

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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AUG 31 1998

FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Annual Assessment of the ) CS Docket No. 98-102  
Status of Competition in the )  
Market for the Delivery of )  
Video Programming )

**REPLY COMMENTS OF LIFETIME ENTERTAINMENT SERVICES**

Lifetime Entertainment Services ("Lifetime") hereby replies to comments submitted in response to the Commission's Fifth Inquiry into the status of competition in the market for the delivery of video programming. In the Commission's previous Competition Inquiry proceedings,<sup>1</sup> Lifetime strongly endorsed the goal of promoting competition and diversity in the programming market, while at the same time urging the Commission to exercise caution in responding to unsupported calls for inappropriate expansion of regulatory measures such as the program access rules. During the last two years, Lifetime has remained just as concerned that, rather than increasing competition, expansion of program access will have a detrimental impact on the vital role that Lifetime and other independent (non-vertically integrated) programmers play in making the video program market more competitive and more diverse.

As this year's Competition Inquiry began, the emergence of new program services stimulated by the 1996 Telecommunications Act continued, while increasing consolidation in the industry gave fewer distributors more control over limited channel capacity. Notwithstanding

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<sup>1</sup> See, e.g., Lifetime's comments in CS Docket No. 97-141 and CS Docket No. 96-133 (the FCC's Fourth and Third Competition Inquiries, respectively).

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the fiercely competitive market for channel space, Lifetime's highly-regarded "Television for Women" network ("Lifetime Television") reaches over 71 million households and is ranked fifth among advertiser-supported satellite-delivered program networks in prime time ratings and sixth in total day household ratings.<sup>2</sup>

Moreover, since the conclusion of last year's Competition Inquiry, Lifetime has embarked on several significant new program ventures and a major public affairs initiative. On June 29, 1998, Lifetime launched a new network, Lifetime Movie Network ("LMN"). Whereas Lifetime Television provides contemporary and informative programming of various genres to women, LMN, also a 24-hour, advertiser-supported basic cable network, airs contemporary made-for-television movies, select theatrical films and mini-series targeted to women. This second Lifetime network was created in response to audience demand and is the next step in Lifetime's goal to be the primary producer and exhibitor of movies for women. On August 18, 1998, Lifetime Television premiered the first of its "Original Tuesdays," featuring three critically-acclaimed, highly-rated new weekly series: "Any Day Now," a one-hour dramatic series and two comedy series, "Maggie" and "Oh Baby," all created especially for Lifetime. Continuing its strong public service commitment, Lifetime also recently added its support to a national coalition of child advocacy organizations that are focusing national attention on the importance of quality child care. Through "Caring for Kids: Our Lifetime Commitment," a comprehensive plan using electronic media and the Lifetime Online website, Lifetime is providing a forum for women and their families to exchange child care information.

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<sup>2</sup> A.C. Nielsen Cable Network Audience Composition Report (2nd Quarter 1998).

The presence of new and original programming in Lifetime's schedule and its support of causes and issues of importance to women cannot continue to grow in the face of unfair and unfavorable regulatory policies. In the previous Competition Inquiries and other Commission proceedings, Lifetime has related the difficulty that it has encountered (and continues to encounter) in attaining and maintaining cable distribution for Lifetime Television in the face of limited channel space on cable systems. In the common scenario in which the number of available program services surpasses the available channel space, operators must make room for legally mandated programming such as must-carry signals and access channels. In this environment, the lack of an affiliation with cable operators often places independent programmers at a disadvantage, even when their programming has a high level of audience appeal. These difficulties are even more pronounced in the case of a newly-launched network such as LMN. If negotiations for carriage of LMN to date are any indication, the flexibility to offer carriage incentives – including limited exclusivity – may prove essential to obtain access to significant portions of the cable audience.

Expansion of the program access restrictions to independent programmers would only exacerbate the competitive disparity that already exists between independent and vertically-integrated networks. Rather than negotiate at arm's-length with independent programmers, advocates of expanded program access would have Congress extend to them the advantage that large, vertically-integrated cable operators enjoyed during periods of little or no competition, all at the expense of independent programmers. Thus, rather than facilitate a truly "level playing field" that would be fair to all parties, expansion of program access would unfairly and unnecessarily distort the marketplace to the detriment of the innovation and diversity that comes

from independent programmers competing in a freely competitive market. For good reason, this was not Congress's intent in establishing program access.

Once again, the comments submitted by advocates of program access expansion<sup>3</sup> fail to address the negative consequences of the change they seek. Nor do they present a compelling case for subjecting all independent programmers to regulatory restrictions. Lifetime's programming, like that of the majority of independent networks, is widely available to viewing audiences regardless of the ownership, size or form of multichannel video distribution.<sup>4</sup> The economic imperative for advertiser-supported networks to reach the largest possible audience generally compels this.

Lifetime continues to believe that expansion of program access to non-vertically integrated programmers would make it even more difficult for them to continue as an important source of competition and diversity in the program market and could render the future viability of newly launched networks like LMN virtually unattainable. The current rules contain adequate measures for dealing with anti-competitive behavior; thus, expansion of the coverage of the regulatory restrictions clearly is not called for at this time. Lifetime urges the Commission, in

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<sup>3</sup> See, e.g., comments of Ameritech New Media at 20 and BellSouth Corporation at 7 (both attempting to demonstrate a "trend" through allegations about a few isolated instances); and Wireless Cable Association at 8.

<sup>4</sup> Lifetime takes issue with allegations in comments of the Small Cable Business Association placing Lifetime among programmers that continue to refuse to sell their programming to the National Cable Television Cooperative at rates comparable to those offered to similarly-situated multichannel video providers. For five years, Lifetime offered NCTC an affiliation agreement on terms comparable to those offered to operators serving a comparable subscriber base on an aggregate basis, but NCTC failed and/or refused to meet standard terms and conditions imposed on other distributors.

making its recommendations to Congress, to take into account the potentially adverse impact of widespread rule changes on the continued level of competition and diversity in all aspects and sectors of the programming market. For these reasons, we urge the Commission to conclude that expansion of program access is not warranted and to urge Congress to refrain from expanding the existing rules or adopting new, program access-like provisions that would only impair competition and unfairly skew the marketplace.

Respectfully submitted,

LIFETIME ENTERTAINMENT SERVICES

By: *Nancy R. Alpert*  
Nancy R. Alpert  
Senior Vice President, Business and Legal Affairs  
Lifetime Entertainment Services  
309 West 49<sup>th</sup> Street  
New York, New York 10019