.

OVS -- Access to Programming

- Programming will be carried on OVS only if it is available to all MVPDs on the OVS
- Broadcasters should be limited to a single selection for “Must Carry/Retransmission” per ADI for all MVPDs.
 - » “If one or more franchise areas served by a cable system overlaps with one or more franchise areas served by another cable system, television broadcast stations are required to make the same election for both cable systems.” 47 CFR 76.64(g)