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

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In the Matter of	)	
	)	
Petition for Rulemaking	)	RM Docket No. 9097
to Amend 47 C.F.R.§ 76.1003 –	)	
Procedures for Adjudicating	)	
Program Access Complaints	)	

REPLY COMMENTS OF LIFETIME TELEVISION

Lifetime Television ("Lifetime") hereby replies to comments submitted in response to the above-referenced petition for rulemaking ("Petition") filed by Ameritech New Media, Inc. ("Ameritech"). Ameritech's Petition advocates revision of Commission regulations implementing the program access provision of the Communications Act.[1] Ameritech's comments propose changes only in the procedural rights of parties involved in disputes under the current program access provisions and do not advocate any change in the scope of the underlying rules themselves[2]; however, comments responding to the Petition urge the Commission to examine the broader issues of whether and the extent to which program access should be

[1] The statutory program access provision was adopted in Section 628 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")and is codified in § 548 of the Communications Act of 1934, as amended. FCC program access provisions are set forth in 47 C.F.R. § 76.1003.

[2] As an independent, non-vertically integrated programmer which is not subject to the program access provisions, Lifetime did not file initial comments in response to the proposed procedural changes.

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expanded to cover non-vertically integrated programmers.[3] It is these comments to which Lifetime addresses its Reply.

1. Background

Lifetime is an advertiser-supported independent programming network dedicated to its mission and tag line -- "Television for Women" -- by providing contemporary, innovative entertainment and informational programming that serves the unique needs and special interests of the female viewing audience, an audience segment that Lifetime believes is underserved by other programmers.[4] Reaching over 68 million households, Lifetime ranks fifth among satellite-delivered program networks in prime time household ratings and fourth in total day ratings.[5] Lifetime's long-standing commitment to maximizing its viewing audience by all available means is evident from its record of making its programming available for distribution by direct broadcast satellite, home satellite dishes, wireless cable and local exchange carrier ("LEC") video distribution systems.

Lifetime opposes efforts to expand the program access rules to cover non-vertically integrated programmers for two reasons. First, there is no need to expand the program access requirements to a broader sector of the programming market than that to which Congress originally intended the rules to apply. Second, an expanded program access rule would place

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[3] *See, e.g.,* Comments of DIRECTV, Inc. at p.4.

[4] Lifetime has been recognized by leading women's and non-profit organizations for its public affairs commitment typified by initiatives such as its breast cancer awareness campaign , in which over 1,000 cable systems across the country participated, and its primetime "Take a Minute" vignettes offering relevant information for women on topics ranging from voting to health care.

[5] A. C. Nielsen Cable Network Audience Composition Report (2nd Quarter 1997).

independent programmers at an even greater competitive disadvantage in the marketplace and would create additional impediments to the development of new program services.

2. **No Need to Expand Coverage of Program Access**

It is clear that Congress was prompted to include program access requirements among the pro-competition provisions of the 1992 Cable Act in order to restrict certain practices of cable systems and programming services with common ownership ties. Subsequently, in the Telecommunications Act of 1996 (the "1996 Act"), Congress specifically revisited the scope of program access and had a perfect opportunity to expand the requirements to cover non-vertically integrated programmers if it had felt the need to do so. But the 1996 revisions expanded the requirements only to cover common carriers.[6]

In order to further enhance the development of competition in the video marketplace, Section 628(g) of the 1992 Cable Act also required the Commission to conduct an annual review of the status of competition in the market for the delivery of video programming. As recently as last year, the Commission faced requests to expand the coverage to include non-vertically integrated programmers but found the evidence before it to be "insufficient for us to make any determination concerning the effect, if any, that exclusive arrangements involving non-vertically integrated programmers may have on competition in the local market for delivery of multichannel video programming." *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 96-133, Third Annual Report, FCC 96-496, (Jan. 2, 1997) at ¶ 157.

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[6] Telecommunications Act of 1996, Public No. 104-104 at § 302(h), 110 Stat. 56 (amending Section 628 of the Communications Act of 1934).

Nothing has changed to warrant expanding the application of program access since Congress declined to do so in 1996 or since the Commission found no justification for such action earlier this year. Rather, economic incentives remain strong for independent, advertiser-supported networks such as Lifetime (for which advertising revenues account for approximately 75% of its revenue stream) to encourage the widest possible availability of its programming, regardless of the form of distribution.

3. Impact of Expansion of Program Access on Competition

As an independent programmer, Lifetime lacks a considerable advantage enjoyed by its vertically-integrated competitors: namely, access to and favorable placement on commonly-owned cable system distribution outlets. The must-carry, retransmission consent and leased access rules have often worked to disfavor, if not displace independent satellite-delivered program services in the battle for carriage. Already at a competitive disadvantage, independent programmers such as Lifetime would be further penalized if program access rules are extended to grant non-cable distributors the very same negotiating leverage against independent programmers that they attribute to cable operators.

In addition, being subject to program access constraints would make future programming plans and ventures less feasible. Lifetime has long considered launching additional networks, and if competitive terms and channel capacity for new networks could be obtained, Lifetime would be interested in creating a second network. But the challenge of obtaining and maintaining widespread distribution is even greater for newly launched program services; subjecting these new independent networks to the program access rules would compound the competitive disadvantages already faced by successful and proven independent services.

4. Conclusion

For the reasons set forth above, the Commission should be particularly wary of launching new inquiries or investigations with respect to any extension of the program access rules. There is simply no basis for the Commission to take further action on the issue of expanding program access to non-vertically integrated programmers at this time.

Respectfully submitted,
LIFETIME TELEVISION

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