

**Fourth Notice of Proposed Rulemaking****Comments**

Ad Hoc Rural Telecommunications Group (Ad Hoc RTG)  
Allied Associated Partners and GELD Information Services (Allied/GELD)  
Ameritech  
PTV  
Bell Atlantic Corporation and SBC Communications, Inc. (Bell Atlantic/SBC)  
BellSouth  
CellularVision  
CellularVision Technology and Telecommunications, L.P. (CVTT)  
City of Long Beach (Long Beach)  
City of San Diego (San Diego)  
City and County of Honolulu (Honolulu)  
City of Palm Springs (Palm Springs)  
City of Topeka (Topeka)  
Competition Policy Institute (CPI)  
Comstat Communications, Inc. (Comstat)  
ComTech  
Endgate  
Farmers Telephone Cooperative, Inc. (Farmers Tel)  
GE  
HP  
Hughes  
ICE-G, Inc., dba International Communications Electronics Group (ICE-G)  
Institute of Transportation Engineers (ITE)  
Japan, Government of (Japan)  
LMC  
M/A-Com  
MCI Communications Corporation (MCI)  
Mobile Source Air Pollution Review Committee (MSAPRC)  
NCTA  
National Telephone Cooperative Association (NTCA)  
Opportunities Now Enterprises (ONE)  
Pacific Telesis Group  
Pioneer Telephone Association, Inc. (Pioneer)  
Puerto Rico Telephone Company (PRTC)  
RioVision  
Roseville Telephone Company (Roseville)  
Sierra Digital Communications, Inc. (Sierra)

Skyoptics, Inc. (Skyoptics)  
Sunnyvale General Devices and Instruments, Inc. (Sunnyvale)  
TI  
USTA  
US West  
Webcel Communications, Inc. (Webcel)  
WCA

**Reply Comments**

Ad Hoc RTG  
Ameritech  
Attorneys General of Connecticut, Delaware, Florida, Idaho, Illinois, Iowa, Massachusetts,  
Minnesota, Missouri, New York, Oklahoma, Pennsylvania, Rhode Island, Virginia,  
Washington, West Virginia, and Wisconsin (Attorneys General)  
CellularVision  
Comcast Corporation (Comcast)  
CPI  
Endgate  
Federal Trade Commission (FTC)  
GE  
HP  
Hughes  
ICE-G  
Independent Alliance (Alliance)  
International Municipal Signal Association (IMSA)  
M/A-Com  
Midwest Wireless Communications, L.L.C. (Midwest)  
Motorola  
NCTA  
NYNEX  
Organization for the Protection and Advancement of  
Small Telephone Companies (OPASTCO)  
Public Service Telephone Company (Public Service Telco)  
PTV  
Sierra  
Small Business Administration (SBA)  
Sunnyvale  
TI  
Titan  
United States Department of Justice (DOJ)

USTA  
US West  
Webcel

**Petitions for Reconsideration of Waiver Application Denials**

Alliance Associates  
Birnbaum, Stevan (Birnbaum)  
BMW Associates (BMW)  
Buchwald, Joseph B. (Buchwald)  
Celltel Communications Corporation (Celltel)  
Chester, Linda (Chester)  
City of Gustine, California (Gustine)  
Clark, Thomas F. (Clark)  
Committee to Promote Competition in the Cable Industry (CPCCI)  
Connecticut Home Theater Corporation (CHT)  
Cornblatt, Arnold (Cornblatt)  
CT Communications Corporation (CTC Corp)  
Evanston Transmission Company (Evanston)  
Feinberg, Judy (Feinberg)  
Fraiberg, Lawrence (Fraiberg)  
Freedom Technologies, Inc. (FTI)  
GEC  
Goldberg, Rosalie Y. (Goldberg)  
Hall, Harry A. (Hall)  
L.D.H. International, Inc. (LDH)  
Hascoe, Lloyd (Hascoe)  
Likins, Paul R. (Likins)  
Lonergan, William (Lonergan)  
M3ITC  
Meeker, Herbert S. (Meeker)  
Melcher, James L. (Melcher)  
Myers, Frederick (Myers)  
Northeast Wireless, High Band Broadcasting Corp., FM Video Broadcasters and Western  
Sierra Bancorp (Joint Petitioners)  
Peysen, Frederick M. (Peysen)  
PMJ Securities, Inc. (PMJ)  
Robert E. La Blanc Associates, Inc. (La Blanc)  
Robertson, Jeanne P. (J. Robertson)  
Robertson, Sanford B. (S. Robertson)  
Rosenkranz, Robert (Rosenkranz)

R&R Telecommunications Partners (R&R)  
SCNY Communications, Inc. (SCNY)  
Seaview Telesystems Partners (Seaview)  
Siegel, Lewis W. (L. Siegel)  
Siegel, Michael S. (M. Siegel)  
Sloan, Kim (Sloan)  
SMC Associates (SMC)  
Snelling, Charles D. (Snelling)  
Telecom Investment Corp. (TIC)  
Telecommunications/Haddock Investors (THI)  
University of Texas-Pan Am (UTPA) and RioVision, jointly (Texas Petitioners)  
Video Communications Corporation (VCC)  
Video/Phone  
Wechsler, Diane (Wechsler)  
Wolff, Ivan (Wolff)

**Separate Statement  
of  
Commissioner James H. Quello**

*Re: Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297; Petitions for Reconsideration of the Denial of Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules; Suite 12 Group Petition for Pioneer Preference, PP-22.*

I am pleased that, with the long awaited release of this item,<sup>1</sup> the rules governing Local Multipoint Distribution Service (LMDS) are finally in place. Because I have publicly expressed my disappointment that this service has been delayed far too long by regulatory inaction, I write separately to state that I am heartened by the bottom-line cuts. The *Order* as a whole is well reasoned and well written. The decisions on particular issues are firmly grounded in the public interest.

I support this *Order* because of the potential public interest benefits offered by an additional innovative transmission medium -- local multipoint distribution -- for communications services. I believe that it is likely that LMDS providers will become a positive competitive force in the near term. The panoply of services proposed under the expansive definition that we have given 'LMDS' hold the promise of jump-starting competition to traditional voice, video, and data communications service providers.

The benefits of competition to the consumers of communications services are beyond peradventure. The FCC has pursued an overarching deregulatory policy of encouraging competition for many years. Moreover, the development of real and demonstrable competition was the touchstone principle that pervades the sweeping changes to our enabling statute that were codified in the Telecommunications Reform Act of 1996. The licensing of LMDS will at last allow innovative communications entrepreneurs to begin to fulfill the regulatory and legislative vision of vigorous competition across a broad range of services.

LMDS is a new family of services that will challenge the entrenched monopolies. For this reason, we have established only minimal rules. We have affirmatively declined to impose so-called "public interest obligations" on these fledgling services. Additionally, we have designed a competitive bidding scheme that balances the competitive opportunities for incumbent monopoly providers of similar services in-region and new entrants.

Although it has taken far too long, the result is carefully crafted. LMDS will benefit from the certainty gained by this Commission resolving the fundamental issues "up-front."

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<sup>1</sup> Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking ("Order").

**Separate Statement  
of  
Commissioner Susan Ness**

*Re: Rules and Policies for Local Distribution Service and for Fixed Satellite Services,  
CC Docket No. 92-297*

I support the Commission's decision to place a limited, short-term eligibility restriction on in-region local exchange carriers (LECs) and cable companies.

The rationale for this short-term eligibility restriction is based upon well-founded and sound economics and antitrust policy. Our record contains the informed views of the Antitrust Division of the U.S. Department of Justice, the Economic Staff of the Federal Trade Commission, the Attorneys General of seventeen states, and the National Telecommunications and Information Administration. All support eligibility restrictions, based upon their assessments of the status of competition in the local exchange and cable television markets, the potential pro-competitive impact that independent LMDS operators could have in these markets, and the adverse impact upon competition that would result from extending eligibility to incumbent LECs and cable firms. These parties speak for consumers of telecommunications services and no one else, and I am glad that the majority has heeded their opinions and advice.

The Commission will be assigning an unprecedented amount of spectrum -- 1150 megahertz -- to a single licensee. By comparison, all of the PCS licenses together totalled 120 megahertz -- one-tenth the size of the LMDS license. The record indicates that licensees need broad bandwidth to offer a comprehensive LMDS service. Therefore, only one provider will be licensed in each geographic area. Because in most service areas LECs and cable are the sole providers of their services, they should not be permitted to further increase their market power by obtaining the exclusive LMDS license as well.

There are substantial economic incentives for these monopoly providers to seek these licenses within their service areas. Therefore, this limited restriction is pro-competitive and in the public interest. LECs and cable *will* be eligible for licenses outside their service areas. We also have provided for waivers where it can be demonstrated that the local market for these services is competitive. Our eligibility rules constitute the least restrictive means available to accomplish our pro-competitive purposes.

In her dissent, my colleague devotes a great portion of her argument to discussing the potential competitors to incumbent LECs and cable firms -- among them cellular, PCS, 38 and 18 GHz services, unbundled elements of the LECs' networks, DBS, MMDS, SMATVs,

etc. However, listing these potential competitors does not alter the fact that these alternatives have not yet borne fruit, as the majority opinion notes. I agree that we are not likely to see substantial erosion of the market power of LECs and cable firms in the next three years, which is the relevant time horizon of this short-term restriction.

I hope that all of these competitive alternatives will thrive. Where incumbents no longer exercise market power in the local exchange or multichannel video markets, it would not be appropriate to restrict in-region LECs and cable firms from participating in the LMDS service (or any other service, for that matter). That is why I am pleased that our Report and Order clearly outlines the circumstances under which we would waive the restriction prior to our general review of this rule in three years. Combined with the short-term nature of the restriction, the waiver process is an appropriate means of responding where competition has developed in some markets more rapidly than in others.

Our decision today not only holds out the promise of a new source of competitive entry, but also recognizes the interests of incumbents by providing a mechanism for them to participate in this service once they no longer exercise market power. In the meantime, the short-term restriction will accelerate the day when the video and telephone markets become deconcentrated and competitive. This is the course that is most likely to bring benefits of increased choice, better service, and lower prices to American consumers.

**STATEMENT OF COMMISSIONER RACHELLE B. CHONG  
DISSENTING IN PART**

*Re: Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Establish Rules and Policies for Local Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*

I support the majority of our decision today to adopt service and competitive bidding rules for the new Local Multipoint Distribution Service ("LMDS"). I am pleased we have finally released this long overdue *Second Report and Order* launching this innovative new service. What I find most exciting about LMDS is that its licensees may provide new competition in the local exchange telephone market, the multichannel video programming distribution ("MVPD") market, or the Internet access market. I write separately, however, to dissent from the portion of the *Second Report and Order* restricting the eligibility of in-region cable companies and local exchange carriers ("LECs") from bidding on the 1,150 MHz block of LMDS spectrum in their authorized or franchised service areas.<sup>1</sup> I also write separately to clarify the portion of our decision related to public interest obligations.

In my view, an eligibility restriction is a very drastic regulatory measure. It acts as a complete ban to an industry's participation in an innovative new service within its service area.<sup>2</sup> It would be my preference to reserve eligibility restrictions for those instances where the record shows that extreme measures are clearly warranted to prevent a substantial competitive harm to a specific market.

I do not believe this is one of those instances. Here, eligibility restrictions are imposed not to *prevent* a specific and predictable harm, but in an attempt to enhance the mere possibility of competition in the local exchange and MVPD markets. When viewed in light of our decision for a flexible use allocation for LMDS, the decision to impose eligibility restrictions simply does not make sense. To the contrary, by precluding the participation of incumbent LEC and cable operators, competition in those markets may well be harmed by arbitrarily denying some of the strongest potential competitors the ability to branch out into new markets. For example, today's decision would preclude an

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<sup>1</sup> *Second Report and Order*, Section II.B.4, paras. 146-99.

<sup>2</sup> The majority has tried to defuse the adverse impact of the eligibility restrictions by limiting their effective period to three years. However, since the eligibility restrictions effectively preclude the incumbents' participation in the auction, they effectively bar in-region cable companies and LECs from offering LMDS in their service areas.

incumbent LEC from buying the LMDS spectrum to offer a new wireless video programming service that could provide much needed competition in the MVPD market. Similarly, this decision would preclude an incumbent cable operator from buying the spectrum to make a bold move into the wireless telephony market.

The Order justifies its eligibility restrictions because incumbent LECs and cable operators allegedly have an incentive to preempt local competition by buying an LMDS license.<sup>3</sup> At best, this argument is speculative. While LECs and cable operators may have an incentive to preclude competition in their markets, this argument succeeds only if one of two things are true. Either LMDS spectrum must provide a unique opportunity for enhancing competition in both of the markets, or, if the LMDS opportunity is not unique, then LECs and cable operators must have the resources and the ability to preclude all other potential competitors. In this case, neither situation is true.

As an initial matter, LMDS does not provide a unique opportunity for cable or telephone competition. On the local exchange side, there are a large number of likely alternative sources of competition besides LMDS. As one LEC commenter has noted:

Competition can be expected from a variety of sources: cable system operators reconditioning their networks to permit two-way networked communications, mobile telephone operations (*viz.*, *e.g.* cellular and PCS), various workgroup wireless offerings based on rationalization of current spectrum assignments, various new satellite-based services, 38 GHz licensees like WinStar, and 18 GHz DEMS licensees like the Associated Group (which just hired Alex Mandl to run its operations in 31 individual markets). Obviously a number of operators with substantial financial backing (MFS, Teleport, MCI Metro) are deploying conventional networks and taking advantage of profit opportunities wherever they exist under the current "crazy quilt" of regulated prices. Many new competitors (including AT&T) will be availing themselves of opportunities to compete by purchasing unbundled offerings and reselling LEC retail offerings.<sup>4</sup>

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<sup>3</sup> See *Second Report and Order*, at para. 162-63.

<sup>4</sup> Bell Atlantic Ex Parte submitted September 12, 1996, John Haring and Charles L. Jackson, *Economic Disabilities of License Eligibility and Use Restrictions*, at 9. Significantly, the Commission placed no eligibility restrictions on LECs' acquisition of this other spectrum, other than a general spectrum cap of 45 MHz that was imposed on all acquirers of commercial mobile radio services ("CMRS") spectrum. See *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services; Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Amendment of Parts 2 and 90 of the Commission's Rules To Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile*

Similarly, on the cable side, there are a number of actual competitors already. Competitors in the MVPD market include Direct Broadcast Service ("DBS") operators, MMDS operators, wireless cable, SMATVs, home satellite dishes, and over the air broadcast television.<sup>5</sup> Many of these competitors are making significant inroads to compete with the cable operators. For example, our recent Video Competition Report finds that DBS subscribership has increased substantially since 1995, and some observers project that DBS operators will offer service to "over 20% of all MVPD subscribers by the year 2000."<sup>6</sup> Electric utilities and Internet access providers also will pose competitive challenges to cable operators in the coming years.<sup>7</sup>

In the face of all of this budding competition, the argument that in-region LECs and cable companies will invest in LMDS spectrum merely to preempt competition seems quite speculative. Our record is bare of evidence indicating that incumbent LECs and cable operators will indeed use such a strategy for LMDS.<sup>8</sup> Nor does our recent experience with the PCS spectrum auctions show that incumbent LECs will make concerted efforts to buy the spectrum in their areas to preempt competition.

The majority recognizes that these other sources of potential and actual competition to LECs and cable operators remove the anticompetitive incentives for incumbents bidding on 150 MHz LMDS licenses.<sup>9</sup> Unfortunately, this reasoning was not extended to the 1150 MHz block.<sup>10</sup> The majority asserts that, "these various competitive prospects, taken together, do not mean that an incumbent LEC or cable TV firm will be unable to preserve substantial market power or delay significantly the development competition by acquiring

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*Radio Pool*, Third Report and Order, 9 FCC Rcd 7988 (1994).

<sup>5</sup> See generally *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Third Annual Report, CS Docket No. 96-133, FCC 96-496 (1997).

<sup>6</sup> *Id.* at para. 38.

<sup>7</sup> *Id.* at paras. 95-112.

<sup>8</sup> The DBS/Primestar situation is distinguishable from this case since the DBS spectrum could be used only to provide MVPD service. In contrast, LMDS spectrum can be used to provide not only services that compete with the incumbents, but also those which legitimately complement traditional telephony and cable television services.

<sup>9</sup> *Second Report & Order*, at paras. 182.

<sup>10</sup> *Id.* at paras. 162-64, 170-75.

in-region [1150 MHz] LMDS licenses."<sup>11</sup> I disagree. LMDS has great potential, but as noted above, LMDS is not the only path to a competitive cable and local telephone marketplace. Thus, I believe that substantial anticompetitive effects from open eligibility for LMDS are unlikely, because the relevant markets are in fact becoming increasingly competitive.<sup>12</sup>

The majority asserts that the primary goal of the eligibility restriction is to encourage competition in both the telephony and MVPD markets.<sup>13</sup> They seem to assume that the best use of the LMDS spectrum by any licensee would be for a combined offering of telephony *and* video services. What is ironic is that the *Second Report and Order* does *not* require licensees to use the LMDS spectrum for either telephony or video services. We have all agreed to give LMDS licensees discretion to choose how to use the spectrum.<sup>14</sup> Given this flexible allocation decision, I cannot understand how it makes sense to allow some competitors to use the spectrum for some purposes while preventing others, specifically incumbent LECs and cable operators, from making that same decision.

The majority acknowledges that the incumbent LEC's use of the LMDS spectrum to provide video services would increase competition in the MVPD market.<sup>15</sup> However, they go on to assert that this increase in competition would not assuage their concerns because they have no way of knowing whether the LEC's use of the spectrum would be the most economically efficient use of the spectrum.<sup>16</sup> What troubles me here is that the majority appears to distrust market forces to deliver the most efficient use of the spectrum, and instead, believes the government must second-guess the marketplace and impose heavy regulatory restrictions on the basis of sheer conjecture.

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<sup>11</sup> *Id.* at para. 164.

<sup>12</sup> This increased competition in local telephone and cable markets are a result of both the efforts of the Commission to inject more competition in recent years and the new procompetitive Telecommunications Act of 1996, which removed outdated legal barriers and allowed major telecommunications players to enter each other's markets.

<sup>13</sup> *Second Report and Order*, at para. 159.

<sup>14</sup> I note that I do not believe that a flexible use allocation *always* serves the public interest. Having said that, in this instance, I supported a flexible allocation for LMDS because there is already technology developed for the spectrum, and because there appears to be a well-defined market demand for at least three types of services: telephony, video and Internet access.

<sup>15</sup> *Second Report and Order*, at paras. 170, 173.

<sup>16</sup> *Id.* at paras. 171, 173.

It was exactly this type of speculation that caused the Sixth Circuit Court to reverse our decisions with regard to eligibility restrictions on PCS spectrum in *Cincinnati Bell Telephone Co. v. FCC*.<sup>17</sup> In that decision, the Sixth Circuit rejected the FCC's eligibility restrictions that prevented certain cellular providers from buying PCS licenses in their service area.<sup>18</sup> Since the eligibility restrictions had "such a profound effect on the ability of businesses to compete in the twenty-first century technology of wireless communications, it was incumbent upon the FCC to provide more than its own broadly stated fears to justify its rules."<sup>19</sup> I believe that this case is no different. In my view, our order relies on only broadly stated fears – "general economic theory" – to fix a market failure that has not occurred and is not likely to occur.<sup>20</sup>

What is overlooked is what the incumbent providers have to offer as competitors in the cable and local exchange telephone markets. The Commission has already acknowledged that cable operators could provide valuable facilities-based competition in the LEC market and vice versa.<sup>21</sup> The concept of cross fertilization between telephone companies and cable operators is exactly what drove the Commission's policies on "video dialtone"<sup>22</sup> and Congress' efforts to create "open video systems."<sup>23</sup> Both were designed to

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<sup>17</sup> 69 F.3d 752 (1995).

<sup>18</sup> 69 F.3d at 763.

<sup>19</sup> *Id.* at 764.

<sup>20</sup> *Second Report and Order*, at para. 161.

<sup>21</sup> See *In the Matter of Annual Assessment of the Status of the Market for the Delivery of Video Programming*, Third Annual Report, CS Docket No. 96-133, FCC 96-496, para. 128 (1997); *In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, CS Docket No. 96-46, FCC 96-334, para. 49-51 (1996); *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, para. 882 (1996).

<sup>22</sup> See *Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, Further Notice of Proposed Rulemaking, First Report and Order and Second Further Notice of Inquiry, 7 FCC Rcd 300, 330 (1991) (*First Report and Order*), Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 5069 (1992) (*Video Dialtone Reconsideration Order*), *aff'd*, National Cable Television Ass'n v. FCC, 33 F.3d 66 (D.C. Cir. 1994); *Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992) (*Video Dialtone Order*), *aff'd*, Memorandum Opinion and Order on Reconsideration and Third Notice of Proposed Rulemaking, 10 FCC Rcd 244 (1994), (*Video Dialtone Reconsideration Order and Third*

encourage local telephone companies to enter the video business in their service areas to provide much needed competition to the cable TV market. Moreover, one of the main goals of the 1996 Act was to abolish outdated legal and barriers to allow current market players to compete in other lines of business previously prohibited to them. Yet, our action today will deny incumbent LECs and cable operators the ability to realize important efficiencies, gain economies of scale, and provide unfettered "one stop shopping" to consumers.

By foreclosing the ability of incumbent LECs and cable operators to provide competition in the MVPD and telephony markets respectively, our decision also may run afoul of Congressional intent. At least with regard to telephone company entry into the video market, Congress has stated that there should be a number of options for that entry, including LMDS. In addressing the establishment of open video systems, Congress recognized that "telephone companies need to be able to choose from among multiple video entry options to encourage entry, and so systems under this section [are] allowed to tailor services to meet the unique competitive and consumer needs of individual markets."<sup>24</sup> In addressing effective competition to cable companies, Congress recognized that LECs might provide video programming services 'by any means' and defined this to include "any medium (other than direct-to-home satellite service) for the delivery of comparable programming, including MMDS, LMDS, an open video system, or a cable system."<sup>25</sup> Consistent with Congressional intent, I believe that we should have given incumbent LECs and cable operators the same opportunities and the same access to technology that we provide to all competitors in the MVPD and local exchange markets. Thus, I respectfully dissent to this portion of today's decision.

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*Further Notice*); *Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, Third Report and Order, CC Docket No. 87-266, 60 FR 31924 (June 19, 1995)(*Third Report and Order*); *Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, Fourth Report and Order, CC Docket No. 87-266, FCC 95-357 (August 14, 1995)(*Fourth Report and Order*); *repealed by Telecommunications Act of 1996 § 302(b)(3)*.

<sup>23</sup> See *In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, CS Docket No. 96-46, FCC 96-334 (1996); *In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996*, Second Report and Order, CS Docket No. 96-46, FCC 96-249 (1996).

<sup>24</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 177 (1996)(*"Conference Report"*).

<sup>25</sup> *Conference Report* at 170.

With regard to public interest programming obligations for eventual LMDS licensees who use the spectrum to provide video services, the majority wisely chose not to impose quantified programming obligations. First, I believe it to be premature to impose programming obligations, especially when we do not know who the LMDS licensees will be and whether they will even provide video services such that a programming obligation would be relevant.

Second, it is my view that a quantified programming obligation would improperly place the heavy hand of government on the programming decisions of the LMDS providers. While we have put the licensees on notice that the Commission could decide in the future to initiate a proceeding to consider programming obligations, such a proceeding is not imminent. Unlike other services in which Congress has made specific pronouncements requiring programming obligations, Congress has *not* directed the Commission to impose obligations on this nascent service; I see no evidence of a compelling need to do so at this time. Finally, I believe that the Commission should think long and hard before deciding to embark on such a regulatory course down a path that will have the Commission ordering all licensees who program content to air certain amounts of programming by government fiat.