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

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	CS Docket No. 97-248
	)	
Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage	)	RM No. 9097

COMMENTS OF
NATIONAL CABLE TELEVISION ASSOCIATION

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The National Cable Television Association ("NCTA") hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States. Its members include the owners and operators of cable television systems serving more than 80 percent of the nation's cable television households, as well as the owners and operators of more than 100 cable program networks.

INTRODUCTION AND SUMMARY

In this proceeding, the Commission seeks comment on several proposed changes to its rules implementing Section 628 -- the program access provisions -- of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992. Specifically, Ameritech has proposed that the Commission impose time limits on itself for resolving program access cases; that it provide complaining parties with a right of discovery, without regard to whether such parties have established any *prima facie* basis for their complaints; and that it allow complaining parties to recover damages against entities that have been found to have violated the program access rules. In addition, DirecTV has proposed that the rules be extended in certain circumstances to cover terrestrially-delivered services, even though the prohibitions of Section 628 clearly apply only to satellite-delivered services.

The Commission has not itself proposed or endorsed these amendments. This is not surprising, since there is no evidence that the current rules need to be changed to ensure that Section 628's prohibitions are effectively enforced. Indeed, all evidence suggests that the rules are working in precisely the manner intended by Congress.

In 1992, not a single Ku-band direct broadcast satellite ("DBS") service had yet been launched, and Congress feared that, by refusing to make vertically integrated satellite-delivered cable program services available to DBS operators and other MVPDs, cable operators could effectively "kill the competition."[1] Today, as the Commission's recently released Fourth Annual Report on competition in the video marketplace makes clear, DBS is an entrenched, rapidly growing competitor.[2] The Report identifies certain problems and disadvantages that DBS operators may face in competing with cable operators[3] -- *but access to desirable program networks is not one of them.* DBS systems currently provide virtually all of the satellite cable networks that have significant viewership among cable subscribers.[4] There is no reason to

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1 138 Cong. Rec. H6533-34 (daily ed. July 23,1992) (statement of Rep. Tauzin).

2 Fourth Annual Report, CS Docket No. 97-141 (rel. Jan. 13, 1998) at ¶¶ 55-56.

3 *Id.* at ¶ 57.

4 For example, both DirecTV/USSB and Echostar carry more than 50 basic and enhanced basic networks, including all the 20 most widely distributed cable networks. *See, e.g.*, Testimony of Decker Anstrom before the Federal Communications Commission, Dec. 18, 1997.

believe that their inability to obtain certain individual non-vertically integrated or terrestrially delivered networks would in any way imperil their viability.

Nor is there any reason to believe that the provision of cable service by local exchange carriers is being thwarted by an inability to obtain affiliation agreements with cable program networks. As the Fourth Annual Report points out, "LEC entry into video distribution... has been highly dependent on the business strategies of the individual companies involved."[5] But there is no indication that LEC entry has in any way been hampered by an inability to obtain satellite cable programming services. Those LECs that have chosen to pursue vigorous entry into the video marketplace, such as Ameritech, have access to such programming and are growing steadily. And they, like DBS services, have had access to virtually all satellite cable programming networks.[6]

All this has been accomplished without the need for a large number of program access complaints. Where such complaints have been filed, the Commission has processed them in a wholly reasonable time period. Imposing time limits on the resolution of complaints by the Commission would only increase the risk of an erroneous decision in those complex cases that may take somewhat longer than the average to decide. And shortening the time limits for the filing of answers to complaints would unfairly limit the ability of parties other than the complainant to prepare a fully documented and well argued response.

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5 Fourth Annual Report at ¶ 108.

6 Ameritech, for example, carries over 80 channels, with a broad array of cable programming that includes all 20 of the most widely distributed networks. *See* Testimony of Decker Anstrom, *supra.*

Multichannel video programming distributors ("MVPDs") do not need a right to engage in full-fledged discovery (*i.e.*, fishing expeditions) in order to uncover and prove violations of the rules. Where necessary, the Commission will itself compel discovery of any relevant information that is unavailable to the complainant.

Since the Commission has found hardly any violations of the program access rules, it would appear that existing remedies, including forfeitures, are wholly sufficient to deter such violations -- and that there is no need for damages. In fact, imposing damages would only be counterproductive, insofar as it would entangle the Commission in complex and time-consuming efforts to measure the extent to which a complainant has been injured. The rules are meant to promote competition by providing an expeditious proceeding for ensuring that MVPDs have fair and nondiscriminatory access to satellite-delivered programming, and damages are unnecessary to achieve this objective.

Finally, the language of Section 628 makes clear that the explicit restrictions on exclusivity and discrimination apply only to satellite-delivered programming services. While other unfair conduct by satellite cable programming vendors may also run afoul of Section 628 if it can be shown to have caused significant anticompetitive injury, it is hard to imagine circumstances in which switching from satellite to terrestrial delivery would fall within the scope of this prohibition.

In sum, the Commission is seeking comments on proposed solutions to a non-existent problem. There are good reasons why the Commission has rejected those proposals in the past. They will impose significant costs, burdens and disruptions without producing significant benefits -- and they should be rejected again.

I. THE COMMISSION SHOULD NOT PLACE TIME LIMITS ON ITS OWN RESOLUTION OF PROGRAM ACCESS COMPLAINTS.

It would be unprecedented for the Commission to adopt a rule imposing time limits on its own resolution of pending adjudicatory matters, and there is good reason why the Commission has never done so. First, to establish time limits is, in effect, to establish priorities. If certain matters are subject to time limits while others are not, or if the time limits for some matters are shorter than those for others, the Commission will be constrained to deal with the former before the latter.

This preferential treatment is, of course, what Ameritech *wants* with respect to its program access complaints -- but it is what *every* complainant, applicant and petitioner wants with respect to a pending matter at the Commission. The Commission is continually faced with the task of assigning priorities to the matters that it must address and resolve.

Sometimes, Congress itself establishes the level of priority for particular matters by imposing specific statutory time limits for resolving petitions or complaints.[7] But it has not done so here, mandating only that the Commission's rules provide for review of complaints on an "expedited" basis. The existing rules comply with this requirement by establishing very short *pleading* periods for the filing of answers to complaints and replies to such answers. They do not, however, force the Commission to put other matters, no matter how pressing, on the back burner in order to resolve a program access complaint within an arbitrary time limit.

Wholly apart from constraining the Commission's discretion to establish priorities in dealing with its caseload, time limits could prevent the Commission from giving adequate

[7] *See, e.g.*, 47 U.S.C. § 614(h)(1)(C)(iv) (requiring resolution of must carry market modification request within 120 days); *id.*, §208 (resolution of common carrier investigation within 5 months of complaint).

consideration to the facts and issues in particular cases. As the Commission points out, it faces "myriad circumstances" in resolving program access complaints, and the time that is required to analyze and resolve complaints varies widely depending on such circumstances.[8] The *average* processing time for cases other than those involving negotiated settlements and those in which program access was raised only as a tangential issue is 7 months. And for those involving outright refusals to deal or exclusivity agreements, the *average* processing time is only 6.5 months.[9] These are not long periods of time -- barely longer than the limits that Ameritech wants the Commission to impose on itself -- but they are only averages. Some cases may take considerably longer; others may take much less time.

Unless there were reason to believe that, in those cases that take longer than the average amount of time to resolve, the Commission were simply dawdling, it would be counterproductive to impose the limits sought by Ameritech. To the extent that such limits deprived the Commission of adequate time to consider the matters at issue, they would increase the likelihood of an erroneous decision. There is, of course, absolutely no reason to believe that the Commission is taking any more time than necessary to resolve program access complaints while simultaneously dealing with the multitude of other equally important tasks assigned to it by Congress. And, especially given that the average time for resolving complaints is not much longer than what Ameritech requests, there is no reason to impose limits that would increase the risk of an erroneous decision in those cases that are the most difficult and take somewhat longer than the average time to resolve.

8 Notice of Proposed Rulemaking at ¶ 39.

9 Letter to Hon. W. J. Tauzin from Chairman Kennard, Jan. 23, 1998, p. 9.

In any event, the Commission should in no circumstances shorten the already truncated *pleading* periods, as Ameritech proposes. In particular, the Commission should reject Ameritech's proposal to shorten the period for answering complaints from 30 days to 20 days. The Commission's tentative conclusion is right: The benefit of expediting the pleadings process by a few days is clearly "outweighed by the need to provide sufficient time for parties to best marshal their arguments and evidence."[10] Moreover, the current rule already gives complainants an inherent advantage in marshaling arguments and evidence. Complainants may take as long as necessary to prepare their complaints (subject only to the one-year statute of limitations), while respondents have only 30 days to prepare an answer. Any further shortening of the time for answering complaints would undermine the Commission's ability to resolve program access cases fairly and correctly on the basis of fully-argued pleadings and a complete record.

II. THE EXISTING DISCOVERY RULES SHOULD NOT BE EXPANDED.

At the same time as it urges the Commission to streamline and shorten the process for resolving program access complaints, Ameritech asks the Commission to allow automatic discovery that would only serve to encumber and lengthen that process. The Commission rejected previous petitions for reconsideration seeking similar changes, and it was not persuaded by Ameritech's petition for rulemaking or by the comments on that petition that "the current system of Commission-controlled discovery is inadequate, or that discovery as of right would improve the quality or efficiency of the Commission's resolution of program access complaints."[11] Moreover, the Commission has recognized that allowing discovery as of right, as

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10 *Id.*, ¶ 40.

11 *Id.*, ¶ 44.

Ameritech proposes, appears to be "inconsistent with the 1992 Act's, and Ameritech's, goal of expeditious disposition of program access matters."[12]

The Commission has sought another round of comments on the issue -- but its tentative conclusions are right. Ameritech, as the Commission notes, contends that "the increased complexity and difficulty of *proving* price discrimination cases requires that discovery as of right be available to complainants."[13] But the current rules provide for discovery to assist in proving a price discrimination case. What they do not allow is automatic discovery to determine whether even the *prima facie* elements of a program access violation exist. They do not, in other words, allow every MVPD to pry into the documents and affiliation agreements of every satellite cable programmer with which they deal or have sought to deal in order to determine whether any such programmer might be discriminating against them at all, much less discriminating in a manner that violates the rules. And, given the absence of *any* evidence that MVPDs are being significantly but undetectably discriminated against by vertically integrated satellite cable programmers, that is as it should be.

Discovery as of right would encourage MVPDs to embark -- or threaten to embark -- on fishing expeditions for the triple purposes of (1) obtaining confidential information regarding the terms and conditions of their competitors' affiliation agreements; (2) harassing programmers into providing more favorable terms and conditions than would otherwise be required under the program access rules; and (3) determining whether any of their affiliation agreements might conceivably be deemed discriminatory under the rules. The first two purposes do not serve, and

12 *Id.*

13 *Id.*, ¶ 20 (emphasis added).

are directly at odds with, the objective of those rules, which is to promote fair marketplace competition. With respect to the third purpose, discovery is unnecessary. The existing rules provide mechanisms for enabling MVPDs to obtain the information necessary to determine whether a *prima facie* showing of discrimination can be made against a particular programmer without requiring automatic, full-scale discovery.

To establish a *prima facie* case in a complaint, an MVPD need only "establish that the vendor has provided or offered different terms and conditions, or different prices, to the complainant and its competitor."[14] It need not, at the outset, establish that the differential is unjustified. Generally, MVPDs are required to provide "a 'rate card,' some other generally available information, or the current contract between the defendant vendor and the complainant's competitor to demonstrate a differential."[15] But if no such materials are available to the MVPD, and the programmer refuses to provide rate information pertaining to the MVPD's competitor,

> then the MVPD can file a complaint based on information and belief of an impermissible rate differential, supported by an affidavit, along with a statement that the vendor refused to provide the necessary specific comparative information. *The staff will then accept the complainant's rate allegations as true for purposes of its prima facie determination.*[16]

Once a *prima facie* case has been established, the Commission will, under its rules, compel any discovery that remains necessary to determine whether there is an impermissible differential or any other alleged violation. This procedure provides access to all information

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14 *First Report and Order*, MM Docket No. 92-265, 8 FCC Rcd 3359, 3417 (1993).

15 *Id.*

16 *Id.* (emphasis added).

necessary to vindicate a MVPD's rights under the program access rules. There is no evidence that the Commission is failing to compel necessary information under the existing approach. That approach already subjects programmers to burdensome and intrusive discovery even where there is a complete justification for any price differential. It is hard to discern *any* legitimate reasons for replacing it with full-scale discovery as of right, which would only increase the likelihood of overbroad discovery, inappropriate fishing expeditions, and breaches of confidentiality.

III. THERE IS NO BASIS FOR AUTHORIZING DAMAGES IN PROGRAM ACCESS CASES.

The Commission has repeatedly determined that whether or not it has statutory authority to impose damages as a remedy in program access cases, it would be inappropriate to do so.[17] At the urging of Ameritech, however, the Commission is again seeking comment on "whether forfeitures alone are an adequate deterrent" or "whether an additional check on anticompetitive conduct such as the imposition of damages for violations of Section 628 ... may now be appropriate and in the public interest."[18] Assessing and imposing damages would substantially complicate and lengthen program access proceedings. And it would do so with no accompanying benefits, since there is no evidence that programmers are flouting the rules.

[17] Memorandum Opinion and Order, 10 FCC Rcd 1902, 1911 (1994); Third Annual Competition Report, ¶ 160 (rel. Jan. 2, 1997). Although the Commission has previously determined that it would have authority to impose damages if it determined that such a remedy was appropriate, NCTA continues to believe that damages are beyond the scope of the Commission's remedial power under Section 628(e).

[18] Notice of Proposed Rulemaking, ¶ 45.

In the five years since the rules took effect, the Commission has faced not a flood but only a trickle of complaints.[19] Most of those have been dismissed or denied by the Commission, and in no case has the Commission found that a forfeiture was appropriate.[20] Therefore, it is hard to see how changing the penalties or remedies for violating the rules would have any significant incremental deterrent effect. There simply is no surfeit of violations to deter.

Moreover, even if there were any evidence in the record supporting the need for increased use of penalties to deter violations -- which there is not -- it would be counterproductive to use damages in lieu of, or in addition to, forfeitures as such a deterrent. Attempting to measure the extent to which particular discriminatory rates, terms or conditions have inflicted monetary losses on MVPDs would be an extremely complex and difficult task. On the rare occasion that the Commission has found a violation of its rules, it has ordered a satellite cable programmer to revise rates, terms and conditions that it has found to be discriminatory, and has not attempted to prescribe specific nondiscriminatory rates, terms and conditions.[21] Instead, it allows the programmer to renegotiate new, nondiscriminatory terms with the MVPD. But if the Commission were to attempt to calculate and impose damages when it issued its decision, it would itself have to prescribe the nondiscriminatory rates, terms and conditions to be included in the reformed affiliation agreement and compare those rates, terms and conditions, in monetary terms, to the terms of the previous agreement.

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19 *See* Letter from Chairman Kennard to Rep. Tauzin, *supra*, Attachment A (describing 31 program access decisions and six pending cases since the rules were adopted in 1993).

20 *Id.*

21 *See, e.g., Bell Atlantic Video Services Co. v. Rainbow Programming Holdings, Inc. and Cablevision Systems Corporation*, 12 FCC Rcd 9892 (1997).

Damages are not only unnecessary to deter alleged violations of the rules. Imposing this remedy would also conflict with Congress' interest in expedition and its desire to avoid imposing "undue costs" on either party.[22] Introducing this additional level of cost and complexity into program access proceedings appears to be the opposite of what Congress had in mind.

The Commission, moreover, has interpreted the statute to prohibit certain activities enumerated under Section 628(c) without any need for a complainant to prevail on its complaint to show *any* actual injury resulting from a programmer's behavior. Even if a complainant succeeds in demonstrating a program access violation, there would be no cause to assume that it has suffered damage as the result. Awarding damages under these circumstances would be thoroughly inconsistent with the Commission's approach.

The Commission virtually never attempts to assess and award damages as a means of deterring or remedying violations of *any* of its rules in the cable area, especially where payments to complainants are not necessary to promote the rules' objectives.[23] With respect to program access, there is no evidence that the absence of damages has in any way prevented the Commission from fully implementing the objectives of Section 628. The point of that provision is to promote competition among MVPDs. There is no indication that the Commission's remedy of ordering satellite cable programmers prospectively to reform their contracts and to deal in a nondiscriminatory manner has, in any of the cases decided by the Commission, been inadequate to enable the complaining MVPDs to compete on fair terms in the video marketplace.

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22 The Senate Report, at 28, explains that its goal was to "have programming disputes resolved quickly and without imposing undue costs on the involved parties."

23 For example, the Commission does not award damages for violations of its signal carriage rules, such as the must carry, network non-duplication, syndex and sports blackout rules.

IV. THE COMMISSION'S AUTHORITY EXTENDS ONLY TO SATELLITE CABLE PROGRAMMING VENDORS.

As the Commission correctly notes, Section 628 "generally applies to the delivery of 'satellite cable programming and satellite broadcast programming.'"[24] But the Commission has asked for comment on DirecTV's argument that "the program access rules should be extended to cover terrestrially-delivered programming that *technically* may not fall within the statutory definitions of 'satellite cable programming' or 'satellite broadcast programming.'"[25] Specifically, while Section 628 "[o]n its face . . . does not preclude a programmer from altering its distribution method from satellite-distribution to terrestrial-distribution," DirectTV contends that such a switch, particularly if intended to evade having to deal with competing MVPDs, would "contravene[] the *spirit, if not the letter* of the law."[26]

The letter of this particular law, however, has no "spiritual" penumbra. Congress specifically considered whether to extend the program access requirements to terrestrially-delivered services and decided not to do so. Indeed, the prohibitions against discrimination and unreasonable refusals to deal in the program access provisions adopted by the Senate *did* extend to all vertically integrated national and regional programmers, regardless of how they were distributed.[27] But the House provisions applied only to satellite-delivered

24 Notice of Proposed Rulemaking, ¶ 50.

25 *Id.*, ¶ 13 (emphasis added).

26 *Id.*, ¶ 51.

27 *See* Report of Senate Committee on Commerce, Science and Transportation, S. Rep. No. 102-92, 102d Cong., 2d Sess. 121 (1991).

services, and the conference agreement, which was ultimately enacted, adopted the House provisions.[28]

Congress obviously had a reason for carefully limiting the scope of Section 628; it must have discerned a downside to applying the program access requirements more broadly than necessary to advance its objective of promoting competitors to incumbent cable operators. One downside is that while the program access requirements may promote particular *competitors*, they are also likely to interfere with wholly legitimate and efficient means of competing in the marketplace.

The program access rules constitute an unusual intrusion by the government into the rates, terms and conditions of affiliation agreements between programming vendors and their distributors. The federal antitrust laws do, of course, prohibit vertical restraints and agreements that are found to be anticompetitive, and those laws apply to programming contracts. But courts, economists and antitrust enforcement agencies generally agree that most vertical restraints and agreements are *not* anticompetitive and, in fact, *promote* competition among suppliers and/or among distributors.[29]

Congress, by limiting applicability of the rules to vertically integrated, satellite-delivered services, struck a balance. It determined that providing MVPDs with nondiscriminatory access to satellite-delivered services would give such MVPDs a sufficient critical mass of programming to compete in the video marketplace. And, conversely, so long as MVPDs had access to the wide

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28 Conference Report, H.R. Rep. No. 102-862, 102d Cong., 2d Sess. 91-93 (1992).

29 *See, e.g., Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717 (1988); *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977); D. Ginsburg, "Vertical Restraints: De Facto Legality Under the Rule of Reason," 60 *Antitrust L. J.* 67.

array of vertically integrated, satellite-delivered services (as well as most non-vertically integrated services, which had no anticompetitive incentive to refuse to deal with non-cable MVPDs), it would be unnecessary and inappropriate to interfere with distribution agreements regarding particular services that are not (or are no longer) satellite-delivered.

Thus, the provisions of Section 628(*c*) that specifically restrict vertically integrated satellite-delivered services from entering into exclusive contracts or discriminating with respect to price, terms and conditions simply do not apply -- and cannot be extended -- to terrestrially-delivered services.

The Commission asks, however, whether a satellite-delivered service, if it switches from satellite to terrestrial delivery "for the purpose of evading the program access requirements," might be deemed to have violated Section 628(*b*)'s general prohibition on "unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming . . . to subscribers or consumers."

Like the specific prohibitions of Section 628(c), the general prohibition in Section 628(b) applies only to satellite cable programming vendors and not to terrestrially-provided services. Section 628(b) provides no basis for generally applying the program access restrictions to satellite-delivered services that switch to terrestrial delivery.

First, Section 628(b) prohibits only "unfair" acts and practices by satellite cable programming vendors. Where a programmer has legitimate business reasons for switching to terrestrial delivery, there is no basis for treating the switch as an unfair method of competition or an unfair practice.[30] That there are legitimate reasons for choosing terrestrial delivery is obvious from the fact that many program services were using such delivery before the program access provisions were enacted, when they had no "evasive" reasons for doing so.[31] Moreover, as the Commission points out, "improved technology and lower costs are improving the efficiency of terrestrial distribution of programming, particularly over fiber facilities."[32] Thus, even if Section 628(b) conferred jurisdiction over vertically integrated satellite-delivered services that switched to terrestrial distribution "for the purpose of evading the program access requirements," a complainant would have to demonstrate, as a threshold matter, that the switch was, indeed, made for such an evasive (*i.e.*, "unfair") purpose, and not for a legitimate, economically justified (*i.e.*, "fair") business purpose.

Second, Section 628(b) prohibits only those practices "the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming ... to subscribers or consumers." The Commission decided not to "impose a threshold burden of demonstrating some form of anticompetitive harm on a complainant alleging a violation of Section 628(c),"[33] because, in its view, Congress made a determination that conduct squarely within the prohibitions of Section 628(c) was inherently anticompetitive and harmful. But "for those complainants alleging a violation of a general

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30 It is also essential to clarify what is meant by a "switch" by a satellite cable network. If a motion picture company or a sports team changes its affiliation from a satellite-delivered service to a new and different terrestrially-delivered service, the mere fact that this programming moved from a satellite service to a terrestrial service does not mean that the satellite cable network itself has switched.

31 *See, e.g., New England Cable News*, 9 FCC Rcd 3231 (1994).

32 Notice of Proposed Rulemaking, ¶ 50 (*quoting* Third Annual Competition Report, *supra*, ¶ 154).

33 First Report and Order, 8 FCC Rcd at 3377.

'unfair practice' prohibited by Section 628(b), consistent with the express statutory language we will require the complainant to demonstrate that the purpose or effect of the conduct complained of was to 'hinder significantly or to prevent' an MVPD from providing programming to subscribers or customers."[34]

As the Commission has made clear, complainants must show significant *anticompetitive* harm -- not simply that they are prevented from providing a *particular* program service.[35] Given the vast array of program services that is now widely available to MVPDs, it would rarely if ever be the case that the switch of a single program service from satellite to terrestrial delivery would significantly impair the ability of MVPDs to compete effectively in the video marketplace -- particularly since such MVPDs increasingly have their own *exclusive* access to a growing variety of sports and entertainment programming that is unavailable to incumbent cable operators.[36] In any event, the burden, under the Act and the rules, would be on a complainant to show that a switch from satellite to terrestrial distribution imposed significant anticompetitive harm, even if such a switch were subject to Section 628(b), and even if the switch had no fair and legitimate business purpose.

CONCLUSION

Five years after adoption of the program access rules, cable's competitors generally have access to virtually all of the most popular satellite-delivered cable programming services. Access

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34 *Id.*

35 *See, e.g.*, 8 FCC Rcd at 3374 n.26 ("We note that our analysis of the hindrance in the context of an alleged unfair practice will focus on whether the purpose or effect of the practice was to hinder or harm the complainant relative to its competitors.").

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to programming is not a significant competitive problem -- and, therefore, the "solutions" proposed by Ameritech and DirecTV are unnecessary to achieve the purposes of Section 628. Those proposals would impose costs and burdens on the Commission and on parties to program access proceedings. And they would undermine the Commission's ability to resolve program access complaints in a fair and expeditious manner.

For the foregoing reasons, the proposals should be rejected.

Respectfully submitted,

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