

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

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In the Matter of)
)
Implementation of Cable Act)
Reform Provisions of the)
Telecommunications Act of 1996)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CS Docket No. 96-85

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REPLY COMMENTS OF
AMERITECH NEW MEDIA, INC.

Ameritech New Media, Inc. respectfully offers the following brief reply to the initial comments filed on one particular issue in the Notice of Proposed Rulemaking released in this docket on April 9, 1996 ("NPRM").

In the NPRM, the Commission proposes several rules which it believes may be necessary to "fully and clearly" implement the Telecommunications Act of 1996 ("1996 Act").¹ The Commission states that other provisions of the 1996 Act are clear and self-effectuating. With respect to those provisions, the Commission entered an Order adopting several new rules, on an interim basis, to conform its current rules to meet these new statutory requirements. The Commission will adopt final rules after it considers the comments on the NPRM.

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996).

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Under the 1996 Act, cable operators continue to be subject to rate regulation in the absence of “effective competition.” However, section 301(b)(3)(C) of the 1996 Act expands the definition of “effective competition” and thereby broadens the circumstances under which incumbent cable operators will be free from rate regulation. Specifically, the 1996 Act now provides that “effective competition” exists if a:

local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

In the NPRM, the Commission solicits comments on several issues having to do with the specific meaning of “comparable” programming for purposes of the new test for effective competition.²

In the initial round of comments, several parties said that “comparability” of programming includes consideration of not only the

² NPRM at pars. 69-73.

number of channels offered,³ but also the programming provided on those channels.⁴ According to these parties, “comparability” is present only if the LEC has reasonable access to the programming available to the incumbent cable operator. In those cases where the LEC is barred from obtaining access to the programming offered by the incumbent cable operator, “comparable” programming is not available, “effective competition” is not present and the incumbent cable operator may not be freed from rate regulation. Ameritech New Media agrees.

Access to programming on reasonable terms and conditions by new providers is critical if competition is to emerge in the cable industry. New providers should be able to have a reasonable opportunity to provide customers with the programming those customers desire and have come to expect. This cannot occur, however, if an incumbent cable operator has prevented the new entrant from having any access to such programming through, for example, exclusive distribution arrangements, or if the new entrant is effectively denied access to programming because of onerous terms and conditions. While current FCC rules do not address this issue, it is also an impediment to effective competition when the new entrant is not able to

³ A new video programming provider should be entitled to make its own determination on the number of channels to offer based on customer demand and the circumstances present in the particular market.

⁴ USTA at 2-6; Bell South at 1-3.

retransmit local broadcast network signals, or to carry cable programming services owned by broadcast networks, under reasonable terms and conditions. This will become a more serious impediment to competition in the cable market as control over existing and newly produced commercial programming becomes increasingly concentrated among a few vertically integrated firms.

Accordingly, when an incumbent cable operator seeks relief from rate regulation by this Commission on the basis of the presence of "effective competition," consideration must be given to the access which would-be competitors have to the available programming, both cable satellite programming as well as broadcast network signals, in the area for which the incumbent cable operator seeks relief. The Commission's rules should

specifically provide for such consideration as an integral part of its examination of whether "comparable" video programming services are being offered in that area and, therefore, whether "effective competition" is present.

Respectfully submitted,

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June 28, 1996

CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that a copy of the foregoing Ameritech's Reply Comments has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 28th day of June, 1996.

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