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VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Expanding Consumer's Video Navigation Choices, MB Docket No. 16-42; Commercial Availability of Navigation Devices, CS Docket No. 97-80

Dear Ms. Dortch:

I've been in the cable television business in one form or another since 1981, as a cable operator, programmer and entrepreneur. I have been a gatekeeper and a victim of gatekeepers. I have witnessed a business paradigm shift brought about by vertical integration and market concentration. Cable operators have acquired content providers. The market entrance by broadcasters, movie studios, telephone companies, and satellite operators, have disrupted and reshuffled the marketplace. I have also been a witness to the shift from analog to digital technology and the accompanying enhancement in quality and channel capacities. In summary, the paradigm shift can be defined as the "convergence of technology, distribution and content". Under every circumstance, the set top box, a place on it (system carriage) and where you are on it (channel lineup), determines a degree of a business's success. The entity that controls the box controls all access to the programming marketplace.

Legislation and public policy have always played an important role in providing and open marketplace and mitigating the behavior of the gatekeeper. Financial syndication rules, must carry, distant signals, copy right blackouts, regional sports carriage, public access, PEG Channels, open sky, deregulation, Cable Television Acts, affirmative action reporting, and net neutrality have never successfully addressed some of the main anticompetitive obstacles related to the set top box, particularly those barriers related to diverse and independent programming. Our diverse programming ecosystem deserves significantly more FCC action in ensuring that diverse programming and diverse owners have open and fair access to the marketplace.

From 1981 to 1989, I was the vice president of sales, marketing and programming for the New York Times cable television operation. NYT Cable as it was known was one of the most technically advanced systems at the time. If you wanted to do business in Philadelphia, you had to come through ME. I ran the Philadelphia Cable Marketing Co-op which pooled resources to promote cable's business interests in

the Philadelphia marketplace. I served on the board of directors for the Cable & Telecommunications Association for Marketing and was President of CTAM's Mid-Atlantic Region. **I was a gatekeeper.**

In 1989, I helped launch the Home Shopping Network (HSN) as the network's Senior Vice President of Business Development. HSN distributed content through both cable and over-the-air broadcast stations. These broadcast stations were used to gain "must carry" distribution on cable systems. HSN also paid for distribution by providing co-op marketing funds (as high as \$2-3\$ per subscriber per year) and yet HSN's cable distribution was 60% of other programmers who were vertically integrated. HSN was so successful that the network had to develop its own telephone infrastructure to handle the volume of telephone calls it received. HSN was a technology company. Despite these successes, **HSN was still a victim of gate keeping** that dampened the company's achievements.

From 1992 to 1996, I was the president of Bell Atlantic Video Services. Bell Atlantic led the way in digitizing and compressing video for video-on-demand platforms. We had to develop our own video servers and set top boxes or consumer premise equipment (CPE). There were many debates as to where the "intelligence" for equipment should be housed, in the network or in the CPE. In the telephone business the intelligence is in the switching station, not in the telephone. We opted to put control in the CPE for control reasons. **I was again a gatekeeper.**

From 1996 to 2001, I was the co-founder, president and chief operating officer of New Urban Entertainment Television (NUE TV). NUE TV was the first major competitor to BET, one of the first digital channels and resided on the TCI digital distribution platform. Our struggles to gain distribution and secure adequate financing to compete in and to deliver quality programming to the Urban Market are stories worthy of much more extensive discussion. **I was a victim of the gatekeepers.**

Since NUE TV, I have consulted various telecommunications, internet and direct-to-home satellite ventures. Each one has its own unique story, but always comes back to the technology and the set top or consumer premise equipment (CPE). I am extremely disappointed in a cable industry that had so much potential when I started, but has fallen victim to an anticompetitive malaise wholly unworthy of its original promise. There are many quality diverse and independent programmers that have withered on the vine as a result of our current gatekeeper system. Unless we eliminate the gatekeeper system, we will forever be just talking about how to improve markets for independent and diverse programmers. The proposed Unlock the Box regulations significantly lower barriers to market entry for diverse and independent programmers. In addition, the proposal represents a positive evolution in our video-programming ecosystem bringing us closer to the non-gatekeeper system we deserve. I urge the FCC to move deliberately in implementing this proposal and finally establishing a cable marketplace that lives up to its potential.

Respectfully submitted,

Robert L Townsend
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