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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
)
Implementation of Sections of) RM 91467
the Cable Act of 1992)
)
To: Cable Services Bureau)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**OPPOSITION OF LIFETIME TELEVISION
TO PETITION TO UPDATE CABLE TELEVISION REGULATIONS
AND FREEZE EXISTING CABLE TELEVISION RATES**

Lifetime Television ("Lifetime") hereby submits its opposition to the above-referenced "Petition to Update Cable Television Regulations and Freeze Existing Cable Television Rates," filed by Consumers Union ("CU") and Consumer Federation of America ("CFA") (referred to collectively hereinafter as "Petitioners") on September 23, 1997 ("*Petition*"). Lifetime strongly opposes Petitioners' requests for: (i) an immediate freeze in existing cable television service rates; and (ii) denial of future per-channel incentives for cable systems adding new programming. As will be set forth in greater detail below, the rule amendments Petitioners are seeking would jeopardize the ability of Lifetime and other programmers to provide new, original and high quality television programming, contrary to the desire of cable television viewers and in conflict with policy objectives that the Commission's rules are intended to foster.¹

¹ Although these comments principally address rate-related proposals in the *Petition*, Lifetime notes allegations (*Petition* at p. 17 -18) that independent programmers are entering into exclusive deals and denying overbuilders access to their programming, which Petitioners present as grounds for expansion of the program access rules. In response to this claim, Lifetime points

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1. Background

Throughout the Commission's implementation of the 1992 Cable Act and the 1996 Telecommunications Act, Lifetime, a 24-hour basic cable television network targeted to women, has submitted comments urging the Commission to be mindful of unintended consequences that its new regulations might have on the continued vitality, diversity and creativity of the programming industry.² In its "going forward" rules, for example, the Commission observed, "We are concerned based on comments filed by operators and programmers that our current rules may not provide sufficient incentives for operators to expand capacity and provide new services to consumers,"³ in recognition of the danger that overzealous or inadequately tailored cable rate

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out that Lifetime routinely has made its programming available via direct broadcast satellite, home satellite dishes, wireless cable and local exchange carrier video distribution systems, and intends to continue to pursue all avenues of distribution. Lifetime contends that there is no basis for expanding the program access rules through this proceeding or any other pending matter. See Reply Comments of Lifetime Television in CS Docket No. 87-42, *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming* and in RM Docket No. 9097, *Petition for Rulemaking to Amend 47 C.F.R. § 76.1003 - Procedures for Adjudicating Program Access Complaints*.

² See, e.g., Comments of Lifetime Television in response to the Commission's *Seventh Notice of Proposed Rulemaking* in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation*, 10 FCC Rcd 1226 (1994) ("Going Forward Proceeding"); *Further Notice of Proposed Rulemaking* in MM Docket 92-266, CS Docket No. 96-40 (11 FCC Rcd 16933 (1996) ("*Leased Commercial Access Proceeding*"); and Reply Comments of Lifetime Television in response to the Commission's *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 95-176, *Implementation of Section 305 of the Telecommunications Act of 1996; Video Program Accessibility*, FCC 97- 279 (August 22, 1997) ("*Closed Captioning Proceeding*").

³ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 10 FCC Rcd 226, at 1234 (November 18, 1994) ("*Going Forward* (Continued...)

regulation poses to the equally important federal policy objective of promoting the availability of new and diverse programming of excellent quality from a variety of sources.⁴

By focusing entirely on the price of cable service, Petitioners ignore the ultimate consumer interest in program *value*. In Lifetime's own experience, which is not unique, originality, high quality and diversity are what consumers demand. Thus, monthly premieres of original movies produced by Lifetime are the unquestioned ratings leaders among all the programming offered on the network. It is surprising, then, that Petitioners, as consumer advocacy groups, so easily overlook the nexus between reasonable rate flexibility and the consumer benefits from the continued robustness, creativity and variety of the programming market.

2. Petitioners' Request Is at Odds With Consumer Interests.

In the intense competition for "shelf space" on cable systems, independent program networks such as Lifetime must compete with a myriad of programming networks for access to the viewing audience. Despite the obstacles that it has encountered in obtaining carriage over the years,⁵ Lifetime nonetheless has succeeded in attaining a national cable audience of over 69

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Order").

⁴ Among the purposes of the Cable Communications Subchapter of the Communications Act is to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public." 47 U.S.C. 521 (4) (1997).

⁵ See, e.g., Reply Comments of Lifetime Television in "*Leased Commercial Access Proceeding*," at 2-4; and Reply Comments of Lifetime Television in "*Closed Captioning Proceeding*" at 4.

million households and a ranking of fifth among satellite-delivered networks in prime time ratings and seventh in total day ratings.⁶ Lifetime's reputation as the leading source of contemporary and informative programming for women has allowed Lifetime to differentiate itself from other networks and successfully establish its identity as "Television for Women."

Among the entertainment programs that Lifetime offers in furtherance of its "Television for Women" mission are original movies featuring prominent female characters and themes of particular interest to women; original nightly "Intimate Portraits" ranging from Bette Midler to Mother Theresa; and popular off-network programs featuring strong female characters, including popular comedy series such as "Designing Women" and "Golden Girls." Upcoming shows will include hit comedy series "Ellen" and "Murphy Brown" as well as the award-winning dramatic series "Chicago Hope." Lifetime has also created an annual Women's Film Festival which includes a mentoring program for up-and-coming female filmmakers, as well as a two-hour Lifetime special airing some of the best films submitted at the festival.

Informational programming and female-oriented documentaries targeted to women also contribute to the focused branding of the Lifetime network. This month, for example, Lifetime once again featured its highly acclaimed annual campaign to heighten awareness of the issues surrounding breast cancer. Throughout the month, the network featured a variety of original programs dedicated to the fight against breast cancer such as "Say It, Fight It, Cure It," a critically acclaimed documentary directed by Lee Grant; "Voices of Hope," a documentary

⁶ AC Nelson Cable Network Audience Composition Report (3rd Quarter 1997).

hosted by Jaclyn Smith showcasing the true stories of women with breast and ovarian cancer; and two special episodes of Lifetime's "Intimate Portrait" series: one featuring Dr. Susan Love, one of the most controversial breast surgeons in America, and the other featuring actress Jill Eikenberry, a breast cancer survivor.

Lifetime also has gained considerable recognition for its initiatives in the field of women's sports, by providing both television coverage and/or financial sponsorship of a wide variety of women's sports, women's teams and athletic competitions. For example, in 1997 Lifetime aired weekly games of the inaugural season of the Women's National Basketball Association (WNBA). Prior to 1997, Lifetime also televised numerous vignettes covering the USA Basketball's Women's National Team, which served as the core of the 1996 United States Olympic "Dream Team." With Women's Hockey to be included for the first time in the 1998 Winter Olympics, Lifetime has joined as a sponsor of the 1997-98 USA Hockey Women's National Team and Tour. Team USA will play 21 games leading up to the Olympics, culminating in the Three Nations Cup tournament, during which Lifetime will bring viewers the first ever nationally televised women's hockey game: Team USA vs. Canada.

Without Lifetime's efforts and investment, it is likely that much of the above-described programming and sponsorship would be unavailable through other sources. Yet Lifetime's investment in providing its unique brand of programming has been substantial and has increased dramatically in recent years. From 1990 to 1997, Lifetime's programming budget increased by 302%. This trend can be expected to continue in light of Lifetime's recent announcement that 50% of the dollars the network will spend on programming in 1998 will be for original

programming, which is among the most costly items in the network's programming budget. The dramatic increase in programming costs is also abundantly evident in the area of acquired programming. Lifetime's cost of purchasing a popular one-half hour sitcom like "Ellen" in 1997 represents a 500% increase in the cost of purchasing a popular one-half hour sitcom like "Designing Women" or "Golden Girls" in 1995 or 1996, respectively. For a one-hour drama, Lifetime's cost of purchasing "Chicago Hope" in 1997 represented a 175% increase over the purchase price of a comparable drama like "The Commish" in 1995 and a 270% increase over the cost of acquiring "Unsolved Mysteries" only five years ago.

In order to remain attractive to viewers and competitive with other programming sources, a network like Lifetime must make commitments for the production and acquisition of programming well in advance. Lifetime does so in reliance on future revenues it expects to generate from multi-year affiliation agreements, which contribute approximately 25% of the network's revenues. Successful programming also is critical to Lifetime's other principal revenue source – the sale of advertising. Lifetime's ability to generate advertising revenues depends squarely upon its ability to deliver advertisers a "critical mass" of targeted viewers, which, in turn, is influenced by the quality of Lifetime's programming. If Petitioners' request were granted, operators would be unable to pass through even modest price increases to subscribers and undoubtedly would turn back to programmers to freeze affiliate fees at current levels. This would jeopardize continued financial support for programming from affiliate fees, which could force cut-backs in the amount of original production and acquisition of new and attractive product. A loss of affiliate license fee revenue also would adversely impact Lifetime's

advertising revenues. Any reduction in the quality or variety of the network's programming undoubtedly would result in a loss of viewership, which, in turn, would make the network less attractive to advertisers.

3. Rate Freezes and More Stringent Rate Regulation Will Do More Harm Than Good.

Although consumers certainly have an interest in keeping prices down, it is very clear that they also have a strong interest in the variety and quality of the product available. When the Commission's 1993 rate freeze was in effect, many programming networks suffered a significant slowdown in audience growth, as cable operators were unable to incur the costs of expanding channel capacity to add programming or, even where space was available, to incur license fees for additional services. Other networks, like Lifetime, were approached by operators who asked if they could distribute the network on a less widely-distributed tier (unregulated) in order to be able to pass through the costs to subscribers. Lifetime was unable to accommodate these requests since broad distribution is essential for ad-supported services. In both cases, cable operators halted all of their marketing efforts while they tried to focus on the regulations, and all cable networks, including Lifetime, experienced a total lack of internal subscriber growth within each system. Thus, as its experience under the previous freeze led the Commission to recognize,⁷ a reasonable amount of rate flexibility is essential to sustaining a certain level of quality and innovation in the program market.

⁷ See, e.g., Cable Services Bureau, *Report on Impact of Going Forward Rules*, March 23, 1995.

In Lifetime's case, the existence of reasonable rate flexibility has not resulted in dramatic increases in affiliate fees. Rather, the steady increase in the quality and variety of Lifetime's programming has been accompanied by only modest increases in the cost of Lifetime to cable operators. Comparing the per annum increase in Lifetime's affiliate license fees and in its programming costs on a per subscriber basis, in each of 1996 and 1997, the programming cost increase was 180% higher than the affiliate license fee increase. Comparing the per annum increase in affiliate license fees and programming costs on a per subscriber basis for the last three years, the annual increase in Lifetime's affiliate license fees has remained constant while the annual increase in its programming costs has increased by 55%.

Although it would be almost impossible to demonstrate that any increase in subscriber rates is attributable to any increases in Lifetime affiliate fees, Petitioners' recommendations -- specifically, a rate freeze and elimination of any possibility for future per channel incentives⁸-- would jeopardize an important source of financial support for Lifetime's continuing efforts to expand and improve its program offerings.

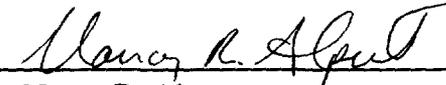
⁸ In addition to permitted pass-throughs of increased program costs, Lifetime supports the extension of reasonable per channel incentives for the addition of new programming.

4. Conclusion

One of the objectives espoused by Petitioners is to recreate the environment that existed under the 1993 rate freeze. Ironically, one of the consequences of that freeze was to chill incentives for making new programming available to cable viewers. Another freeze, or other overly-aggressive forms of rate control that Petitioners advocate, can be expected to produce similar results. In today's market, the short-sighted pursuit of rate controls at the expense of program *value* would be contrary to the long-term best interests of consumers and the program market. Lifetime is proud of its accomplishments in the field of television for women and urges the Commission to preserve a regulatory climate that allows these achievements to continue.

Respectfully submitted,

LIFETIME TELEVISION

By: 

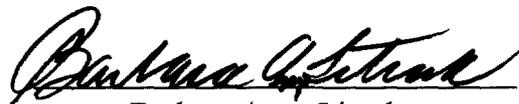
Nancy R. Alpert
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Date: October 29, 1997

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached "Opposition of Lifetime Television to Petition to Update Cable Television Regulations and Freeze Existing Cable Television Rates" has been sent this 29th day of October, 1997, by first class United States mail, postage prepaid, to the following:

Consumers Union
1666 Connecticut Avenue, N.W.
Suite 310
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A handwritten signature in black ink, appearing to read "Barbara Anne Litvak", written in a cursive style.

Barbara Anne Litvak