

including such diverse industry participants as NBC, Capital Cities/ABC, NCTA, Rainbow Programming Holdings, Viacom, and HBO.¹³

Thus, an operator-affiliated programming provider's menus, navigational devices, and other information provided to subscribers are not governed by section 653(b)(1). Nor should they be. TELE-TV, for instance, has invested heavily in developing a navigator that will allow viewers to review the various types of programming TELE-TV intends to provide over OVS platforms. Using distinctive graphics and sound, TELE-TV's navigator will provide an interface that will differentiate TELE-TV from other multichannel video programming distributors. This navigator will constitute a major part of TELE-TV's differentiated offering; it is crucial to establishing TELE-TV's branded identity and thus to enabling TELE-TV to compete with cable.

In this respect, TELE-TV is no differently situated than other programming distributors who are developing their own navigational devices. Viacom, for instance, cites its Starsight technology as an "emerging device" that will "offer consumers enhanced navigational control of available video services through hardware embedded in such consumer equipment as television receivers, video cassette recorders, or advanced set-top boxes." Viacom Comments at 19. Other competing navigational devices include TV Guide On-Screen (owned by News Corp. and TCI),

¹³See NBC Comments at 11-13; Cap Cities/ABC Comments at 12-13; NCTA Comments at 12; Rainbow Comments at 4; Viacom Comments at 17-20; HBO Comments at 16.

Stargazer, Prevue (owned by TCI), and Primestar (owned by a consortium of cable companies and General Electric), with other products under development by DirectTV, Oracle, Time Warner, and Microsoft.

Much as the first PCS wireless systems are offering new features to attract customers from incumbent cellular carriers, OVS providers will compete against the cable companies by offering more accessible, informative, and entertaining ways of selecting video programming.¹⁴ For this competition to develop fully, however, all OVS programming providers -- including those affiliated with OVS operators -- must be free to offer the same types of navigators that will be deployed by cable companies, without being subject to non-discrimination obligations that could prove as unworkable as they are undesirable.¹⁵

CONCLUSION

The Commission should further the purposes of section 653 and promote the viability of OVS by extending its program access rules to all programmers and all modes of programming delivery;

¹⁴Competition in the market for navigational devices will be addressed in a separate Commission proceeding. See 1996 Act § 629. Concerns as to the competitive availability of navigators -- which ALTV attempts to interject here, ALTV Comments at 15 -- are properly reserved for that proceeding.

¹⁵From a purely practical standpoint, TELE-TV doubts that it could provide nondiscriminatory access to each and every programming provider on its navigator. For instance, as Cap Cities/ABC points out, requiring programming providers to list every program option on the menu for every subscriber would likely "have the unfortunate result of cluttering the menu to the point that it would undermine the menu's purpose as a primary and user-friendly means to program selection." Cap Cities/ABC Comments at 16.

by confirming OVS operators' right to deny cable monopolists capacity on OVS systems; and by rejecting attempts to extend non-discrimination requirements to OVS programming providers.

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April 11, 1996

CERTIFICATE OF SERVICE

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