ORIGINAL

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

PETER D. ROSS
(202) 429-4232

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

May 9, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Notification of Permitted Ex Parte Presentation
CS Docket No. 96-46

Dear Mr. Caton:

Viacom Inc., by its attorneys and pursuant to Section 1.1206(a)(1)-(2) of the Commission's rules, hereby submits an original and two copies of this memorandum regarding the attached permitted ex parte presentation to Commission officials regarding CS Docket No. 96-46.

Today at 11:00 a.m., the undersigned along with Ed Schor and Ellen Schned of Viacom Inc., met with John Logan, Gary Laden, Rick Chessen, Larry Walke, and Meryl Icove of the FCC Cable Services Bureau. The discussion addressed the attached presentation and Viacom's related pleadings previously filed in the docket cited above.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Peter D. Ross

Peter D. Ross

PDR/gpb
Attachment
cc: John Logan
Gary Laden
Rick Chessen
Larry Walke
Meryl Icove

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VIACOM VIEWS ON OPEN VIDEO SYSTEM ("OVS") NPRM

(Permitted Written Ex Parte Presentation in CS Docket No. 96-46)

THE POTENTIAL BENEFITS OF OVS WILL BE LOST IF OPERATORS ARE DENIED REASONABLE FLEXIBILITY

- While the OVS regulatory scheme must afford unaffiliated programmers and packagers non-discriminatory access to -- and fair treatment on -- Open Video Systems, imposing sweeping "open access" regulations would be self-defeating.

- Given their existing choices and incentives, LECs must be provided substantial flexibility to make Open Video Systems an attractive option.

- The FCC should therefore adopt general non-discrimination obligations (with "safe harbors") that afford OVS operators reasonable discretion to determine the most viable -- yet still effective -- means to ensure unaffiliated packagers fair access to an Open Video System.

REGULATION OF OVS CHANNEL ALLOCATIONS SHOULD NOT PRECLUDE THE COMPETITIVE VIABILITY OF AN OVS-AFFILIATED PACKAGER

- The statutory cap should limit the affiliated packager to one-third of an oversubscribed system's analog capacity, measured separately from the digital capacity (until consumers enjoy ready access to programming carried on digital channels). But . . .

- Affiliated packagers should be able to retain and control more than the statutory one-third channel cap where no excess demand for initial capacity arises.

- Local broadcast channels and all "shared" channels should not count against the statutory cap on the OVS-affiliated packager's use of system capacity.

- OVS operators should not be required to allocate more channel capacity to any one unaffiliated program packager than the operator would be allowed to provide to its own affiliated program packager.

- Consistent with relevant licensing agreements, OVS operators should be allowed to "co-package" the programming selected by its affiliate with program services provided by an unaffiliated program packager.

LOCAL CABLE OPERATORS SHOULD BE PERMITTED TO BECOME OVS OPERATORS, BUT NOT TO TAKE UP SCARCE CAPACITY ON A RIVAL OPEN VIDEO SYSTEM

- The Commission should authorize cable operators and any other telecommunications entities to offer service as (or transform themselves into) OVS operators, consistent with their existing program licensing obligations.

- The FCC should preclude incumbent local cable operators from limiting competition by taking capacity on a competing Open Video System, at least where demand for analog capacity exceeds supply and digital channels do not offer comparable subscriber access.

THE FCC SHOULD CONFIRM THE PRIMACY OF PROGRAMMERS' CONTROL OVER LICENSING IN THE STRUCTURING OF CHANNEL SHARING AND OTHER OVS LICENSING ARRANGEMENTS

- Any OVS program packager who wants to offer a program service carried on a shared channel must first obtain permission from the program service to do so.

- The Commission should expressly reject any suggestion that an OVS operator may have broader authority to deny programmers any rights they may otherwise have to license or not license their program services to one or more packages.

- OVS operators must not be allowed to deny unaffiliated packagers carriage of program services for which the affiliated packager has not obtained a license on terms to its liking.

- There is no statutory authority for extending program access rules to apply either to terrestrially-delivered program services or to any program service in which an OVS packager that is neither a LEC nor a cable operator has an interest.

- Any FCC-required disclosure of the carriage rates OVS operators charge packagers need not, and should not, spill into the separate domain of licensing agreements between OVS packagers and individual programmers.

NON-DISCRIMINATORY NAVIGATIONAL DEVICES ARE CRITICAL TO SUPPORTING INTRA-SYSTEM COMPETITION ON OPEN VIDEO SYSTEMS

- The Commission's OVS safeguards should ensure a non-discriminatory interface between the subscriber and all packagers offering program services on the Open Video System, i.e., permitting subscribers to access both affiliated and unaffiliated program packagers with comparable ease.

- Congress explicitly prohibited OVS operators from excluding unaffiliated packagers from any navigational device the operator employs with its system.

- OVS operators should not be allowed freely to remove or otherwise alter information carried in the vertical blanking interval of a broadcast or non broadcast signal that might be used for navigational devices that subscribers acquire independently.