DOCKET FILE COPY ORIGINAL **Bell Atlantic**

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EX PARTE OR LATE FILED

May 14, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

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

Re: CS Docket No. 96-46, Open Video Systems

The undersigned, representing Bell Atlantic and Karen Stevenson, General Counsel of TELE-TV met on May 13, 1996, with Jim Olsen, Marty Stern and Debbie Kline of the Office of the General Counsel. The purpose of the meeting was to discuss TELE-TV's reply comments in the Open Video System proceeding relative to program access. A copy of the handout distributed in the meeting is attached.

Please include this notice as part of the public record in the above captioned proceeding. This letter is being filed one day late due to the late hour at which the meeting ended.

Sincerely,

Marie Breslin

Attachment

cc: J. Olsen
M. Stern
D. Kline

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List ABCDE

DISCRIMINATION AGAINST TELE-TV

Broadcast retransmission consent

- cash premiums
- channel set-asides
- joint ventures
- failure to respond to retransmission requests

Non-vertically-integrated cable programming

- "new-entrant" or "technology" surcharges
- denial of discounts, marketing and other support

Vertically integrated cable programming

- refusal to negotiate
- regional non-satellite delivery

RECOMMENDED COMMISSION ACTION

Extension of Rules

- All programmers
- All programming
- All delivery methods

Clarification of Rules

- OVS programming providers are MVPDs
  - "[A]n entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming." 47 C.F.R. § 76.1000(e).
- Scope of satellite delivery

THE COMMISSION'S POWERS

Section 2(a)

- Commission s power extends to any regulation that is "reasonably ancillary to the effective performance of [the Commission's] various responsibilities." Southwestern Cable Co., 392 U.S. at 178 (1968); Southwestern Bell Telephone Co., 19 F.3d at 1479 (D.C. Cir. 1994).

- Commission has authority to regulate "with a view not merely to protect but to promote the objective for which [it] has been assigned jurisdiction." Midwest Video Corp., 406 U.S. at 667 (1972).

Section 4(i)

- "The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions."

- A "necessary and proper clause" to effectuate specific provisions of Act. New England Tel. & Tel. Co., 826 F.2d at 1108 (D.C. Cir. 1987).

SECTION 653

Congressional Purposes

- "[T]o promote competition, to encourage investment in new technologies and to maximize consumer choice of services that best meet their information and entertainment needs." S. Rep. 230 at 172.

- "[E]ncourage common carriers to deploy open video systems and introduce vigorous competition in entertainment and information markets." Id. at 178.

- "[E]ncourage telephone company entry and spur competition and new investment.' OVS NPRM ¶ 2.

Objectives of OVS Rulemaking

- "[P]romote Congress's goals of flexible market entry, enhanced competition, streamlined regulation, diversity of programming choices, investment in infrastructure and technology, and increased consumer choice." Id. ¶ 4.

- Section 653(b)(1) establishes minimum contents of rules, not maximum (except for channel set-aside)

SECTION 628

Congressional Objectives

- Curb "undue market power" of cable and promote competition

  - "[E]ncourage competition . . . with the overwhelming majority of cable systems in this country which are monopolies and not subject to effective competition." S. Rep. No. 92, at 9.

  - "Section 628 is intended to increase competition and diversity in the multichannel video programming market, as well as to foster the development of competition to cable systems . . . ." 8 FCC Rcd at 3360.

- Provide new entrants access to critical programming

  - "In enacting the program access provisions of the 1992 Cable Act, Congress expressed its concern that potential competitors to incumbent cable operators often face unfair hurdles when attempting to gain access to the programming they need in order to provide a viable and competitive multichannel alternative to the American public." 8 FCC Rcd at 3362.

  - "The program access requirements of section 628 have at their heart the objective of releasing programming to the existing or potential competitors of traditional cable systems so that the public may benefit from the development of competitive distributors." 8 FCC Rcd at 3365.

- Satellite-delivered programming used as proxy for national and regional programming. S. Rep. No. 92, at 28.

Commission Implementation

- "[T]he Commission will continue its efforts to eliminate barriers that delay entry by competitive firms." 11 FCC Rcd at 2124.