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Summary of Prepared Statement of

DECKER ANSTROM
President
National Cable Television Association

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Before The
FEDERAL COMMUNICATIONS COMMISSION

December 18, 1997

I. Competition in the video marketplace is growing steadily.

II. More than 10 million customers already obtain multichannel video service from cable's competitors

III. Cable's share of the multichannel video market decreased 2% last year, to 87%

IV. Cable subscribers today have real, meaningful alternatives to their local cable company in virtually every community

V. Cable's prices reflect substantial investments in new services and technology, and provide value to our customers.

VI. Cable's costs have increased sharply

VII. These investments provide strong value to our customers, both in terms of quantity and quality of cable service

VIII. Cable competitors have access to virtually all the programming that cable carries

IX. Extending the program access rules to additional services is unnecessary and unwarranted

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DECKER ANSTROM

Decker Anstrom is President and Chief Executive Officer of the National Cable Television Association. He joined NCTA in November 1987 and served as Executive Vice President until becoming President and CEO in January 1994.

Prior to coming to NCTA, Mr. Anstrom was President of Public Strategies, a Washington, D.C.-based public policy consulting firm. At Public Strategies, Mr. Anstrom directed a broad range of public policy and economic analyses and political assessments for investment banking and corporate clients. He also advised trade and membership associations on strategic planning, organization and management issues, and government relations activities.

Previously, Mr. Anstrom has served as a senior staff member at the Office of Management and Budget and as Assistant Director of the White House Office of Presidential Personnel.

Mr. Anstrom is an alumnus of Macalester College and attended the Woodrow Wilson Graduate School of Public and International Affairs at Princeton University. He is married to Sherron Hiemstra. They have one son and reside in Alexandria, Virginia.

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FEDERAL COMMUNICATIONS COMMISSION
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Prepared Statement Of

DECKER ANSTROM
President
National Cable Television Association

Before the
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December 18, 1997

Thank you for inviting me to testify before you on behalf of NCTA, which represents cable companies serving more than 80 percent of the nation's 65 million cable customers and more than 100 cable program networks. I welcome this opportunity to comment on the status of competition and consumer choice in the marketplace for multichannel video programming.

I would like to emphasize three points. First, competition in the video marketplace is growing steadily. Second, cable's prices reflect substantial investments in new services and technology, and provide strong value to our customers. And third, our competitors have access to virtually all the programming that we carry, and extension of the program access rules to additional services would be unnecessary and unwarranted.

I. THE MULTICHANNEL VIDEO MARKET IS COMPETITIVE AND IS GROWING MORE SO EACH DAY

The nation's television consumers are experiencing a steady, irreversible increase in video choices, as satellite, telephone, SMATV, and MMDS providers intensify their efforts to provide multichannel video programming services. Cable now faces significant competition in the video market, as the following numbers bear out:

Cable's share of the multichannel video business dropped from 89% to 87% between September 1996 and May 1997.

In vivid contrast, cable's most significant multichannel competitor, DBS, had a subscriber growth rate of 84.5% from May 1996 to May 1997 -- nearly 34 times as great as cable's.

- Telephone companies are aggressively pursuing cable franchises in dozens of communities, with more than a million households expected to have access to telephone-provided cable service by the end of the year.

MMDS and SMATV have gained 27% more subscribers between May 1996 and May 1997.

- Broadcast competition to cable has continued to grow in scope and intensity, with the development of new networks.

And cable operators are beginning to face competitive video offerings from public utilities, with a major initiative announced in the Washington D.C. area.

There are already more than 10 million consumers that obtain multichannel video services from one of cable's competitors. This trend will only increase as cable's competitors become more savvy in the marketing, packaging and pricing of their services, and if and when they begin to invest resources in greater product and programming differentiation.

A. Cable's Competitors Have Broad Reach

Consumers have choices among multichannel video service providers. While cable service is available to approximately 97 percent all television households (and is taken by 67.2 percent), DBS service is generally available to all single-family residences. Moreover, many residents of multiple dwelling units ("MDUs") can subscribe to SMATV service and in several areas, MMDS. As a result, cable subscribers today have real, meaningful alternatives to their local cable company in

virtually every community.

B. DBS In Particular Is Thriving

DBS is an unparalleled consumer phenomenon in terms of growth: first year sales of DBS dishes alone were "stronger than those of any other consumer electronics product in history, including VCRs, CD players and big-screen televisions."[1] DBS subscribership grew 2.66 million to 4.91 million between May 1996 and May 1997. DirecTV and United States Satellite Broadcasting ("USSB") alone added 1.05 million subscribers during this period. DirecTV subscribership has grown from zero in mid-1994 to nearly 3 million. The rate of DBS subscriber growth in 1997 is even higher than in 1995 and 1996.[2]

According to the *SkyREPORT Newsletter*, Direct-to-Home ("DTH") subscribers (all dish customers, including DBS and C-Band) grew from about 5.9 million to 7.25

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[1] "Pizza-Sized Dish is the Hottest Item on Home Telecommunications Menu," Washington Times, February 4, 1995.

[2] During the first five months of 1997, DBS subscribers increased 741,000. By comparison during the first five months of 1996, subscribership increased by 546,000 and in 1995 by 445,000. See Cable World, July 7, 1997, at 17.

million, an increase of 42 percent, from May 1996 to May 1997.[3] Since then, DTH subscribers have increased an additional 867,633 to its current total of about 8.1 million.[4]

Growing numbers of consumers are taking advantage of these options in ways that have a real impact in the marketplace. Aggregate national numbers tell only part of the story. In 26 states, DTH subscribership is now over 10% of all television homes. While this level may not yet technically satisfy the Cable Act's "effective competition" test, it has proved more than sufficient to place real competitive pressures on cable operators.

DBS providers have a distinct competitive advantage over cable operators in light of regulatory and technical factors, notably additional capacity. DBS systems operated by DirectTV and EchoStar offer customers a package of services that nearly always exceeds in number of channels the services available from incumbent cable operators.[5] Subscribers to DirectTV, and its companion service USSB, have access to

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[3] SkyREPORT, June 1997. DTH includes C-Band subscribers (roughly 2 million). It should be noted that virtually all of the growth in DTH subscribership over the past three years is attributable to DBS, given that C-Band subscribership has remained relatively flat.

[4] Satellite Broadcasting and Communications Association Press Release, "Satellite TV Reaches 8 Million Mark", Dec. 8, 1997 at 1.

[5] The DirecTV programming options include the following services: AMC, Encore, Encore-West, Encore 2-Love Stories, Encore3-Westerns, Encore 4-Mysteries, Encore 5-Action, Encore 6-True Stories, Encore 7-WAM!, Independent Film Channel, Starz!, Starz!-2, Starz!-West, Starz!2-West, Romance Classics, Turner Classic Movies, CMT, MuchMusic, TNN, ESPN, ESPN2, Empire Sports Network, Fox Sports - Arizona, Fox Sports -Midwest, Fox Sports -Northwest, Fox Sports - Pittsburgh, Fox Sports -Rocky Mountain, Fox Sports -South, Fox Sports -Southwest, Fox Sports - West, Fox Sports -West 2, HTS, MSGN, NESN, PASS, SportsChannel - Chicago, SportsChannel - Cincinnati, SportsChannel - Florida, SportsChannel -New England, SportsChannel -New York, SportsChannel - Ohio, SportsChannel -Pacific, SportsChannel -Philadelphia, Sunshine Network, Classic Sports Network, The Golf Channel, Outdoor Life, SpeedVision, A&E Television Network, Animal Planet, BET, Bravo, Cartoon Network, Discovery Channel, Disney-East, Disney-West, E!, The Family Channel, The History Channel, Home & Garden TV, HSN, TLC, Sci-Fi Channel, QVC, TBS, Trinity, TRIO, TNT, TV Food Network, USA Network, WGN, America's Health

up to 220 channels, including 34 movie channels, 30 sports channels, 27 variety channels, 16 news and information channels, 6 music channels, 68 pay-per-view channels and 31 audio channels. The average cable system has 53 channels.

Prices for high-power DBS receiving equipment have fallen dramatically since DBS was first introduced to the American public. The Commission has traced this trend in its various annual reports on the status of video competition. In its First Annual Report to Congress, released shortly after the institution of DBS service, the Commission reported that DBS dishes -- which were then used in conjunction with DirecTV and USSB, the only high-power DBS providers at the time -- cost $699. Subscribers also had to pay $150-$200 for professional installation or purchase the installation kit for $69.95.[6]

One year later, in its *1995 Video Competition Report*, the Commission observed that the DBS receiving system available from RCA was then available for $597.[7] Last

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Network, Bloomberg Information TV, Channel Earth, CNBC, CNN, CNNI/CNNfn, C-SPAN, C-SPAN2, Court TV, Fox News Channel, Headline News, MSNBC, NewSport, Newsworld International, The Weather Channel and 31 channels of digital audio programming. DirecTV also offers Playboy TV and Spice *a la carte*. DirecTV also offers numerous sports programming packages including NFL Sunday Ticket, MLB Extra Innings, NBA League Pass, NHL Center Ice, ESPN Full Court (college basketball) and ESPN GamePlan (college football).

In addition to the programming available on DirecTV, USSB carries the following programming services: HBO-East, HBO-West, HBO2-East, HBO2-West, HBO3, HBO Family, HBO Family-West, Cinemax - East, Cinemax-West, Cinemax 2, Flix, Showtime-East, Showtime-West, Showtime 2, Showtime 3, The Movie Channel-East, The Movie Channel-West, Sundance Film Channel, VH-1, MTV, M2, Comedy Central, Lifetime, Nickelodeon, Nick-at-Nite's TV Land, and All News Channel. There's simply no cable company in the U.S. today that offers this line-up of programming.

[6] 1994 Report, 9 FCC Rcd 7442, 7475 (1994).

[7] 1995 Report, 11 FCC Rcd 2060, 2085 (1995).

year, in 1996, the Commission reported that when EchoStar began service, it offered receiving equipment for $199 to customers who signed up for a year's programming. In addition, two DSS manufacturers lowered their prices for their basic models to $399 and DirecTV began a $200 rebate program for subscribers who purchased a year's worth of programming.[8]

This trend has continued. On June 1, 1997 EchoStar "unbundled" its programming from its receiving equipment so that its customers did not have to purchase a year's worth of programming in order to purchase the EchoStar dish for $199.[9] DirecTV also adopted the same pricing policy.[10] It seems likely that this trend in price reductions for DBS receiving equipment will continue.

At the same time that prices for basic DBS receiving equipment have steeply declined, a series of initiatives have been announced to make equipment with additional features available to the public. For example, at least two manufacturers have integrated an off-air antenna into a DBS receiving dish so that DBS subscribers may be able to receive local broadcast signals.[11] And several months ago Hughes Networks Systems introduced an antenna called DirectDuo that can receive both the DBS programming packages of DirecTV and USSB as well as the high-speed data services of DirecPC. Existing subscribers to either DirecTV or DirectPC can upgrade to DirectDuo for between $599 and $699, while new subscribers can purchase the new

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[8] 1996 Report, FCC 96-496 at ¶43.

[9] "A Mixed Bag for DBS," Broadcasting & Cable, June 9, 1997, at 42.

[10] Satellite News, June 16, 1997.

[11] See, "A Solution for DBS' Local Signal Blind Spot?", Cable World, July 21, 1997, at 64, and "Antenna America Licensed by DirecTV," Cable World, July 21, 1997, at 8.

antenna for $899 to $999.[12] Given the history of DBS dish prices, the prices for this TV/PC service can be expected to fall in the near future.

C. SMATV And MMDS Are Also Providing Significant Competition To Cable

Tens of millions of consumers live in apartment buildings.[13] MDU residents can obtain multichannel video services from an incumbent cable operator and often from one or more operators of SMATV or MMDS systems. These high density buildings are the subject of vigorous competition. From May 1996 to May 1997, the number of MMDS and SMATV customers increased from 1.78 million to 2.26 million, or approximately 27%.[14] Since May 1997, SMATV and MMDS services have attracted an additional 170,000 customers to reach their current total of 2.43 million.[15] SMATV and MMDS service remains an option, particularly for residents of MDUs, that many find attractive.

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[12] "New Dish," Cable World, July 21, 1997, at 18.

[13] According to the Statistical Abstracts of the United States 1995 at 733 Table No. 1224, over 28 million people resided in multiple dwelling units with three or more units in 1993.

[14] Paul Kagan Associates, Marketing New Media, May 19, 1997, at 4.

[15] Paul Kagan Associates. Marketing New Media, Nov. 17, 1997 at 4.

D. Telephone Companies Are Now Providing Cable Service

Since enactment of the 1996 Telecommunications Act, which struck down the statutory and regulatory barriers preventing local telephone companies from entering cable, telcos have moved quickly to offer competitive video services.

Ameritech is aggressively seeking cable franchises throughout its region. At last count, it has received authorizations to operate cable systems in 60 communities serving a population of more than 2,000,000.[16]

The Southern New England Telephone Company ("SNET") has begun cable service and plans to operate throughout Connecticut;[17]

GTE, through its subsidiary GTE Media Ventures, passes more than 520,000 homes in Clearwater, Florida and Ventura County, California, in competition with incumbent operators;[18]

BellSouth plans to operate video systems in many parts of its telephone service area; and [19]

Bell Atlantic operates an OVS system in Dover Township, New Jersey, and apparently plans to offer cable service in Philadelphia in the near future.[20]

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[16] Ameritech Press Release, "Riverview becomes Ameritech's 60th Cable TV Franchise", Nov. 19, 1997.

[17] "SNET Expanding Competition for Cable Subscribers," Hartford Courant, July 3, 1997.

[18] "Cable Service Puts Internet Feel on GTE Subscribers' Television," LA Daily, May 10, 1997.

[19] See, e.g., BellSouth Acquires Wireless Cable of Atlanta: Video Services to be Available to 900,000 Households: Yahoo PR Newswire, Feb. 12, 1997; BellSouth Agrees to Buy Wireless Cable TV Services in Nine Southern Markets," Atlanta Journal-Constitution, Mar. 20, 1997.

[20] See CableFAX Daily, July 21, 1997, at 1.

In addition, the Commission permits telcos to jointly market video service at the time a new resident applies for phone service.[21] Under these circumstances, the cable company is not likely to be the first call of a new resident; the telco will be.

While subscriber counts are not reported by these companies and are difficult to derive, it is nevertheless clear that telephone company video systems constitute an increasingly significant factor in any assessment of multichannel service competition. **Well over a million households either have access to a competitive multichannel choice from a telephone company or will have such a choice within the next few months.**

The presence of these choices profoundly changes the multichannel video marketplace. This stands in stark contrast to the local telephone market. When a consumer orders residential telephone service, she or he does not have alternatives today. The only choice is the incumbent telephone company.[22] Such is not the case with cable television and the multichannel video market.

E. Cable Operators Face More Aggressive Competition From Broadcasters

Where a multitude of strong off-air broadcast signals are available, the need for cable service to assure a full complement of local broadcast channels is reduced. In 1975 there were 706 commercial stations;[23] in 1997 there are 1,193 stations on the air,

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[21] Implementation of the Nonaccounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, 5 FCC Rcd 696, 782 (1996).

[22] Over 99% of residential telephone subscribers still have only one choice of provider.

[23] Warren Publishing, Television & Cable Factbook Services, Vol. 65, at I-45.

a net gain of 69 percent more stations.[24] And cable's carriage of UHF stations, along with random access tuners, have narrowed the "UHF handicap" to the point where even major networks freely affiliate with UHF stations.

In the mid-1980's, cable operators competed principally with three national commercial broadcast networks for the allegiance of television viewers. Since then, FOX affiliates have become full-fledged competitors, achieving prime-time ratings that are comparable to other network affiliates. For example, for the week ending July 12, 1997, CBS achieved a prime rating of 5.9, while FOX's rating was 5.7. The two networks garnered equal 11 shares.[25]

Cable operators are also pressed by competition from affiliates of two new broadcast networks, "The WB" and UPN, which developed due in part to the increase in licensed TV stations. In many markets, cable operators and programmers face off-air competition from six commercial broadcast networks, plus public television, rather than just the three or four present a few years ago. Affiliated with two of the leading production studios, "The WB" and UPN have ready access to original programming.

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[24] Broadcasting & Cable, July 14, 1997, at 66.

[25] Nielsen Media Research, as reported in The Washington Post, July 16, 1997, at D4.

Despite the early stage of these networks' development, they already achieve average prime-time ratings in excess of any cable network.

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Overall, the evidence is clear: the level of alternatives to cable provides significant competition to the cable industry. In response, cable is competing hard to win new customers, thanks to the value that it offers its customers. And cable has added new customers, although at a slower rate than in the past.

Some may argue that if the video marketplace were truly competitive, cable companies would irretrievably lose, not gain, customers. But that analysis assumes that cable operators have not responded effectively to more competition. It ignores the cable industry's successful efforts to improve customer service, to add capacity, and to restructure and enrich program packages. Recognizing that the cable industry cut its teeth as an aggressive competitor to the broadcast oligopoly, it should not be surprising to see cable respond effectively to a new competitive environment.

II. CABLE PRICES REFLECT SUBSTANTIAL INVESTMENTS IN NEW SERVICES AND TECHNOLOGY

There has been some suggestion that cable television rate increases have been excessive and should be frozen while the Commission decides whether to change its rate regulation rules. But proponents of a rule change fail to address, let alone answer, this central question: If, after cutting rates 17% to a "reasonable" and "competitive" level, the Commission's cable rate regulation rules strictly limit rate increases to costs plus specified amounts needed to stimulate desirable investment, and if that investment

improves the attractiveness of program offerings to consumers, how can rate increases be *un*reasonable or reflect *anti*competitive practices?

As the Commission knows, its rules specifically limit rate increases to pass-throughs of (1) inflation; (2) certain "external" costs that increase faster than inflation (including programming costs, which the Commission *expected* to increase faster than inflation); and (3) a limited additional amount that the Commission has deemed necessary and sufficient to permit investment in programming and system upgrades.

It is hard to see, and those advocating a rule change do not explain, how rate increases limited to these pass-throughs can be deemed excessive or "monopolistic." And there is no evidence that cable rate increases have exceeded what the rules permit.

Nor is there any evidence that operators are evading the rate regulation constraints through their affiliated programmers. Existing FCC rules do not permit excessive rate increases for affiliate transactions. Those rules limit pass-throughs for affiliated programming to "prevailing company prices" offered to unaffiliated distributors or "fair market value" if there are no prevailing marketplace prices. Moreover, if artificially-inflated prices for affiliated programming explained increasing rates, affiliated transaction prices would be increasing faster than non-affiliated programming prices. But the prices of unaffiliated programming appear to be increasing just as much as the prices of affiliated programming.

Perhaps most significantly, the Commission already concluded that "subscribers

have benefited by receiving more product for less money."[26] And consumers themselves have responded -- as cable's viewing shares have steadily increased, reflecting quality improvements. Indeed, even Consumers Union concedes that the rate increases -- especially those allowed by the Commission's 1994 "going forward" rules -- have been accompanied by significant enhancements to the quantity and quality of cable service. But what the advocates of a rule change fail to recognize is that price increases that produce more and better services are very different than price increases for a static, unchanged product. So they simply report that regulated cable price increases are higher than inflation (which measures the *average* price increase of *all* goods and services) -- which the Commission's rules explicitly allow and anticipate.

As the attached Report from Kagan Media Appraisals, Inc. demonstrates, programming costs -- primary inputs to cable service -- are themselves increasing at rates that exceed inflation. This is especially true for sports and movie costs, two categories that cable provides in large measure. National payments made by TV networks for the rights to deliver major league sports have increased 32% since the early 1990s, reflecting in part soaring sports team payrolls. Another major cable program source, movies, has experienced leaps in costs, too. In the last 4 years production costs of motion pictures have risen 33%. As Kagan points out, these programming costs place "acute" pressure on all the networks, broadcast and cable. And "these continuing increases eventually get passed on to the consumer in the form

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[26] Cable Services Bureau, *Report on Impact of Going Forward Rules* (March 23, 1995).

of higher direct entertainment prices for tickets and subscription services, and higher indirect costs -- advertising, marketing and promotion -- built into virtually all goods and services."[27]

Although cable prices have increased, the consumer story behind those numbers is that the number of new networks has increased dramatically, and investment in programming on existing channels has substantially increased. In part, this is a predictable response to competition -- especially as cable companies strive to match the very competitive offerings provided by DBS.[28] In addition, investment in upgraded facilities has improved the range and quality of service offerings. Consumers have responded positively to those enhancements -- as subscribership went up and viewership and ratings of cable network programming jumped, clearly reflecting the *increased value* of cable service.

In these circumstances, there is no reason why the Commission should undertake yet another review of its rules -- much less impose a rate freeze. The Commission's "going forward" rules appear to have had their intended effect of encouraging the addition of new programming without producing excessive rate increases.

As the record before the Commission makes clear, a freeze would hit hardest at the suppliers of programs and equipment who have helped to make cable an attractive video choice.

III. THERE IS NO NEED TO CHANGE THE PROGRAM ACCESS RULES

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[27] Kagan Media Appraisals, TV Programming Cost Analysis at 27.

[28] See Comments of NCTA, Competition Inquiry (attaching Report of Economists Inc.).

The program access rules have provided a fail-safe mechanism to satisfy Congress's goal that alternative providers of video programming have access to all of the most widely distributed national cable program networks. Today, cable's competitors are marketing packages of national satellite-delivered cable programming networks -- both vertically and non-vertically integrated -- as well as exclusive sports and big event programs.[29] Indeed, the top 20 most widely distributed cable networks are carried by competing MVPDs.[30] Over the past five years, the FCC has only received approximately 40 filings relating to program access issues -- and rendered only three rulings in favor of the complainant.[31] The program access rules are working as Congress intended.

Not content with guaranteed access to cable networks that are the four corners of the cable television viewing world, competing MVPDs now want government-mandated access to independent, non-vertically integrated programming when there is no evidence

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[29] *See* Comments of NCTA, Competition Inquiry (illustrating the wide availability and wide distribution of both vertically integrated and non-vertically integrated cable networks on competing MVPDs, such as DirecTV and Ameritech systems.)

[30] *See id.* at 12-13; Reply Comments of NCTA, Competition Inquiry, at 6, 10-11.

[31] Based on our information, five matters were not complaints but instead sought clarifications or rulings on exclusivity.

to suggest such marketplace intrusion is necessary. And they want government-mandated access to local terrestrially-delivered programming as well. What they demand from government is nothing less than the complete commoditizing of programming and the repudiation of product exclusivity for anyone but themselves. And they want a free ride on cable's investment and risk-taking in the development of local and regional services.

As we fully addressed in our comments for the FCC's Fourth Annual Competition Report, such action would force cable operators to hand over original programming -- produced and nurtured at the local level -- to their competitors. And it would deny cable operators the opportunity to enter into exclusive contracts, a right freely enjoyed by their competitors. Indeed, there are many sound economic reasons why independent, non-vertically integrated programmers would want to grant exclusivity. Antitrust law and Commission precedent recognize that exclusivity is a normal competitive tool that more often than not promotes rather than inhibits competition.[32]

As to so-called "loopholes" in Section 628 regarding its inapplicability to terrestrially-delivered programming, Congress expressly limited the scope of the program access rules to satellite-delivered services that were arguably vital to entry into the video marketplace. Subjecting local news, sports and other terrestrially-

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[32] *See* Reply Comments of NCTA, Competition Inquiry, at 21-29 (discussing legitimate, procompetitive reasons for exclusive distribution arrangements). Section 628 identifies several potentially pro-competitive effects of exclusive agreements and authorizes the Commission to permit them where it finds that they are "in the public interest." *See* New England Cable News, 9 FCC Rcd 3231 (1994).

delivered services to the commoditizing approach of the program access provisions would stifle operator incentives to produce such programming. Improved technology and lower costs may make terrestrial distribution of programming more efficient and cost-effective than distribution via satellite. But there is absolutely no evidence that program networks have moved to fiber optic distribution for anticompetitive reasons or for the purpose of avoiding section 628's requirements.

If MVPDs have problems obtaining programming under the Act, the Commission has authority to address them under the section 628 complaint process. And under section 616 of the Act,[33] MVPDs have recourse to address anticompetitive carriage-related behavior by cable operators, with or without an attributable interest in the program supplier, and regardless of the method of distribution. In short, if there is evidence of anticompetitive conduct regarding the distribution of cable programming, the existing rules provide the Commission with the tools it needs to address the problem.

[33] 47 U.S.C. § 536. Section 616's implementing rules grant standing to competing MVPDs to file complaints where they believe cable operators have coerced programmers into granting exclusivity.