additional increases are expected. Commercial advertisers are feeling the effect of these increased costs as well.[39]

Even these numbers must be put in their proper context. Related service industries that are subject to these same conditions have also increased prices. For example, the average professional sports ticket price has increased annually by 7.2 percent since 1992,[40] and the price of a World Series ticket recently doubled.[41] In the Baltimore-Washington Area the ticket prices for all major sporting events have increased by an average of 29.5 percent since last year.[42]

We offer these data by way of demonstrating that comparisons with the consumer price index or with the pricing experience of the telecommunications or computer industries are inapposite, in that such comparisons fail to recognize the unique cost pressures of the entertainment and information industries where demand generally leads to drastic increases, not decreases, in the cost of production.

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[39] Cauley, *To Pay the NFL*, *supra* at note 36 (ESPN plans to increase cost of 30 second ad by 15 percent; CBS by 10 percent; Fox by 8 percent; and ABC by 6 percent); Stefan Fatsis, *Gatorade is Expected to Unveil Big Accord on NFL Sponsorship*, THE WALL STREET JOURNAL, June 8, 1998, p. B8 (Gatorade will increase payments for local and national marketing rights with NFL by 300 percent).

[40] 1997 TEAM MARKETING REPORT as cited by Richard Hoffer, Paul Zimmerman, *Scorecard*, Sports Illustrated, Jul. 13, 1998, p. 25; *see also* Paul Farhi, Mark Maske, *A Hit After A Strike*, THE WASHINGTON POST, Jul. 19, 1998, p. H1 ("Tickets, parking, souvenirs and food for a family of four cost about $ 115 for a Major League Baseball game this season, compared with $ 221 for an NFL game, $228 for a hockey game or $ 214 for the National Basketball Association, according to Team Marketing Report.").

[41] Murray Chass, *The Series's First Double: Box Seat Prices*, THE NEW YORK TIMES, Aug. 12, 1998, p.C3.

[42] Paul Farhi, Mark Maske, *A Hit After A Strike*, THE WASHINGTON POST, July 19, 1998, p. H1.

B. In Distinct Contrast, Input Costs For The Telephone And Computer Industries Are Declining.

The Commission has recognized that consumers are better off if the telephone industry's profits are constrained by price-cap regulation that recognizes the documented increases in productivity due to declining costs.[43] Price cap regulation encourages incumbent LECs "to improve their efficiency by harnessing profit-making incentives to reduce costs, invest efficiently in new plant and facilities, and develop and deploy innovative service offerings, while setting price ceilings at reasonable levels."[44] Clearly, the assumption underlying this regulatory structure for incumbent LECs is that their input costs decline over time in order to yield profit-making incentives.

The relationship between declining costs and profitability is reflected in the Commission's adoption of a productivity offset (or "X-Factor") for regulated local exchange carriers. The X- Factor reflects the fact that changes in telephone companies' costs per unit of output (unit costs) have historically been below that of the economy as a whole due to greater productivity gains and lower input price changes enjoyed by the telecommunications

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[43] "The cost of telecommunications equipment has been declining, relative to inflation, in recent years." *In re Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection*, Second Report and Order, 12 FCC Rcd 18730, 18774 (1997). The decline in the costs of providing telecommunications services and equipment was also examined in detail by the Commission with respect to international rates. In *Trends in the U.S. International Telecommunications Industry*, 1998 FCC Lexis 3954 (1998), the Commission found that "cable investment related costs per circuit and per toll minute declined 99% between 1956 and 1996." *Id.*,Table 12 at *70-71. Moreover, in 1998, new systems were installed with six times the capacity and at less than half the investment cost per circuit compared to those installed just two years earlier. *Id.*, at *67-68.

[44] *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982 (1997) at ¶ 26.

sector.[45] For example, local exchange providers have depreciated networks, which they have not upgraded since the mid-Eighties, and have instituted personnel cut-backs to further streamline costs.[46] Similarly, in the computer industry, since the early 1960s, every 18 months, the capacity of computer chip doubles while the cost to produce the chip gets cut in half.[47] While the cable industry has benefitted from new technological developments, it has not experienced the declining cost phenomenon, as recognized by the Commission in refusing to adopt a productivity factor to apply to cable pricing.[48]

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[45] *Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform*, 12 FCC Rcd 16642, *aff'd*, 12 FCC Rcd 10175 (1997). In 1997, the Commission raised the "X-Factor," by which price cap carriers must lower their rates each year (relative to cost changes in the general economy), from a maximum of 5.3% under the preexisting price cap formula to 6.5%. *Id.*

[46] *See, e.g.,* Howard Wolinksy and Mary Ellen Podmolik, *Ameritech to lay off 5,000 workers*, CHICAGO SUN-TIMES, April 15, 1998, p. 1; Joe Van, *Ameritech laying off 5,000 to cut costs; operating profit sets record, but jobs to go anyway*, Chicago Tribune, April 15, 1998, p. 1; Leslie Cauley, *Bell Atlantic, Nynex job cuts to hit 10,000*, THE WALL STREET JOURNAL, May 6, 1997, p. A3. (Bell Atlantic and Nynex planned to cut 10,000 and perhaps as much as 15,000 jobs in 5 years); *but see* Mark Landler, *2 Phone Companies Deny Report on 10,000 Job Cuts*, THE NEW YORK TIMES, May 7, 1997 (Bell Atlantic spokesman said companies would stick to pledge to only cut 3,000 jobs).

[47] Steve G. Steinberg, *Chip improvements and the real truth of Moore's law*, LOS ANGELES TIMES, April 15, 1996, p. D7 ("The result has been twofold: The cost of making a given chip is regularly cut in half, allowing manufacturers to see high profit margins for a little while. Even better, the constant and dramatic improvements made possible by Moore's Law keep customers coming back to computer stores with open checkbooks.")

[48] *In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 – Rate Regulation*, 9 FCC Rcd 5760 (1994).

VI. COMPETITION IS THRIVING AND CABLE IS RESPONDING UNDER THE EXISTING PROGRAM ACCESS RULES

A. The Record Presents No New Factual Information Supporting Expansion Of The Program Access Rules.

Under the existing statutory regime, the Commission is precluded from regulating video programming that is not distributed by satellite.[49] Nevertheless, the program access rules have helped to foster the development of DBS and other competing MVPDs, who now offer not only comparable, but oftentimes unique channel lineups.[50] In addition, new and independent programming services have flourished and customers are responding positively through increased cable viewing.[51] From 1980 to 1998, the number of national satellite cable programming networks has grown from 28 to 171,[52] and 60 percent of today's networks are

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[49] The 1992 Cable Act and legislative history clearly limits the scope of the program access rules. 47 U.S.C. § 548. Indeed, the statute alone refers to "*satellite* cable programming" 18 times, and the words "cable programming" are never used without the modifying term "satellite." The Senate expressly considered and rejected an amendment that would have extended the rules to include all programming.

[50] For example, in an exhibit attached to DirecTV's comments, DirecTV boasts that it is the only MVPD to provide: NFL Sunday Ticket; 35 out-of-market regular season Major League Baseball games per week; and 45 regular season Women's National Basketball Association games. Comments of DirecTV, CS Docket 98-102, filed Jul. 31, 1998, at Exhibit 1. In addition, DirecTV's advertisement asserts that it offers more NBA and NHL games than are available on local cable or broadcast channels. *Id.*; *see also* Cox Comments at 9 (citing U.S. West's recent announcement that it has entered into a 20-year exclusive arrangement with the Phoenix Suns for the cable rights to their NBA games).

[51] *Cable audience growth is being fueled*, COMMUNICATIONS DAILY, Aug. 26, 1998, p. 7 (According to Nielsen research, since 1995, audience ratings are up 18 percent for networks launched by 1985, 36 percent for networks launched between 1986 and 1990, and 101 percent for networks begun between 1991 and 1995).

[52] NCTA Comments at 51.

not affiliated with cable operators.[53] There is no question that competition and independent programming services are thriving under the current rules.

Indeed, only three weeks ago the Commission decided against those who petitioned to extend the program access rules to include terrestrially delivered programming, finding that the information in the record at the time failed to demonstrate that moving programming to terrestrial delivery was "significant [or] causing competitive harm . . . ."[54] The record in this proceeding does not present any new evidence that should cause the Commission's to alter its recent conclusions.

B. Terrestrial Delivery Is A Legitimate, Economic Means Of Distributing Local Programming, And An Important Tool For Development Of Local Programming.

There are numerous reasons for delivering local and regional programming services terrestrially via microwave and fiber optic cable, as opposed to satellite. Perhaps most significantly, the cost of terrestrial delivery over limited distances can be far less than for satellite delivery.[55] Moreover, it is unlikely that there would be enough national interest in specialized local services to warrant the increased cost of satellite delivery. In any event,

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[53] *Fourth Annual Report* at ¶ 158.

[54] *In re Petition for Rulemaking of Ameritech New Media, Inc.*, CS Docket 97-248, FCC 98-189 (August 10, 1998) at ¶ 71.

[55] In the specific case of Comcast SportsNet, a terrestrially delivered network that is currently the subject of two program access complaints, Comcast has shown that the cost of satellite delivery for this service would be about four times as much as for terrestrial delivery. *See, e.g.,* Comments of Comcast Corporation, CS Dkt No. 97-248 (filed February 2, 1998) at 15, n.10; Affidavit of Sam Schroeder, filed with Answer To And Request For Dismissal Of Program Access Complaint, *DirecTV, Inc. v. Comcast Corp.*, CSR 5112-P, filed Oct. 24, 1997, Exhibit 4.

increased distribution costs translate into higher licensing fees for distributors, thereby decreasing the appeal of the programming.

While some commenters urge the Commission to change – or to recommend that Congress change – the rules governing terrestrially delivered programming, there is simply no factual record, and no public policy basis, for such a change. Moreover, extending the reach of the program access rules to terrestrial programming would dramatically undercut the incentive of cable operators to invest in innovative local and regional programming to respond to unmet needs. The Commission should decline to make or recommend any changes.

CONCLUSION

Competition in the multichannel video marketplace is growing at an unprecedented pace. In response to that competition, Comcast has invested in and developed new and innovative programming, structured its traditional video programming services so as to be more attractive to consumers, strengthened its role in local communities and education, and expanded into competitive markets for advanced communications and information services. It is critical that the Commission now recognize that prices alone cannot be the single, or necessarily even most important, indication of viable competition in the video marketplace.

The competitive environment has changed considerably since the Commission's first report to Congress five years ago. Competition has been a major factor in encouraging cable operators to invest in upgraded networks, resulting in improved reliability and quality of traditional cable services as well as the introduction of new technologies and services. New providers offering more and varied services have entered the marketplace and are competing effectively with the cable television industry. The result of this competition is exactly that contemplated by the Telecommunications Act of 1996 – the cable industry has made the capital investments necessary to both dramatically improve its traditional cable services and to allow the industry to become a competitor in the broader communications marketplace.

We urge the Commission to confirm to Congress that the policies implemented since 1992 to encourage competition are working well, and that the policies adopted in 1996 to reduce regulation of cable in response to growing competition should remain in place.

Respectfully submitted,

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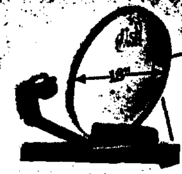

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