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National Cable Television Association

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July 24, 1998

EX PARTE

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, D.C. 20554

Re: CS Docket No. 97-248

Dear Ms. Salas:

On July 23, 1998, Jill Luckett, Michael Schooler, and Diane Burstein of the National Cable Television Association ("NCTA") met with Jane Mago, Sr. Legal Advisor, Office of Commissioner Powell.

During this meeting, consistent with our written comments in this proceeding, NCTA discussed why the Federal Communications Commission should not modify its program access rules. Copies of the attached chart and position paper were distributed.

Any questions may be directed to the undersigned.

Respectfully submitted,



Diane Burstein

Attachments

cc: Jane Mago

DBB:ldh

No. of Copies rec'd 0 + 1
List Attached

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Carriage of Top 20 Cable Networks by Cable Competitors Ranked by Subscribers

Cable Network	Offered on DirecTV/USSB	Offered on EchoStar	Offered on Ameritech's Americast systems in Midwest	Offered on BellSouth's Digital Wireless System In New Orleans	Offered on People's Choice TV of St. Louis*
Discovery Channel	✓	✓	✓	✓	✓
ESPN	✓	✓	✓	✓	✓
TBS Superstation	✓	✓	✓	✓	✓
TNT	✓	✓	✓	✓	✓
C-SPAN	✓	✓	✓	✓	
CNN	✓	✓	✓	✓	✓
TNN: The Nashville Network	✓	✓	✓	✓	✓
USA Network	✓	✓	✓	✓	✓
Lifetime Television	✓	✓	✓	✓	✓
The Weather Channel	✓	✓	✓	✓	
AMC (American Movie Classics)	✓	✓	✓	✓	
Headline News	✓	✓	✓	✓	✓
The Family Channel	✓	✓	✓	✓	✓
A&E Television Network	✓	✓	✓	✓	✓
MTV: Music Television	✓	✓	✓	✓	✓
Nickelodeon/Nick at Nite	✓	✓	✓	✓	✓
CNBC	✓	✓	✓	✓	
QVC	✓	✓	✓	✓	
VH1 (Music First)	✓	✓	✓	✓	
The Learning Channel	✓	✓	✓	✓	✓

* PCTV offers 34 channels and also carries six local broadcast stations, three premium services, five PPV channels, four additional basic networks and a regional cable sports channel.

Source: Marketing materials from individual companies.

PROGRAM ACCESS

- **In general:**

- ⇒ None of these measures is necessary to promote effective enforcement of the program access rules.
- ⇒ Cable's competitors in the video marketplace have access to virtually all of the satellite networks that have significant viewership among cable subscribers, and there is no evidence that their ability to compete is being adversely affected by noncompliance with the program access rules.
- ⇒ There have been only a small number of program access complaints -- and hardly any instances in which the Commission has found violations of the rules.

- **Time Limits:**

- ⇒ Imposing time limits on the Commission's resolution of program access complaints would only increase the risk of an erroneous decision in those complex cases that may take somewhat longer than the average case to decide.
- ⇒ Shortening the time limits for the filing of answers to complaints would unfairly limit the ability of parties to prepare fully documented and well argued responses.

- **Damages:**

- ⇒ Awarding damages in program access cases would entangle the Commission in complex and time-consuming efforts to measure the extent to which a complainant has been injured but would have little deterrent effect on programmers, since the FCC already has authority to impose fines on programmers that are found to have violated the rules.

- **Discovery:**

- ⇒ Giving all complaining parties a right to engage in automatic discovery would simply encourage fishing expeditions to obtain sensitive competitive information or to harass programmers into providing more favorable terms and conditions.

- **Terrestrial Delivery:**

- ⇒ It is clear from both the language and the legislative history of the law that the *specific statutory restrictions on exclusivity and discrimination* apply only to satellite-delivered programming services and cannot be extended to terrestrially-delivered services.
- ⇒ Moreover, the *general statutory prohibition against unfair anticompetitive practices* by vertically integrated, satellite-delivered services provides no basis for generally applying the program access restrictions to services that switch from satellite to terrestrial delivery.