

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

RECEIVED

JUL 17 1997

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Ameritech New Media, Inc. )  
Petition for Rulemaking )

RM No. 9097

**REPLY COMMENTS OF  
THE NATIONAL CABLE TELEVISION ASSOCIATION**

The National Cable Television Association ("NCTA"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding.

**DISCUSSION**

NCTA's Opposition, as well as the Oppositions of Time Warner Cable, HBO, and Rainbow Media Holdings, demonstrate why the Commission should not adopt Ameritech's proposed modifications to the program access rules. Nevertheless, certain supporters of expanded access to all cable programming seek to piggyback on to Ameritech's Petition by providing yet other suggestions for significant and unwarranted substantive changes to the reach of the program access rules.

In particular, DirecTV -- which already provides its customers with access to over 60 cable program networks and exclusive pay-per-view football programs not available to cable subscribers -- asks the FCC to examine whether to extend the program access rules to terrestrially-delivered programming, as well as to non-vertically integrated program

02/10

networks. The Commission has already considered these proposals. DirecTV presents no reason for the FCC to conduct a further inquiry.

First, contrary to DirecTV's suggestion, the Commission lacks the authority to extend the program access rules to programmers other than vertically-integrated, satellite-delivered cable program services. Rather than constituting a "fine-tuning" of the FCC's rules, as DirecTV claims,<sup>1</sup> applying program access rules to entities other than vertically-integrated, satellite delivered cable programming services would constitute a major rewrite of the program access provision. Section 628 of the 1992 Act only regulates conduct by those satellite-delivered cable programmers "in which a cable operator has an attributable interest".<sup>2</sup> It is similarly limited to "satellite cable programming or satellite broadcast programming".<sup>3</sup> The precise scope of the program access rules is hardly a mere "technical" issue, as DirecTV seems to contend, but instead a deliberate congressional determination to narrowly target its program access provisions. The reasons for this targeted approach have been exhaustively reviewed by the FCC in the Order implementing Section 628 and need not be rehashed here.

---

<sup>1</sup> DirecTV Comments at 3.

<sup>2</sup> 47 U.S.C. §§548(b) and (c).

<sup>3</sup> Id., §548(i).

Furthermore, the Commission just months ago examined these issues yet again<sup>4</sup>, as well as several of the other proposals contained in Ameritech's Petition. The Commission in its Third Annual Competition Report determined that recommendations to expand the program access rules were not justified. In particular, with respect to terrestrially-delivered services, the Commission found "no evidence" that vertically integrated programmers were switching from satellite to terrestrial delivery in order to evade the program access rules.<sup>5</sup> Furthermore, the Commission was unable to determine what effect, if any, exclusive arrangements with non-vertically integrated program networks had on competition in the local markets for delivery of multichannel video programming.<sup>6</sup> DirecTV's Comments provide no reason for the Commission to revisit these conclusions, and no cause for issuing a Notice of Proposed Rulemaking.

Finally, the public interest would not be served by the changes proposed by DirecTV. The marketplace is working to ensure the availability of a multiplicity of program services to all MVPDs. Competition to cable is growing at a rapid pace. Expanding program access rules is neither necessary nor desirable. To recommend imposition of additional intrusions into the market would not only fly in the face of Congress' tailored approach in the 1992 Act. It also would be inconsistent with the

---

<sup>4</sup> The FCC in its 1994 and 1995 Competition Reports found no evidence to warrant Commission action in these areas. First Annual Report, 9 FCC Rcd. 7442, 7530-32 (1994); Second Annual Report, 11 FCC Rcd. 2060, 2140 (1995).

<sup>5</sup> Third Annual Inquiry at ¶154.

<sup>6</sup> Id. at ¶157.

principle to let the marketplace govern industry transactions<sup>7</sup> in the absence of compelling evidence warranting government intervention. Such evidence is absent here.

**CONCLUSION**

For the foregoing reasons, and for the reasons detailed in our Opposition, the Commission should deny Ameritech's Petition.

Respectfully submitted,



Daniel L. Brenner

Diane B. Burstein

1724 Massachusetts Avenue, N.W.

Washington, D.C. 20036

202-775-3664

Counsel for the National Cable  
Television Association, Inc.

July 17, 1997

---

<sup>7</sup> 1992 Cable Act, Section 2(b).

## CERTIFICATE OF SERVICE

I, Roberta L. Williams, do hereby certify that on this 17th day of July, 1997, copies of the foregoing **“Reply Comments of the National Cable Television Association, Inc.”** were delivered by first-class, postage pre-paid mail upon the following:

Jonathan D. Blake  
Kurt A. Wimmer  
Erin M. Egan  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004  
Counsel for Corporate Media Partners

Lawrence R. Sidman  
Jessica A. Wallace  
Verner, Liipfert, Bernhard,  
McPherson & Hand, Chtd.  
901 15th Street, N.W.  
Suite 700  
Washington, D.C. 20005  
Counsel for Ameritech New Media, Inc.

Arthur H. Harding  
Seth A. Davidson  
Fleischman and Walsh, L.L.P.  
1400 Sixteenth Street, NW  
Suite 600  
Washington, DC 20554  
Counsel for Time Warner Cable

Howard J. Symons  
Michael B. Bressman  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
701 Pennsylvania Avenue, NW  
Washington, DC. 20004  
Counsel for Rainbow Media  
Holding, Inc.

Gary M. Epstein  
James H. Barker  
Latham & Watkins  
1001 Pennsylvania Avenue, NW  
Suite 1300  
Washington, D.C. 20004  
Counsel for DirecTV, Inc.

Paul J. Sinderbrand  
Robert D. Primosch  
Wilkinson, Barker, Knauer & Quinn  
1735 New York Avenue, NW  
Suite 600  
Washington, D.C. 20006  
Counsel for The Wireless Cable  
Association International, Inc.

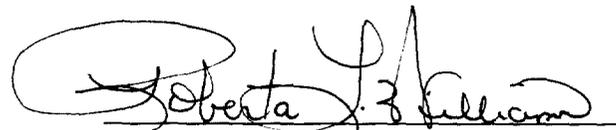
John Logan, Esq.  
Cable Services Bureau  
Federal Communications Commission  
2033 M Street, N.W.  
Room 918  
Washington, D.C. 20554

Gigi B. Sohn  
Media Access Project  
1701 L Street, NW  
Suite 400  
Washington, DC 20036

Brian Conboy  
Michael Hammer  
Michael Finn  
Willkie, Farr & Gallagher  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20036  
Counsel for Home Box Office

Meredith Jones  
Chief  
Federal Communications Commission  
Cable Services Bureau  
2033 M Street, NW  
Room 918  
Washington, DC 20554

Deborah E. Klein  
Assistant Division Chief  
Consumer Protection and Competition Div.  
Federal Communications Commission  
Cable Services Bureau  
2033 M Street, NW  
Room 700  
Washington, DC 20554



Roberta L. Williams