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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

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

REPLY COMMENTS OF CONSUMERS UNION  
CONSUMER FEDERATION OF AMERICA  
AND MEDIA ACCESS PROJECT

Consumers Union, Consumer Federation of America and Media Access Project (CU, *et al.*) respectfully submit this reply to comments filed here by cable industry interests.

This reply addresses two issues:

- Can, and should, the FCC extend its program access rules to cover terrestrially-delivered programming?
- Can, and should, the FCC impose damages for program access violations?

CU, *et al.* would answer both of those questions in the affirmative.

INTRODUCTION AND SUMMARY

The cable industry commenters fail to address two critical facts that make strong Commission action in this docket critical:

- Competition in the MVPD market has not materialized as quickly as hoped. *1997 Competition Report*, FCC No. 97-243 (released January 13, 1998) at ¶¶7-8.
- In derogation of the competitive goals of the 1996 Telecommunications Act, cable operators have been able to exercise monopoly market power to extract rate increases far in excess of inflation. See Paul Farhi, "Paying the Price for Cable TV," *Washington Post*, February 21, 1998; *1997 Competition Report* at ¶¶7,11.

Absent any effective rebuttal to these facts, the cable industry has yet again resorted to the familiar refrain as of industries seeking to avoid regulation intended to promote competition

and diversity: the Commission lacks legal power to adopt such regulations in the absence of an express Congressional mandate. This mantra is at odds with the Communications Act and court precedent. The cable industry has pursued similar claims on prior occasions, but the FCC and courts have repeatedly ruled that the Commission has broad authority, in the absence of an express prohibition, to adopt rules and regulations "as may be necessary to carry out the provisions of this Act...." 4(i); 303(r). *See, e.g., U.S. v. Southwestern Cable Co.*, 351 US 192, 203-204 (1956); *Mobile Communications Corp. of America v. FCC*, 77 F.3d 1399, 1404-05 (DC Cir. 1996). There is no industry which has unsuccessfully challenged the FCC on this core question more times than the cable industry.

The Commission can, and should, exercise its authority here to promote the public's First Amendment right to have access to a diversity of viewpoints by ensuring competition in the MVPD market. In addition to providing for expedited resolution of program access complaints, the Commission should extend its program access rules to cover terrestrially-delivered programming and impose damages for program access violations.

Nothing in the comments filed by the cable industry in this docket should persuade the Commission otherwise. The industry's argument that Congress expressly considered, and rejected, applying the program access provisions of the 1992 Cable Act to terrestrially-delivered programming finds no support in the legislative history of the Act. Indeed, if that history demonstrates anything, it is that Congress wanted the program access law to cover anticompetitive conduct concerning *all* programming, and that the use of the term "satellite-delivered" reflected only the fact that in 1992, nearly all national and regional programming was distributed *via* satellite.

Even if the Commission did not find that the plain language of Section 628 gives it express authority to extend the program access rules to terrestrially delivered programming, the above-described ancillary authority clearly enables it to determine that it is "necessary" to do so under those general powers. As regional "clustering" of cable systems and changing technology makes terrestrial delivery more desirable, the emergence of increasingly viable MVPD competitors creates strong incentives to vertically integrated cable operators to avoid sharing their programming with others.

The Commission should disregard cable's complaints that expanding program access will discourage programmers from investing in regional and local programming because distributors will expend sufficient promotion resources for such programming only if they have exclusive rights to it. Because vertically integrated cable operators are both the programmers *and* the distributors, there is no risk that they will not provide premium channel space for, and aggressively market, regional and local programming.

The Commission also has express authority under Section 628(e) to impose damages for program access violations. Section 628(e)(1) permits the Commission to adopt "appropriate remedies" for program access violations, of which damages are one. This provision works in conjunction with Section 628(e)(2), which clarifies that the Commission can adopt remedies that are not authorized elsewhere in the Communications Act. Nor does the plain language limit these remedies purely to forward-looking, injunctive relief.

Contrary to what cable commenters claim, forfeitures are less effective deterrents than damages, even if the Commission were to use increase its fines to the maximum statutory limits. The Commission should also approach with extreme skepticism the industry's assertion that the

relatively small number of program access complaints filed to date conclusively proves that damages are not necessary. The dearth of complaints has reflected only a dearth of competitors. As viable competitors emerge, as they have over the past year or two, program access violations will only increase in the absence of adequate safeguards.

**I. THE COMMISSION HAS THE AUTHORITY TO, AND SHOULD, EXTEND THE PROGRAM ACCESS RULES TO TERRESTRIALLY-DELIVERED PROGRAMMING.**

A number of the cable industry commenters assert that the Commission cannot extend the program access requirements to terrestrially-delivered programming. *E.g.*, Comcast Comments at 8-10; Cablevision Comments at 13-17; NCTA Comments at 13-17. They claim that Congress specifically declined to extend the program access law to terrestrial delivery. *Id.* They also charge that the Commission does not otherwise have authority to so extend the rules. *Id.* Neither contention can be sustained.

**A. Extending the Program Access Rules to Terrestrial Delivery is Consistent with Congress' Intent in Adopting Section 628.**

Several of the cable commenters argue that the Commission is barred from extending its program access rules to terrestrially-delivered programming because Congress specifically considered the issue and declined to do so. *E.g.*, NCTA Comments at 13-17; Comcast Comments at 8-10; Cablevision Comments at 13-17. The basis for this claim rests almost entirely on the fact that the House version of the program access law, which specified satellite-delivery, was the basis of the final version of the law developed in conference. Since the Senate provision did not so specify, they argue that Congress "clearly contemplated, but rejected, applying the program access provisions to non-satellite-delivered programming...." NCTA Comments at 13. *See* Cablevision Comments at 15-16.

This argument treats the Senate's silence as if it were intent. Nothing in the Committee Reports or floor debates indicate that Congress specifically considered, much less rejected, inclusion of terrestrially-delivered programming in the program access provision. The more plausible explanation is that the term "satellite-delivered" simply reflected the fact that at the time, for economic and other reasons, national and regional programming was almost universally delivered *via* satellite. As the Commission recognized in its two annual Competition Reports, terrestrial program delivery has only recently become economically viable. *1997 Competition Report* at ¶231, quoting *1996 Competition Report*, 12 FCC Rcd 4358, 4435 (1997).

If the legislative history demonstrates anything, it is that the overriding objective driving enactment of Section 628 was the Congressional desire to promote diversity, competition and lower prices in the MVPD market. The statute was directed at prohibiting *all* abuse of programming ownership by vertically integrated cable companies. The House provision adopted in favor of the Senate's, was much stronger and far-reaching; its prohibition on unfair conduct was substantially broader than the Senate's version, and, unlike the Senate's it barred certain exclusive contracts between a cable operator and a programming vendor. H.R. Rep. 102-862 (September 14, 1992) at 91-92. It is utterly illogical to imagine that the members of the House intended that in this one respect their more sweeping version would contradictorily limit FCC program access jurisdiction.

Throughout the legislative history of the Act are indications that Congress intended to strengthen, rather than weaken, competing MVPDs' program access. For example, the Conference Report states that:

In adopting rules under this section, the conferees expect the Commission to address and resolve the problems of unreasonable cable industry practices, including restricting the

availability of programming and charging discriminatory prices to non-cable technologies. The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable and extending programming to areas not served by cable.

H.R. Rep. 102-862 at 93. Not a word in the Conference Report demonstrates any desire by Congress to place limits on competitors' access to programming based upon the method of delivery.

The best indicator of Congressional intent to adopt broad program access provision are the statements of Rep. Tauzin, sponsor of the floor amendment to the House bill that, with but minor changes in Conference, became Section 628. The House floor vote, adopting Rep. Tauzin's proposal by the overwhelming margin of 338-68, evidences a clear desire to take strong and comprehensive action. Tauzin's amendment. At the same time, by a vote of 247-152, it rejected a weaker, cable-industry backed amendment brought to the floor by Rep. Manton. During a prolonged debate, Rep. Tauzin repeatedly demonstrated that the clear purpose of his amendment was to ensure that cable's competitors were not unfairly denied access to the most popular cable programming, regardless of its delivery mechanism:

The Tauzin amendment, very simply put, requires the cable monopoly to stop refusing to deal, to stop refusing to sell its products to other distributors of television programs.

In effect, this bill says to the cable industry, "you have to stop what you have been doing, and that is killing off your competition by denying it products."

It will do us little good...to hope in vain for the advent of a DBS, direct broadcast satellite, industry or for the expansion of wireless cable in America as competition to this monopoly if none of it can get programming. Programming is the key

Why did cable need network programming to get going? Why did cable need this Government to give it network programming free of charge to get going? Because without programming, cable could not get off the ground. Without programming, competitors of cable are equally stymied and who is the big loser? The big loser is everyone in America who pays a cable bill.\*\*\*\*

What does it mean? It means that cable is jacking the price upon its competitors so high that they can never get off the ground. In some cases they deny programs completely to those competitors to make sure they cannot sell a full package of services. So the hot shows are controlled by cable.\*\*\*\*

It is this simple. There are only five big cable integrated companies that control

it all. My amendment says to those big five, "You cannot refuse to deal anymore."

You have to offer your programs to other competitors and you cannot refuse to deal by saying "We will only give it to you at a much higher price."

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

Then-Telecommunications and Finance Subcommittee Chairman Markey echoed Rep.

Tauzin's sentiments:

Now, we have got to make sure they have access to programming, and that is all this amendment does is just make sure that there is a sale of the video programming from the cable industry for a reasonable price over to the satellite industry, plain and simple competition, the same thing we did when we forced the broadcasters to give their signals for free over to the cable industry....

138 Cong. Rec H6538 (July 23, 1992) (statement of Rep. Markey).

Throughout this critical floor debate, the discussion is about the problem of denial of program access and the desire to fix it. Specific means of program delivery were not addressed. Nor was there any mention of particular kinds of programming which should be excluded from the program access law. Thus, NCTA is wrong: Congress did not "specifically consider[] whether to extend the program access requirements to terrestrially-delivered services and decide[] not to do so." NCTA Comments at 13. Rather, Congress enacted legislation intended to give the FCC the necessary power to ensure that competitive MVPDs had access to popular programming that, at the time, was almost universally delivered via satellite.<sup>1</sup>

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<sup>1</sup>Citing to the testimony of one individual in a 1990 hearing before the Senate Judiciary Committee's Subcommittee on Antitrust, Monopolies and Business Rights, and another in a 1988 hearing before the House Telecommunications Subcommittee, Liberty Media states that "Congress was well aware of alternative distribution methods, such as microwave and fiber optic delivery of video signals,...In fact, Congress knew that several of the most popular cable programming services *at one time* were distributed terrestrially. For example, HBO and WTBS both testified before Congress that they *had initially used* terrestrial based microwave means to distribute their services." Liberty Media Comments at 26 n. 51. [emphases added][citations omitted]. This testimony hardly proves what the members of the House of Representatives knew when they were

**B. Regardless of How the Plain Language of Section 628 May be Interpreted, the FCC has Broad Ancillary Authority to Extend the Program Access Rules to Terrestrially-Delivered Programming.**

CU, *et al.* and others have argued that the plain language of Section 628, at the very least, permits the Commission to extend the program access rules to terrestrially-delivered programming that was once satellite-delivered. *E.g.*, CU, *et al.* Comments at 5-7; Echostar Comments at 13; DIRECTV Comments at 17. Indeed, some of the cable commenters seem to concede this point. *E.g.*, Liberty Media Comments at 24-25; Time Warner Comments at 7-8. Others steadfastly assert that the Commission cannot extend the program access rules regardless of whether the programming was originally provided via satellite. NCTA Comments at 15; Cablevision Comments at 14; Comcast Comments at 10.

What is glaringly absent from the cable industry arguments is any recognition, much less argument, about the broad ancillary jurisdiction that the Commission has to adopt rules and regulations "not inconsistent with the law, as may be necessary to carry out the provisions of this Act." 47 USC §303(r). *See* 47 USC §154(i); *e.g.*, *U.S. v. Southwestern Cable Co.*, 351 US 192, 203-204 (1956); *Mobile Communications Corp. of America v. FCC*, 77 F.3d 1399, 1404-05 (DC Cir. 1996); *New England Telephone and Telegraph v. FCC*, 826 F.2d 1101 (DC Cir. 1987). This ancillary jurisdiction gives the Commission authority to extend the program access rules

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voting on the House floor to adopt Rep. Tauzin's amendment. The most recent testimony was to a Senate Committee. The earlier testimony was at least delivered to a subcommittee of the House, but four years later many of the subcommittee members had left the Congress. Their replacements, who actually voted on the Tauzin amendment, could hardly have been aware of the testimony, much less acted on the basis of their knowledge of, and agreement with, its contents. If these sparse references to delivery technologies prove anything, it is that at the time Congress did pass the 1992 Act, these and other programmers were *no longer* delivering their programming terrestrially.

to any programming that is terrestrially-delivered, whether or not it was previously delivered via satellite, because such action is necessary to "promote the public interest, convenience and necessity by increasing competition and diversity in the multichannel video programming market,..." 47 USC §548(a). *See, e.g., CU, et al. Comments at 5-7; DIRECTV Comments at 21.*<sup>2</sup>

**C. Extending the Program Access Rules Will Not Discourage Development of New Local and Regional Programming.**

Some cable commenters argue that should the Commission extend the reach of its program access rules to terrestrially-delivered programming, it would "commoditize" programming and discourage vertically integrated cable operators from developing local and regional programming services. Cablevision Comments at 21-25; Comcast Comments at 11; Liberty Media Comments at 28-29. Vertically integrated cable operators will only develop such programming, Cablevision argues, if they have the flexibility to offer exclusivity, which will ensure that a distributor is be "willing to place the service on a channel that will be viewed by a substantial number of subscribers and to market the service aggressively to promote the highest possible penetration." Cablevision Comments at 21.

There are several flaws in this argument. First, to the extent that the program access laws

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<sup>2</sup>The Commission rejected jurisdictional arguments similar to those made by the cable industry here in a recent decision in its cable inside wiring docket *Report and Order and Second Further Notice of Proposed Rulemaking*, FCC No. 97-376 (released October 17, 1997) at ¶¶81-101 ("*Inside Wiring Order*"). In that matter, Congress had given the Commission express authorization to promulgate rules concerning the disposition of wiring inside a multiple dwelling unit (MDU), but was silent on the disposition of so-called "home run" wiring, which runs outside the individual unit and attaches to the common line on each floor. The Commission found authority under Sections 4(i) and 303(r) to regulate home run wiring as "necessary" to the execution of its home wiring rules. *Inside Wiring Order* at ¶¶83-87.

have not discouraged programmers from developing national and other satellite-delivered programming, it should not discourage programmers from developing terrestrially-delivered regional and local programming.

Second, and most importantly, vertically integrated cable operators are both "programmer" *and* "distributor." As the owner of the content and the pipe, the vertically integrated cable operator is in complete control of the success of any new program service it may develop. Because it has expended the resources and taken the risks to make the programming, a vertically integrated cable operator has the incentive, as a distributor, to place it on a popular channel and market it heavily. The operator also has the incentive, and the power, to keep its programming out of the hands of competitors. That is why Section 628 was passed in the first place.<sup>3</sup>

## **II. THE COMMISSION HAS THE AUTHORITY TO, AND SHOULD, IMPOSE DAMAGES FOR PROGRAM ACCESS VIOLATIONS.**

Some cable commenters assert that the Commission lacks authority under Section 628(e) to impose damages. *E.g.*, NCTA Comments at 10-11; Liberty Media Comments at 18-22; HBO Comments at 23 n. 40. They also argue that damages are unnecessary, because 1) the Commission's forfeiture authority is adequate to discourage program access violations; and 2) relative to the number of programming contracts that are executed, there are relatively few program access complaints filed. HBO Comments at 18-20; NCTA Comments at 11-12; Time Warner

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<sup>3</sup>Comcast also argues that there is no "evidence of a problem of restricted availability of [terrestrially-delivered] programming." Comcast Comments at 13. But as discussed in a number of the comments filed in this docket, DIRECTV has already filed a program access complaint against Comcast, and officers of Rainbow have publicly stated that they intend to deliver regional sports programming via terrestrial means. *E.g.*, DIRECTV Comments at 11-13; Wireless Cable Comments at 20-21. And the Commission has recognized that this problem is likely only to get worse.

Comments at 6.

These Commission should reject these arguments. The Commission does indeed have authority to impose damages - the plain language of Section 628(e) gives the Commission broad power to adopt "appropriate remedies" for program access violations. Moreover, damages are necessary - both because the Commission's forfeiture authority is inadequate and because program access violations are bound to increase with the recent development of viable competitors to cable.

**A. The Plain Language of Section 628 Gives the Commission the Authority to Impose Damages.**

Liberty Media and HBO argue that the plain language of Section 628 prohibits the Commission from imposing damages for program access violations. Liberty Media Comments at 19-22; HBO Comments at 23 n. 40. They argue first that the Commission's expansive interpretation of the term "appropriate remedies" under Section 628(e)(1) renders superfluous subsection (e)(2), which states that the remedies provided for in (e)(1) are "in addition to, and not in lieu of the remedies available under Title V or any other provision of this Act." 47 USC §548(e)(2). *Id.*

But Section 628(e)(2) is not at all rendered superfluous by a broad interpretation of Section 628(e)(1). The two work in conjunction. Section 628(e)(1) gives the Commission "power to order appropriate remedies," and Section 628(e)(2) clarifies that any such remedy the Commission might impose for program access violations are not limited to those otherwise enumerated in the Act. One could presume that had Congress *not* enacted Section 628(e)(2), these commenters would likely argue that the "appropriate remedies" language was limited only to those remedies specifically enumerated elsewhere in the Act.

Liberty and HBO then claim that the "including" qualifier in Section (e)(1) also prohibits the imposition of damages. Liberty Media Comments at 21-22; HBO Comments at 23 n. 40. Citing the *ejusdem generis* canon of statutory law that states that where specific words follow general words, the latter are construed to embrace "only objects similar in nature," Sutherland on Statutory Construction, §47.17, Liberty and HBO argue that because the establishment of prices, terms and conditions are "prospective, injunctive relief," they are not similar in nature from a "backward-looking, punitive-type remedy, such as damages." Liberty Comments at 22; HBO Comments at 23 n. 40.

But the doctrine of *ejusdem generis* applies only when, *inter alia*, "the members of the enumeration suggest a class" and "there is not clearly manifested an intent that the general term be given broader meaning than the doctrine requires." Sutherland at §47.17. *See Brown & Root, Inc. v. Donovan*, 747 F. 2d 1029 (5th Cir. 1984). It is in these two categories that the application of Section 628(e)(1) fails. Contrary to the Liberty/HBO argument, the "power to establish prices, terms and conditions" does not necessarily suggest a class of "prospective, injunctive relief." Given that Congress has enumerated but one remedy under Section 628(e)(1), it is difficult to discern any commonality among items that would constitute a "class." Moreover, under its power to "establish prices," the Commission could, consistent with Section 628, establish a "backward-looking," retroactive price for programming sold to a competing MVPD on discriminatory terms, and require that a vertically integrated cable operator pay the difference between the old price and the new price.

Even *assuming arguendo* that the specific language in Section 628(e)(1) does suggest a class, it is apparent that Congress intended to give the term "appropriate remedies" a broader

meaning that the *ejusdem generis* canon requires. Congress manifested that intent by also enacting Section 628(e)(2), which permits the Commission to adopt remedies "in addition to," those specifically enumerated in the Act. This demonstrates that Congress intended the Commission to have remedial powers that went far beyond forfeitures and other "prospective, injunctive relief" for which the Act provides.<sup>4</sup>

**B. Damages are a Necessary Deterrent to Anticompetitive Conduct by Vertically Integrated Cable Operators Now More Than at Any Time Since the Program Access Law Was Passed.**

Some cable commenters argue that the imposition of damages for program access violations would be, as Time Warner characterizes it, a "solution without a problem." Time Warner Comments at 6; NCTA Comments at 11-12; Liberty Media Comments at 16. They claim that such relief is unnecessary because 1) forfeitures are an effective deterrent to anticompetitive conduct and 2) very few program access complaints have been filed in the past. *Id.*

*1. As Currently Interpreted, 47 USC §503 Does Not Deter Program Access Violations.*

As CU, *et al.* have discussed at length in their comments, the statutorily-mandated daily and overall caps on forfeitures under 47 USC §503 do not provide disincentives for multi-billion dollar vertically integrated cable operators to violate the program access rules. CU, *et al.* Comments at 12. *Accord*, Ameritech New Media Comments at 21.

A possible alternative to obviate the need for damages would be to increase the deterrent

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<sup>4</sup>Contrary to Liberty Media's claim, case law construing Section 5 of the Federal Trade Commission Act is not at all analogous here. See Liberty Media Comments at 23. The language of the two statutes are quite dissimilar. The term "*affirmative* relief" used in Section 5 suggests prospective relief, but the term "appropriate remedies" - which is far broader - does not. In any event, the FTC's overall authority to grant relief for violations of its laws is far more limited than that of the Commission.

effects of forfeitures. This would require a very substantial increase in impact. The FCC would have to do two things: 1) raise the daily forfeiture to the prescribed statutory maximum *and* 2) interpret the term "cable television operator" under 47 USC §503(b)(2)(A) as applying to a single cable television system or franchisee, thereby multiplying by 100 times or more, the daily forfeitures imposed on vertically integrated cable operators. *See* CU, *et al.* Comments at 12-13. In the absence of both of these changes, however, damages are absolutely necessary to provide incentives for vertically integrated cable operators to negotiate in good faith with competitors.

2. *The Raw Number of Past Program Access Complaints Does Not Prove That Damages For Program Access Violations are Unnecessary.*

The cable commenters point to the small number of program access complaints that have been filed since the 1992 Cable Act was passed, and argue that this demonstrates that damages are unnecessary to deter program access violations. *E.g.*, NCTA Comments at 11-12; Liberty Comments at 16.

The raw number of program access complaints, standing alone, says little about the Commission's need for damages. There are obvious explanations for why few complaints were filed in the past - not the least of which is the perceived futility of filing at an agency that was unwilling to impose forfeitures even in the most egregious cases. *See* NCTA Comments at 11 ("Most [program access complaints] have been dismissed or denied by the Commission, and in no case has the Commission found that a forfeiture was appropriate"). Another reason that competitors have been reticent to file is that they have perceived great risks inherent in combatting huge, deep-pocketed cable companies (which also provide them popular programming) for nothing more than the possibility of prospective relief.

The most obvious reason why there have not been a large number of complaints filed in

the past five and one half years is that until very recently, there has no viable competition in the MVPD market. Only over the past year or two have DIRECTV, Ameritech, BellSouth, Bell Atlantic, Echostar and other competitors have even made a minor dent in cable's stranglehold over the MVPD market. *1997 Competition Report* at ¶11. During that time, each one of these named competitors has filed a program access complaint,<sup>5</sup> and there is no reason to believe, as more viable competitors enter the market and vertically integrated cable operators seek to protect their near-monopoly status, that others will not follow.

Thus, the Commission has a choice - it can wait - as the American people have waited for MVPD competition, for more program access complaints to arise, or it can act now to provide incentives for vertically integrated cable operators to act fairly in the provision of programming. If, as the cable commenters claim, the low number of complaints are evidence that they are providing nondiscriminatory access to programming, then damages should give them little cause for concern.<sup>6</sup>

## CONCLUSION

As the Commission has recognized, this is a critical time for the growth of MVPD competition. *E.g.*, *1997 Competition Report* at ¶8. But the Commission cannot, as it has done in the past, stand idly by and hope that competition will simply take root. The result of such inaction

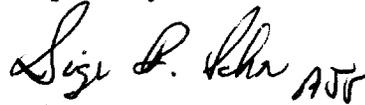
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<sup>5</sup>For a list of several of the more recent complaints, *see* Ameritech New Media Comments at 21 n. 48.

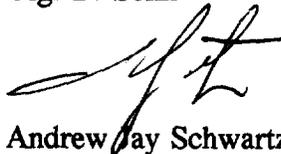
<sup>6</sup>Some cable operators argue that imposing damages will delay, rather than expedite the Commission's consideration of program access complaints. *E.g.*, Cablevision Comments at 25-26; Liberty Media Comments at 17-18. The solution to that problem, as Ameritech has suggested, would be a bifurcated proceeding whereby the Commission determines the existence of a violation first, and the amount of damages second.

will be no better than what exists in the MVPD market today - a handful of struggling competitors with relatively minuscule market share, rising cable prices and dissatisfied viewers. Instead, the Commission should act to both improve and expand its program access rules. The Commission should take whatever steps are necessary to expedite the process for resolving program access complaints. Most importantly, it should 1) apply the program access law and rules to programming that is delivered terrestrially; 2) increase daily forfeitures for program access violations to the statutory maximum and 3) exercise its authority and impose damages for program access violations in accordance with the guidelines set out in CU, *et al.*'s comments in this docket.

Respectfully submitted,

Handwritten signature of Gigi B. Sohn in cursive, with the initials "ATR" written to the right.

Gigi B. Sohn

Handwritten signature of Andrew Jay Schwartzman in cursive.

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