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October 30, 1997

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OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

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

Re: Comments of Ameritech New Media, Inc. on Petition To Update Cable Television Regulations and Freeze Existing Cable Television Rates Filed By Consumers Union and Consumer Federation of America; RM No. 9167

Dear Mr. Caton:

Enclosed for filing please find the original and nine (9) copies of the Comments of Ameritech New Media, Inc. in the above-referenced matter.

Please direct any questions that you may have to the undersigned.

Respectfully submitted,

Lawrence R. Sidman

Lawrence R. Sidman

Enclosures

10/30/97
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
Implementation of Sections of the)
the Cable Act of 1992)
Rate Regulation)
Horizontal and Vertical Ownership Limits)
Development of Competition and Diversity)
of Video Programming Distribution)
and Carriage)

RM No. 9167

**COMMENTS OF AMERITECH NEW MEDIA, INC. ON
PETITION TO UPDATE CABLE TELEVISION REGULATIONS
AND FREEZE EXISTING CABLE TELEVISION RATES FILED BY
CONSUMERS UNION AND CONSUMER FEDERATION OF AMERICA**

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October 30, 1997

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AND FREEZE EXISTING CABLE TELEVISION RATES FILED BY
CONSUMERS UNION AND CONSUMER FEDERATION OF AMERICA**

Ameritech New Media, Inc. ("Ameritech") submits these Comments on the Petition to Update Cable Television Regulations and Freeze Existing Cable Television Rates (the "Petition") filed on September 23, 1997 by Consumers Union ("CU") and Consumer Federation of America ("CFA") (together, the "Petitioners").^{1/}

I. GENUINE COMPETITION WILL PROVIDE CONSUMERS WITH INCREASED CHOICES AND LOWER PRICES FOR CABLE TELEVISION SERVICE

The *Petition* raises significant issues regarding the practices of the dominant incumbent cable multiple-system operators ("MSOs") and the role that competition should play in the multichannel video programming distribution ("MVPD") marketplace in restraining prices for

^{1/} *Petition to Update Cable Television Regulations and Freeze Existing Cable Television Rates*, MM Docket Nos. 92-264, 92-265, 92-266 (filed September 23, 1997)(the "*Petition*"). The Commission placed the *Petition* on public notice on September 30, 1997, Public Notice, Report No. 2230 (September 30, 1997).

consumers. Ameritech agrees with the Petitioners that there has been a discernable increase in concentration and vertical integration among incumbent cable MSOs, resulting in increased potential for anticompetitive behavior and ultimately, increased prices for consumers. It has been Ameritech's experience that genuine competition is the best mechanism to provide consumers with increased choices and lower prices for cable television service. Accordingly, Ameritech believes that in order to restrain rising cable rates, the Commission should take concrete measures now to promote vigorous competition to incumbent cable providers.

A. Ameritech's Experience Has Been That Competition Brings Consumers More Choices and Lower Prices

Following passage of Section 651 of the Telecommunications Act of 1996, repealing the arcane telephone company cable cross-ownership prohibition,^{2/} Ameritech has been busily engaged in building competitive cable systems in several states. Since its launch in May, 1996, Ameritech has secured fifty-six (56) franchises encompassing an aggregate population of roughly 2.3 million people residing in more than one million households, and is currently offering cable services, over state of the art cable systems, to consumers in thirty-five (35) communities in the states of Illinois, Ohio and Michigan. In these communities, incumbent MSOs are responding to the competitive presence of Ameritech by refraining from increasing or actually reducing prices, and by offering increased programming options to subscribers. In some communities where Ameritech has begun to offer service, incumbents have reduced their prices per channel by 20% or more.^{3/} One example of the increased services being offered to incumbents' subscribers as a result

^{2/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

^{3/} An illustration of the per channel price reductions resulting from Ameritech's presence in certain markets is appended as Attachment 1.

of Ameritech's entry is Berea and North Olmsted, Ohio. In these markets, Cablevision Systems, Inc. responded to Ameritech's entry by reducing its price for the basic service tier by \$2.57 per month; upgrading its cable system to 750 MHz; adding twenty new channels (nineteen of which were added to the basic tier) increasing the total number of channels to 77; offering the new expanded basic tier channels free to subscribers for the first six months; introducing a new advanced converter box with an Interactive Programming Guide; moving the Disney Channel from a la carte premium service to its expanded basic tier; and reducing prices for its a la carte tier.

These are precisely the type of pro-consumer and procompetitive results Congress desired when it repealed the cross-ownership ban. These results are in marked contrast to those in adjacent communities not yet served by Ameritech where incumbents have continued to raise cable rates and provide subscribers with few choices and poor service. They are also in stark contrast to the national trend described in the *Petition* of cable rates increasing at a rate more than three times as fast as inflation.^{4/}

Ameritech's experience as a head-to-head competitor to incumbent cable operators demonstrates why the noncompetitive *status quo* in the MVPD market is unacceptable to consumers and to many members of Congress. A series of hearings before Congress in the past six months has highlighted the need for new, effective procompetitive initiatives by the Commission.^{5/}

^{4/} *Petition* at 4.

^{5/} Hearing on Multichannel Video Competition Before the Senate Committee on Commerce, Science, and Transportation, 105th Cong., 1st Sess. (April 10, 1997); Hearing on Video Competition: The Status of Competition Among Video Delivery Systems Before the House

B. The Commission Must Act Now to Take Procompetitive Steps to Ensure Lower Prices and Other Benefits to Cable Subscribers

The Petitioners describe the increasing concentration and vertical integration in the MVPD industry and the anticompetitive effects these trends have on competitors and consumers alike.^{6/} These problems have been brought to the Commission's attention with increasing regularity and vigor by Ameritech and other MVPDs over the last several years in the context of the Commission's annual reviews of the status of competition in the MVPD marketplace.^{7/} While the Commission has acknowledged these concerns, it has not acted on them, reasoning that the evidence before it was insufficient for the Commission to take remedial steps to mitigate the adverse effect that increased concentration and vertical integration were having on competition.^{8/} Clearly, this is no longer the case. The Commission has now been presented with an abundance of evidence of the anticompetitive effects of increasing horizontal concentration and vertical integration in the cable industry. The statement of Dr. Mark N. Cooper, attached as an exhibit to

Subcommittee on Telecommunications, Trade and Consumer Protection, 105th Cong., 1st Sess. (July 29, 1997); Hearing on Antitrust and Competition Issues in the Cable and Video Markets Before the Senate Subcommittee on Antitrust, Business Rights and Competition, 105th Cong., 1st Sess. (Oct. 8, 1997); Hearing on the State of Competition in the Cable Industry Before the House Judiciary Committee, 105th Cong., 1st Sess. (Sept. 24, 1997).

^{6/} *Petition* at 10-18.

^{7/} See e.g. *Comments of: Ameritech New Media, Inc.; OpTel, Inc.; BellSouth Corporation, BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc.; Wireless Cable Association International, Inc.; DIRECTV, Inc.* in CS Docket No. 97-141 (filed July 23, 1997); see also *Comments of: Ameritech New Media, Inc.; BellSouth Corporation and BellSouth Telecommunications, Inc.; DIRECTV, Inc.; National Rural Telecommunications Cooperative; OpTel, Inc.; SBC Communications, Inc.; Wireless Cable Association International, Inc.* in CS Docket No. 96-133.

^{8/} See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 12 FCC Rcd 4358, ¶ 157 (1997) ("Third Annual Report").

the *Petition*, provides a rigorous antitrust analysis of the behavior of incumbent cable MSOs and outlines how these dominant providers exploit their high level of vertical integration to engage in anticompetitive activities such as denying access to popular programming to alternative MVPDs or overcharging competitors for such programming. Dr. Cooper's Statement also demonstrates how cable MSOs have exploited their oligopoly status to overcharge consumers for cable service.

To ameliorate the anticompetitive situation described in the *Petition* and Dr. Cooper's Statement and to ensure that consumers receive the maximum benefits available from true competition in the MVPD marketplace, the Commission should take the following procompetitive measures immediately:

(1) The Commission should issue a Notice of Proposed Rulemaking ("NPRM") in response to *Ameritech's Program Access Petition* concerning adjudication of program access complaints.^{9/} *Ameritech's Program Access Petition* suggested specific improvements to the Commission's program access rules, including providing a deadline for resolution of program access complaints, a right to discovery and for the award of fines and damages in instances where the Commission determines that an incumbent has engaged in illegal behavior.^{10/} These changes to the program access rules are modest, targeted steps which would make the program access rules more effective and help ensure that consumers receive the benefits of competition.

Ameritech's Program Access Petition has been pending for nearly six months and has received

^{9/} *Petition for Rulemaking of Ameritech New Media, Inc. to Amend 47 C.F.R. § 76.1003 -- Procedures for Adjudicating Program Access Complaints*, RM No. 9097 (May 16, 1997) ("*Ameritech Program Access Petition*").

^{10/} *Id.*

strong support from alternative MVPDs and consumer advocates. There is no reason why the issuance of an NPRM should be further delayed.

(2) The Commission should take any other appropriate steps that it is authorized to take by the Communications Act to promote competition to incumbent cable operators. For example, the Commission should consider further measures beyond the framework adopted in its recent decision on cable inside wiring^{11/} to facilitate competition by alternative MVPDs in multiple dwelling units. Similarly, the Commission may have authority to extend the program access rules to cover video programming not delivered by satellite or to extend the program access rules to include non-vertically integrated programmers, at least in some circumstances.

(3) Where the Commission concludes that it requires additional statutory authority to take steps needed to promote more vigorous competition in the MVPD marketplace, it should make specific recommendations to Congress for the grant of such expanded authority.

While Ameritech urges the Commission to act on its *Program Access Petition* immediately by releasing an NPRM, it respectfully suggests that the Commission could address the last two suggestions in its upcoming Fourth Report on the Status of Competition for the Delivery of Video Programming ("*Fourth Annual Report*"). The *Fourth Annual Report* is likely to be released in January 1998 and is an appropriate vehicle for the Commission to outline steps that it plans to take and that Congress should take to increase competition in the MVPD market. This approach would be consistent with the suggestion made by Rep. Billy Tauzin, (R-LA), Chairman of the House Subcommittee on Telecommunications, Trade and Consumer Protection at a July 29, 1997

^{11/} In the Matter of Telecommunications Services Inside Wiring, CS Docket No. 95-184, MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking (rel. October 17, 1997).

hearing on competition in the MVPD market.^{12/} In this way, the Commission would help ensure that 1998 becomes a landmark year for competition in the cable industry.

II. CONCLUSION

The CU/CFA *Petition's* thoughtful economic analysis reinforces the observations and experiences of competitive MVPDs regarding anticompetitive practices by incumbent cable operators and programmers. The Commission should take strong procompetitive action now and in the upcoming year, beginning by articulating concrete steps it plans to take or it plans to recommend to Congress to ensure that the benefits of true and fair competition are enjoyed by consumers in the MVPD marketplace.

Respectfully submitted,



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October 30, 1997

^{12/} Rep. Tauzin invited parties to describe issues which involved problems with competition which would be susceptible to legislative changes and those which could be addressed through regulatory action by the Commission

PRICE PER CHANNEL COMPARISON

	<u>Before Competition</u>		<u>During Competition</u>		<u>Currently 10/97</u>	
	<i>Number of EB Channels</i>	<i>Price per Channel</i>	<i>Number of EB Channels</i>	<i>Price per Channel</i>	<i>Number of EB Channels</i>	<i>Price per Channel</i>
<u>Cablevision</u>						
Berea, OH	42	\$ 0.44	47	\$ 0.42	63	\$ 0.35
N. Olmstead, OH	26	\$ 0.75	47	\$ 0.41	63	\$ 0.35
<u>Coaxial</u>						
Columbus, OH	47	\$ 0.63	56	\$ 0.50	56	\$ 0.47
<u>Comcast</u>						
Garden City, MI	47	\$ 0.46	65	\$ 0.35	66	\$ 0.35
Southgate, MI	49	\$ 0.45	65	\$ 0.35	65	\$ 0.35
Sterling Hts, MI	54	\$ 0.46	54	\$ 0.46	62	\$ 0.42
<u>MediaOne</u>						
Canton, Plymouth	63	\$ 0.48	63	\$ 0.34	63	\$ 0.36
<u>TCI</u>						
Troy	36	\$ 0.71	82	\$ 0.34	80	\$ 0.34
Lincoln Park	50	\$ 0.44	48	\$ 0.53	63	\$ 0.38
<u>Time Warner</u>						
Glendale Hts	46	\$ 0.41	65	\$ 0.33	67	\$ 0.37
Columbus	46	\$ 0.44	60	\$ 0.45	60	\$ 0.45

ATTACHMENT 1

CERTIFICATE OF SERVICE

I, Renee K. Kernan, a secretary with the law firm Verner, Liipfert, Bernhard, McPherson & Hand, do hereby certify that on this 30th day of October, 1997 copies of the foregoing "Comments of Ameritech New Media, Inc. on Petition To Update Cable Television Regulations and Freeze Existing Cable Television Rates Filed By Consumers Union and Consumer Federation of America" were delivered by first class mail, postage prepaid, unless otherwise indicated, to the following:

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