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Lisa Chandler Cordell

March 3, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

RE: CS Docket No. 99-363
Reply Comments of the American Cable Association ("Reply Comments")

Dear Ms. Salas:

On behalf of the American Cable Association ("Association"), we enclose ten (10) copies of the Association's Reply Comments in the above-referenced docket. We request that each Commissioner receive a personal copy of these materials.

We also include a "FILE COPY." We ask that you date-stamp and return it to the courier.

Please call with any questions.

Very truly yours,



Lisa Chandler Cordell

Enclosures

cc: American Cable Association
cc: service list

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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of:)
)
Implementation of the Satellite) CS Docket No. 99-363
Home Viewer Improvement)
Act of 1999)
)
Retransmission Consent Issues)

To: The Commission

REPLY COMMENTS OF THE
AMERICAN CABLE ASSOCIATION

I. INTRODUCTION

The American Cable Association ("Association") files these Reply Comments to address suggested rules that would create disparate treatment of cable and DBS, despite Congress' desire to place cable and DBS "on an equal footing" when it comes to the availability of broadcast programming.¹ Anything but uniform retransmission consent election policies would have the effect of creating regulatory and marketplace disparity and therefore discourage meaningful and long-term competition between cable and DBS. Instead, the Commission must develop a technology-neutral, industry-neutral retransmission consent regulatory approach – a framework that Congress mandates must be "equal."

¹ See *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999*, Notice of Proposed Rule Making in CS Docket No. 99-363, FCC 99-406 (released December 22, 1999), at ¶ 1 ("NPRM").

II. APPLYING THE SAME ELECTION PROCEDURES TO CABLE AND DBS ALIKE WILL FOSTER MEANINGFUL COMPETITION.

The Commission must apply the same election procedures for DBS retransmission consent as it does for cable.² Congress has established a largely parallel framework between cable and DBS with respect to local signal carriage obligations. To the extent that Congress has imposed similar must-carry and retransmission consent requirements, the Commission must also impose uniform procedural and substantive requirements for retransmission consent arrangements.

As the Association has previously explained, uniform retransmission consent policies remain essential to long-term, meaningful competition between cable and DBS.³ To create uniformity and foster meaningful competition, the Commission must (1) bring the timing of the DBS election cycle into alignment with cable's as quickly as possible; (2) require broadcasters to make consistent elections for cable and DBS;⁴ (3) require the same notice provisions; and (4) require default must-carry in the absence of an election. This will ensure that one multichannel video programming distributor ("MVPD") does not gain a competitive advantage over another.⁵ In addition to promoting meaningful competition,

² See e.g., 47 C.F.R. § 76.64.

³ See Comments of the American Cable Association in CS Docket No. 99-363 (Jan. 12, 2000) at 3-7 ("ACA DBS Retransmission Consent Comments").

⁴ Broadcasters would have to make the same election for all cable systems and DBS providers that serve the same or partially overlapping areas.

⁵ See Comments of the National Cable Television Association on Section III of the NPRM in CS Docket No. 99-363 (Feb. 1, 2000) at 2-4.

requiring consistent elections will also ward against unlawful exclusive agreements.⁶

The Commission's rules prohibit exclusive retransmission consent agreements between broadcasters and MVPDs.⁷ In addition to the obvious concern that a broadcaster does not enter an exclusive agreement with one cable system to the exclusion of another cable system, or one DBS provider to the exclusion of another DBS provider, a further concern involves *de facto* exclusive agreements. A *de facto* exclusive agreement exists where a broadcaster's unreasonable retransmission consent demands force a smaller cable business to forego consent, giving a competitor's cable system an exclusive right to carriage.⁸

Permitting a broadcaster to make inconsistent elections could similarly result in exclusive agreements. For example, the broadcaster could elect must-carry for DBS but retransmission consent for cable, effectively withholding consent from the smaller cable business and leaving the DBS operator with an exclusive agreement to cable's disadvantage. Allowing broadcasters to make inconsistent elections would facilitate exclusive agreements in violation of the Commission's rules. The Commission therefore should make the rule changes the Association previously submitted to avoid this possibility.⁹

⁶ See 47 U.S.C.S. § 325(b)(3)(C); 47 C.F.R. 76.64(m).

⁷ See 47 C.F.R. § 76.64(m).

⁸ See ACA DBS Retransmission Consent Comments at 14-15.

⁹ See ACA DBS Retransmission Consent Comments at 20.

III. CONCLUSION

The Commission must develop uniform retransmission consent election policies. Only then can it promote long-term, meaningful competition and satisfy Congress' intent that cable and DBS rest on equal footing with respect to the availability of broadcast programming.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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March 3, 2000

CERTIFICATE OF SERVICE

I, Lisa Chandler Cordell, certify that a copy of the foregoing REPLY COMMENTS was sent via first class mail on this 3rd day of March 2000, to each of the following:

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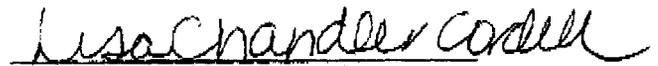
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