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July 28, 1998

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JUL 28 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CS #97-248, Ex Parte Communication

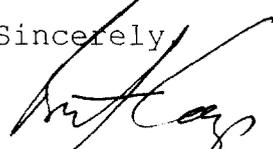
Dear Madam Secretary:

In a discussion with Anita Wallgren, Legal Advisor to Commissioner Susan Ness, on July 27, 1998, I made the following point on behalf of Turner Broadcasting System, Inc., a subsidiary of Time Warner Inc. (See Reply Comments of the National Cable Television Association, Inc., p. 8, fn 12.)

A number of C-band satellite programming distributors are experiencing declining economic circumstances as the K-band marketplace grows and the C-band marketplace shrinks, for reasons that have nothing to do with access to programming. If damages in program access cases were made available as a matter of right, a flood of speculative "nuisance suits" filed by failing C-band distributors (much like the shareholder suits typically filed after mergers are announced) might well ensue.

The Commission should not find it necessary to allow for the award of damages at all, since the Commission has found no need even to use its forfeiture authority to punish program access violations. However, if the Commission should provide for damages, to avoid incentives for nuisance litigation it is important that any award of damages be in the discretion of the Commission, and that damages not be awarded unless programmers have acted in bad faith.

Sincerely


Bertram W. Carp

BWC:eao

cc: Anita Wallgren, Esq.

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