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National Cable Television Association

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September 17, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary, FCC
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation
MM Docket No. 92-266; CS Docket No. 96-60

Dear Mr. Caton:

On September 16, 1996, Decker Anstrom (President and CEO), Daniel Brenner (Vice President, Law and Regulatory Policy), and Diane Burstein (Associate General Counsel) of the National Cable Television Association met with Commissioner Rachelle Chong and Legal Advisor Suzanne Toller to discuss NCTA's comments in the Commission's leased access proceeding. The attached document was distributed at that meeting.

Please place a copy of the enclosed document in the ex parte file in the above-captioned proceeding.

Any questions regarding the enclosed may be addressed to the undersigned.

Respectfully submitted,

Daniel L. Brenner

DLB:smp

Enclosure

cc: Commissioner Rachelle Chong
Suzanne Toller, Esquire

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COMMERCIAL LEASED ACCESS

BACKGROUND:

1984: Congress adopted commercial leased access requirements in order to "assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems." Congress provided that a cable operator could establish the price, terms and conditions of access "which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system."

1992: Congress amended commercial leased access provision to give the Commission authority to "determine the **maximum** reasonable rate that a cable operator may establish ... for commercial use of designated channel capacity ...." The statute continues to contain the language cited above.

1993: Commission adopts rules establishing commercial leased access rates based on "highest implicit fee" for three categories of unaffiliated programmers (home shopping; premium channel; and all others).

GROWTH IN CARRIAGE OF UNAFFILIATED PROGRAM NETWORKS:

1984: 48 national cable program services, more than half of which were affiliated with cable operators.

1996: 137 national program networks, nearly three times as many as 1984. Approximately 60 are unaffiliated; nearly half of top 25 national networks are unaffiliated.

ISSUES RAISED IN MARCH 1996 FURTHER NOTICE OF PROPOSED RULEMAKING:

- Proposed cost model undercounts true costs imposed by leasing and results in unlawful subsidy to lessees.
  - ⇒ Ignores effect on subscribers caused by replacing desirable cable services with programming that subscribers do not value as highly
  - ⇒ Fails to account for value of placement in highly penetrated tiers or harm to other networks on tier
  - ⇒ Administratively difficult

Talking Points: Commercial Leased Access
9/16/96

- NCTA Average Channel Rate proposal
  - ⇒ Surrogate for lost opportunity cost caused by taking away right to freely program channel on tier
  - ⇒ Compares average cost of programming per channel to average value of channel to subscriber, responding to criticism of highest implicit fee
  - ⇒ No double recovery because leased access fee compensates for costs leasing imposes, including adverse effects on subscribership and revenues
- Premium channel rate should not be based on average -- would lead to unintended migration of networks
- No requirement for subsidy for non-profit users through special rates and set-asides -- it should be voluntary
- Program networks should be protected against bumping