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July 30, 1998

BY HAND

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

Re: **Notice of Ex Parte Presentation**  
Petition for Rulemaking of Ameritech New Media, Inc.  
Regarding Development of Competition and Diversity in  
Video Programming Distribution and Carriage  
CS Docket No. 97-248 ✓

Dear Ms. Salas:

This is to provide notice that Richard H. Waysdorf, Senior Counsel, Affiliate Relations, of Encore Media Group LLC ("Encore") and Timothy J. Fitzgibbon, counsel for Encore, met on July 28 with Susan Fox, Senior Legal Advisor to Chairman Kennard, and on July 29 with Rick Chessen, Senior Legal Advisor to Commissioner Tristani; Anita Wallgren, Legal Advisor to Commissioner Ness; and Jane E. Mago, Senior Legal Advisor to Commissioner Powell. Robert L. Hoegle, counsel for Encore, also attended the meeting with Ms. Mago. An original and one copy of this letter are being submitted to you for inclusion in the record in this proceeding, and copies are being provided to each of the attendees.

During the meetings, we discussed various proposals to amend the Commission's program access rules in the above-referenced rulemaking. At the outset, we stated the bases for our view that the existing rules have functioned well and that additional procedural protections and remedies are unnecessary. If the Commission were to adopt a damages remedy, significant changes in the existing substantive and procedural rules would be necessary. For example, a presumption of injury would not be appropriate, and the burden of proof would necessarily remain with the complainant throughout the proceeding. To state a *prima facie* case, a complainant would be required to show specific competitive injury resulting from the alleged

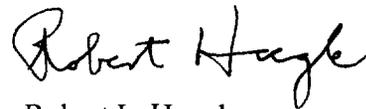
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violation of the program access rules. Finally, the Commission cannot simply adopt a new damages remedy without defining the measure of damages and the time period for which damages could be recovered.

Likewise, the existing methods of discovery, which are controlled by the Commission's staff, have enabled appropriate discovery where necessary but have prevented wide-ranging and unjustified discovery requests. Under the existing rules, programmer respondents must provide specific factual responses to specific allegations and support those responses by affidavit, documentation, or other information. The existing procedures have worked without subjecting the parties or the staff to burdensome discovery requests, which would place truly proprietary information at risk. "Automatic" discovery procedures would be a vehicle for abuse, affording complainant's counsel the opportunity and incentive to craft its complaint to trigger broad disclosure obligations by the respondent.

If you have any questions regarding the above information, please contact the undersigned.

Very truly yours,



Robert L. Hoegle

RLH:ssm

cc: Rick Chessen, Esquire  
Susan Fox, Esquire  
Jane E. Mago, Esquire  
Anita Wallgren, Esquire