Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	
And Competition Act of 1992	)	
	)	CS Docket No. 01-290
Development of Competition and Diversity	)	
In Video Programming Distribution:	)	
Section 628(c)(5) of the Communications	)	
Act:	)	
	)	
Sunset of Exclusive Contract Prohibition	)	

To: The Commission

COMMENTS OF
INDEPENDENT MULTI-FAMILY
COMMUNICATIONS COUNCIL
(IMCC)

INDEPENDENT MULTI-FAMILY COMMUNICATIONS COUNCIL

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INTRODUCTION

The Independent Multi-Family Communications Council ("IMCC") submits these comments in response to the Notice of Proposed Rulemaking ("*NPRM*") in CS Docket No. 01-290, *Sunset of Exclusive Contract Prohibition.*

IMCC represents a cross-section of companies on the cutting-edge of the telecommunications revolution leading the U.S. into the twenty-first century. Its members include private cable operators ("PCOs"), shared tenant services providers, equipment manufacturers, program distributors, broadband Internet service providers ("ISPs") and, importantly, residential property management and development companies. While IMCC members originally concentrated their competitive entry efforts exclusively on video services, the last six years have marked an expansion into the provision of voice and data communications services to residents throughout the country. IMCC members employ a variety of communications technologies, including wired, wireless and direct broadcast satellite ("DBS"), to serve the residential multiple dwelling unit ("MDU") market, which includes some 30 million households. IMCC members compete primarily with both franchised cable operators and incumbent local exchange carriers ("LECs"). Without the competition fostered by IMCC members and other emerging technology companies, MDU owners and managers, but *primarily residents*, would have little choice among cable and telecommunications providers.

I. THE NEED FOR THE FCC'S PROHIBITION OF EXCLUSIVE PROGRAMMING CONTRACTS REMAINS AS STRONG AS EVER

As the Commission well knows, Congress enacted the program access provisions in 1992 after concluding that vertically integrated program suppliers have the incentive and ability to favor their affiliated cable operators over other multichannel video program distributors ("MVPDs") such as competing cable systems, home satellite dish distributors, direct broadcast satellite ("DBS") providers, satellite master antenna television ("SMATV") systems and wireless cable operators. The use of exclusive programming contracts is the primary way in which cable Multiple System Operators ("MSOs") may deny popular programming to their competitors. The statute's ban on exclusivity is scheduled to sunset on October 5, 2002, "unless the Commission finds, . . . that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming."[1] The Commission has issued the *NPRM* to determine whether market conditions require continued enforcement of the statute's prohibition on exclusivity.

[1] 47 U.S.C. § 548(c)(5).

A. The Ban on Exclusivity is the Cornerstone of Section 628 as a Whole and Must be Preserved

Section 628 prohibits an array of unfair practices preventing competitive access to video programming, including the use of undue influence and discrimination in the terms, conditions and prices for programming. However, the ban on exclusivity remains the centerpiece of the legislation because without it, all of the other pro-competitive provisions would be vitiated. Suppose that the Commission decides to lift the prohibition and allow vertically integrated programmers to enter into exclusive contracts with their cable affiliates. A non-cable competitor, assuming it has been victimized by unfair practices, undue influence or price discrimination (all in violation of section 628), would have the option of filing a program access complaint with the Commission and possibly obtaining monetary damages under 47 C.F.R. § 76.1003(h).

In order to survive as a viable competitor to cable, however, the alternative Multichannel Video Program Distributor ("MVPD") needs not the questionable prospect of monetary damages, but access to the popular programming that is locked up by the MSO's exclusive contract. As the Commission has said, "access to programming is an essential prerequisite to the ability to compete against incumbent cable operators."[2] To sunset the prohibition on exclusive programming contracts would be, in effect, to render the remainder of section 628 completely ineffective with respect to its purpose of ensuring competitive access to video programming and thereby providing meaningful choices for consumers.

B. Market Conditions Have Only Increased the Need for the Prohibition on Exclusive Programming Contracts

Clearly, the program access law, including the ban on exclusive programming contracts, is intended to enhance competition among MVPDs by ensuring that all providers in the marketplace have non-discriminatory access to the programming they need in order to attract and retain viewers. The chronic lack of real competition in the MVPD market is best demonstrated by the fact that cable rates continue to rise faster than inflation.[3] The Commission has found that these soaring rates are primarily attributable to "increases in programming costs,"[4]and that "when an incumbent cable operator faces 'effective competition,' as defined in the Communications Act, it responds to such head-to-head competition in a variety of ways, including lowering prices or adding new channels without changing the monthly rate, as well as improving customer service and adding new services such as interactive programming."[5] Meaningful competition among MVPDs for crucial programming – which was Congress' explicit purpose in enacting Section 628 – will decrease or at least control the price of that programming, and thereby erect a market-driven restraint on the prices cable consumers pay for video services. In

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[2] *Outdoor Life Network and Speedvision Network,* 13 FCC Rcd 12226, 12235 (CSB, 1998).
[3] *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming,* CS Docket No. 00-132 ("*Seventh Annual Report*") at ¶ 9.
[4] *Id.* at ¶203.
[5] *Id.* at ¶ 9.

short, current market conditions make is essential that the program access rules – especially the ban on exclusive programming contracts – remain in place and be strengthened where possible.

1. Horizontal Issues

The Commission recognizes that horizontal concentration of cable systems may also pose a threat to nondiscriminatory program access, regardless of whether the programming vendor is vertically integrated.[6] The sheer number of eyes that a horizontally concentrated MSO is able to offer a programmer gives the MSO bargaining leverage against the programmer that cannot be matched by non-cable competitors.

According to the Commission's own evidence, "[c]onsolidations within the cable industry continue as cable operators acquire and trade systems. The ten largest operators now serve close to 90 percent of all U.S. cable subscribers,"[7] which represents an eight percent increase over 1999.[8]

The effects of horizontal consolidation on nondiscriminatory access to key programming is only exacerbated by the phenomenon of "clustering" which has also increased in recent years.[9] Approximately two-thirds of all cable subscribers are now served by system "clusters" in local markets.[10] These clusters tend to focus on the most lucrative urban markets, and programmers are understandably reluctant to distribute programs where they cannot reach a critical mass of subscribers, thus ceding even further bargaining leverage to the large horizontally concentrated MSOs vis-à-vis their rivals.

It should also be noted that cable systems in a large cluster tend to be linked through fiber optic networks. These fiber optic networks make it easier for vertically integrated MSOs to "migrate" programming from satellite to terrestrial delivery, thus avoiding application of the program access rules altogether.

On top of all this, the Commission may soon be forced to relax its cable horizontal ownership cap, which limits the number of multichannel video programming subscribers that may be served by systems in which an incumbent cable operator has an attributable ownership interest. As a result of the D.C. Circuit's recent decision on horizontal ownership, the Commission is now requesting comment on whether it should

[6] " … [T]he horizontal ownership rules limit the potential for anticompetitive abuses of purchasing power in areas outside of the core areas covered by the program access rules, such as programming contracts between cable operators and non-vertically integrated programmers or contracts involving programming that is not delivered to cable operators via satellite." *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., to AT&T Corp., Transferee,* 15 FCC Rcd 9816, 9846 (2000).
[7] *Seventh Annual Report* at ¶ 15.
[8] *Id.* at ¶ 168.
[9] *See id.* at 157 ("Since the previous report, cable MSOs have continued to undertake or announce system mergers, acquisitions, divestitures, swaps, and joint ventures in order to create regional clusters of contiguous cable systems.")
[10] *Id.* at 158 and Table C-2.

raise the cap from its current 30 percent level to as high as 60 percent.[11] If, as one can reasonably expect, the Commission's horizontal ownership cap is raised to *any significant extent*, market conditions will make it more difficult for non-cable MVPDs to purchase the quality programming they need to compete, *even if the Commission's prohibition of exclusive programming contracts is retained,* as it clearly should be.

2. Vertical Issues

The Commission would *only* be justified in lifting the ban on exclusive programming contracts if there were evidence that vertical integration between program vendors and cable MSOs were significantly declining. In fact, the evidence demonstrates just the opposite. Currently, of the top 20 programming networks in terms of subscribership, *more than one-half* (i.e., 12) are owned by only 11 companies, and nine of those networks are vertically integrated with cable MSOs.[12]

The problem is especially acute with respect to national and regional sports programming, the significance of which can hardly be overstated.[13] Given the unique nature of all local sports and its tremendous appeal to local audiences, it is essential that any would-be MVPD competitor have access to such programming in order to establish a viable presence in any particular market.

Nonetheless, all available evidence confirms that sports programming is becoming *less not more available to* cable's competition. As the Commission recognizes, "it appears that more and more sports programming is distributed via cable in lieu of other outlets . . . This migration of games to cable is seen as an ongoing trend."[14] This trend is properly understood as sounding the death knell for any start-up or over-builder seeking to establish a competitive niche in virtually any major urban market.[15]

Given the significance of sports programming in local MVPD markets, it is not surprising that vertically integrated MSOs have gone to great lengths to withhold that programming from would-be entrants. One of the most egregious and notorious examples remains Comcast's refusal to sell its SportsNet programming to DBS competitors in the

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[11] *Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992 (Further Notice of Proposed Rulemaking),* CS Docket No. 98-82, FCC 01-263 at ¶¶ 52-59 (rel. Sept. 21, 2001).

[12] *Seventh Annual Report* at ¶ 175.

[13] "The games of the professional sports [teams] provide a unique experience for viewers that cannot be duplicated . . . There is simply no other type of programming comparable in popularity and demographic pull to live sporting events." Piraino, "A Proposal for the Antitrust Regulation of Professional Sports," 79 B.U.L. Rev. 889, 895 (1999). The Commission has itself stated that "[s]ports programming . . . warrants special mention because of its widespread appeal and strategic significance for MVPDs." *Fifth Annual Report, Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 13 FCC Rcd 24374 (198) at ¶ 171.

[14] *Id.* at ¶ 189.

[15] According to a survey recently conducted by RCN, between 40 and 58 percent of cable subscribers would be less likely to subscribe to a cable service if it lacked local sports." *Id.* at ¶ 183.

Philadelphia region.[16] Comcast is the dominant cable incumbent in Philadelphia with approximately 1.9 million subscribers, or 90 percent of total MVPD subscribers in the region, and the company is vertically integrated at nearly every level. Through subsidiaries, Comcast owns a controlling interest in the Philadelphia Flyers National Hockey League team, the 76ers National Basketball League team and two area sports arenas. SportsNet is controlled by Comcast and carries the majority of games played by the Flyers and the 76ers, along with one-half of the Philadelphia Phillies Major League Baseball games. Comcast itself acknowledges the strategic significance of its control over SportsNet programming: "SportsNet provides a significant marketing advantage against satellite TV and other competitors."[17]

While Comcast's actions survived the Commission's scrutiny under the"terrestrial delivery" exemption in Section 628, it is undeniable that the MSO's exploitation of this unfortunate loophole in the law has created a further barrier to entry in an already uncompetitive market, allowing Comcast to raise rates and limit consumer choice.[18]

While sports programming may be the most effective weapon in a vertically integrated MSO's arsenal of anticompetitive weaponry, it is by no means the only one. As mentioned above, "11 out of the top 20 video programming networks ranked by prime time ratings are vertically integrated with cable MSOs."[19] These vertically integrated "marquee" networks include the USA Network (AT&T), TBS (Time Warner), TNT (Time Warner), the Cartoon Network (Time Warner), TLC (AT&T, Cox), the Sci-Fi Channel (AT&T), the Comedy Channel (Time Warner), Court TV (AT&T, Time Warner), CNN/CNN Headline News (Time Warner), E! (Comcast, AT&T) and APL (AT&T, Cox).

The MSOs have demonstrated their willingness to evade the program access rules by migrating vertically integrated programming from satellite to terrestrial delivery when threatened with competition in any given regional market. In response, the Commission has stated that "if a trend developed where vertically integrated programmers began to switch from satellite delivery to terrestrial delivery for the purpose of evading the Commission's rules, it would 'consider an appropriate response to ensure continued access to programming.'"[20]

With these words, the Commission correctly and appropriately acknowledges both the inadequacy of the program access rules as they currently exist as well as the likelihood that vertically integrated MSOs will continue to create barriers to entry by denying their would-be competitors access to crucial programming. The vigor with which the MSOs argue in this proceeding in favor of a sunset of section 628(c)(2)(D) confirms

[16] *See DirecTV v. Comcast Corp.*, 13 FCC Rcd 21822 (1988) and *EchoStar Communications Corp. v. Comcast Corp.*, 14 FCC Rcd 2089 (1999).
[17] Comcast 1999 Summary Annual Report, http://www.comcast.com/investor_relations/annual_reports99/content2.asp.
[18] *See, for example,* Horn, "Prices Tend to Rise as Competition Lags for Cable TV," *The Philadelphia Inquirer,* June 3, 2001
[19] *Seventh Annual Report* at ¶ 175, Table D-7.
[20] *Id.* at ¶ 182, *quoting Program Access Order*, 13 FCC Rcd 15856-7, ¶ 71.

that one obvious way in which they hope to deny competitive access to programming is through the use of exclusive programming contracts. Given the inadequacy of the current program access rules and the tendency of large, vertically integrated MSOs to leverage affiliated programming as a way of crushing competition, it would make no sense at all for the Commission to create yet another loophole in the law by lifting the ban on exclusive programming contracts.

II. PCO INDUSTRY AS A WHOLE RELIES ON SECTION 628(c)(2)(D) IN ORDER TO SURVIVE IN THE MDU MARKET

Most PCOs utilize Satellite Master Antenna Television System ("SMATV") to provide MVPD services to residents of MDUs. Although there are a handful of relatively large PCOs in terms of subscribership, most private operators serve approximately 3,000 to 4,000 customers.[21] Altogether, the PCO industry services about 1 to 2 percent of the MVPD market nationwide. However, in the 100 unit or larger MDU market, that percentage increases to a significant 6 to 8 percent.

After prolonged investigation, in 2000 the Commission has granted PCOs the right to utilize the lower portion of the 18GHz radio spectrum for microwave transmission. The Commission recognizes that this technology represents an important component in the PCOs ability to compete effectively with franchised cable. Any change in this allocation would seriously undermine the viability of the PCO industry, depriving MDU residents of real choice among providers.

PCOs compete directly with franchised cable in the MDU market, offering many of the same services, including video, local and long-distance residential telephone and Internet access. Although DBS subscribership is growing, in many areas PCOs offer the only real alternative to cable because the "local-into-local" service now being offered by DBS providers (after enactment of the Satellite Home Viewer Improvement Act of 1999) is severely limited in its geographical scope.[22]

Without the presence of PCOs, many of which utilize DBS, MDU owners would lose whatever negotiating leverage they have against franchised cable operators. The MSOs, as virtual monopolies, would then have no incentive to improve the products and services offered to MDU residents. PCO competition is therefore crucial to fulfillment of the goals of the 1996 Telecommunications Act.

PCOs are able to compete in the MDU market by offering products that are superior to and often less expensive than those offered by incumbent MSOs, and by

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[21] *Seventh Annual Report* at ¶ 92.

[22] *Id.* at ¶ 70, footnotes 257, 260. DBS "local-into-local" service is, for the moment, confined to major metropolitan areas, leaving many rural or suburban regions without local broadcast signals delivered via DBS. According to a recent report submitted in response to the Commission's recent *Notice of Inquiry* for its upcoming eighth annual *Video Competition Report*, as many as 80 percent of all television markets nationwide may not have any DBS local-into-local service. *Ex Parte* letter from Peter Pitts, Executive Director, EARN, to Magalie Roman Salas, Secretary, Federal Communications Commission, CS Docket No. 01-129 (filed Sept. 12, 2001).

providing fast, efficient and friendly customer service to MDU residents. These advantages are incidental to the more "local" nature of PCO services when compared to the generic services provided by large MSOs with nationwide reach. Thus most PCOs manage to establish a mutually beneficial relationship with MDU owners that is very different from the kind of adversarial relationship that often times exists between owners and cable incumbents facing no competition. The record in the Commission's pending proceeding on inside wiring is replete with statements from MDU owners and property managers demonstrating the importance of PCO competition to their ability to attract and retain residents in MDU buildings. However, without the core ability to obtain nondiscriminatory access to quality programming, none of the competitive advantages available to PCOs would suffice to ensure MDU residents with any meaningful choice among MVPDs.

A. Obstacles to PCO Competition in the MDU Marketplace

Even with Section 628's ban on exclusive programming contracts in place, PCOs face many difficulties when competing for subscribers in MDU buildings. To fully understand these difficulties, it is worth recalling a bit of background.

It is important to remember that the federal government encouraged and fostered the burgeoning cable television industry from its inception in the 1970s. The government did this by providing localities with the legal authority to establish cable systems as exclusive regional monopolies in franchise areas. Other governmental actions helped to further entrench the franchised cable monopolies. For example, many states enacted "mandatory access" laws that provide the franchised cable operator with a legal right to provide service in MDU buildings even if the property owner objects. The assumption underlying these governmental actions was that because cable faced little or no competition, government-sponsored monopolies were necessary in order to ensure that all Americans could have access to cable television programming.

Today, however, that underlying assumption is no longer valid, because competing technologies – including DBS, wireless and SMATV systems – are able to offer consumers video and other services that are equal or superior to those offered by franchised cable. The problem is that the outmoded assumptions still exist, along with associated regulatory structures that are inappropriate in what could and should be a vibrantly competitive marketplace. For example, mandatory access laws remain in effect in fifteen states, despite the fact that these laws function mainly to suppress competition in the MDU market. And although Congress and the Commission have taken some significant steps – for example, by outlawing the granting of exclusive franchises – to foster MVPD competition, in 99 percent of all franchise areas cable MSOs face no competition at all except that provided by non-cable MVPDs such as DBS and PCOs.

In the MDU market, PCOs face the following barriers to entry, among others:

Many MDU owners are bound by "perpetual" exclusive contracts with cable MSOs. Although the specific working of such contracts may and does vary, a perpetual contract generally extends for the life of the MSO's franchise and any renewals and/or extensions thereof. Many MDU owners were induced to sign such onerous agreements at a time when there was little if any competition among MVPDs serving MDUs, and the alternative was to forgo video service altogether on behalf of MDU residents. IMCC estimates that as many as one-third of MDUs nationwide are subject to perpetual contracts, in effect foreclosing all possibility of MVPD competition in that portion of the market.[23]

Another obstacle facing PCOs is the inadequacy of the Commission's rules governing the disposition of cable inside wiring in MDU buildings. These rules[24] are designed to enhance competition by allowing an alternative MVPD to utilize existing cable inside wiring when the property owner or any MDU resident terminates the services of the incumbent. IMCC will not repeat here the comments it has filed in the Commission's pending rulemaking on inside wiring[25] except to re-affirm that cable incumbents across the country are doing everything within their power to block or undermine implementation of the rules. The MSOs anticompetitive tactics create yet another barrier to entry into the MDU market by competitive MVPDs.

The most critical barrier to entry, however, is the PCOs' inability to acquire quality programming on terms, prices and conditions comparable to those available to cable incumbents. Data on the extent to which PCOs are being denied nondiscriminatory access to quality programming is difficult to obtain because, although program vendors must publish "rate cards," these disclosures reveal very little about what the MSOs are actually paying for programming. IMCC estimates that PCOs pay, on average, 40 percent more than the MSOs for the same programming.

One of the important ways in which PCOs are able to compete with the large MSOs is by offering subscribers only those channels that they really want. Thus, many PCOs market their services by offering MDU residents a "best of" lineup of 40 to 60 channels. Program vendors, however, are subverting this marketing strategy by means of "forced carriage" arrangements. PCOs are being forced to accept bundling and tying arrangements with program vendors that raise the price of desired programs and consume limited channel capacity.

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[23] The Commission is currently considering a rule that would allow MDU owners the option of canceling perpetual contracts in order to provide residents with a choice among MVPDs. *See Telecommunications Services Inside Wiring, Customer Premises Equipment, Implementation of the Consumer Protection and Competition Act of 1992: Cable Home Wiring,* CS Docket No. 95-184 and MM Docket No. 92-260, *Report and Order and Second Further Notice of Proposed Rulemaking ("Inside Wiring FNPRM"),* 13 FCC Rcd 3659 (1998).
[24] 47 C.F.R. §§ 47.800 *et seq.*
[25] ICTA Comments filed in CS Docket No. 95-184, *Inside Wiring FNPRM*.

ESPN is the most popular national sports programming network in America. Jeff Maxwell, CEO of 4COM, a program aggregator for PCOs, reports that ESPN is insisting that if 4COM is to carry the basic ESPN channel, it must also carry its smaller, less popular networks, including ESPN2, ESPNews and ESPN Classic. While this sort of forced carriage is not a problem for the larger MSOs, it is burdensome on the smaller PCOs, both because of increased programming costs (passed on to subscribers) and because the carriage of less desirable programming consumes the limited and valuable channel capacity available to the PCOs. Other cable networks engage in the same sort of bundling and tying behavior. For example, PCOs must carry Discovery in order to provide Animal Planet, and Disney forces operators to carry the basic Disney channel in order to launch Toon Disney.

A variation of forced carriage is the use of "pricing incentives" by program vendors. 4COM reports that MTV leverages its popularity by offering a 10 percent discount when the MVPD also offers Nickelodeon or VH1, and a 25 percent discount when the MVPD offers both. Turner Broadcasting engages in similar tactics: 4COM is offered a 20 percent discount on CNN if the provider also agrees to carry other Turner network programs such as CNN Headline News, TBS and TNT. Again, the point is not that such tactics are illegal, but that they tend to favor the larger cable MSOs who enjoy expended channel capacity and are better able to absorb the costs associated with multiple (albeit unwanted) carriage of affiliated programming.

Similarly, Trey Gaskins, CEO of Advanced TeleMedia ("ATM") in Atlanta, reports that the Fox cable network requires that in order to carry Fox's popular news network on any chosen system, ATM must also carry the programming on *all* of its systems, and place those programs on an early prominent area of the channel lineup. ATM is also experiencing problems with ESPN and Discovery similar to those experienced by 4COM described above.

Again, the issue is not only what vertically integrated program vendors have done to deny competitive access to the smaller PCOs, but rather *what they would be likely to do if the ban on exclusivity were lifted as the MSOs urge.* If, for example, AOL Time Warner were to gain the exclusive right to distribute games played by their Major League Baseball Atlanta Braves and National Basketball Association Atlanta Hawks teams, the result would be certain death for any non-cable MVPD (such as ATM) trying to compete in the Atlanta region.

Finally, it is worth remembering that prior to enactment of Section 628 in 1992, exclusive programming contracts between programming vendors and affiliated cable operators were the norm rather than the exception. As a result, alternative MVPDs were in many cases completely unable to acquire the programming they needed to become viable competitors to cable. The Commission is well aware of this pre-1992 state of affairs, because complaints from non-vertically integrated MVPDs regarding exclusive programming contracts were a primary impetus that pushed Congress and the Commission to enact the program access laws and rules in the first instance. In fact, the access rules, despite their flaws, have been a fundamental factor in allowing whatever growth the PCO industry has managed to achieve over the last ten years. The fact that exclusive programming contracts do not *currently* appear to present a significant problem in competitive access to programming is evidence that section 628(c)(s)(D) *has worked and should remain in place.*

Accordingly, it requires no leap of faith to imagine what would happen if the Commission were to lift the ban on exclusive programming contracts: The entire industry would take a giant step backward into an era when market conditions compelled Congress to intervene to ensure that the largest and most powerful cable MSOs would not suppress competition and deny consumer choice by monopolizing the availability of precisely the programming that competitive MVPDs need to survive.

III. CONCLUSION

It is crucial that the Commission bear in mind that the Congressional ban on exclusive programming contracts is not simply a provisional stopgap measure to curb discrete and transitory tactics by vertically integrated cable MSOs. Rather, this prohibition constitutes the essential foundation of every other regulatory restraint against discrimination in the distribution of marquee programming that every competitive MVPD in the market desperately requires in order to survive in a market monopolized by franchised cable. Given the blatant loopholes (*e.g.*, the terrestrial delivery exemption, the restriction to vertically integrated firms, which ignores the monopsony power of huge, horizontally consolidated, clustered cable MSOs) in the existing program access laws, the ban on exclusive programming contracts must be understood as perhaps the single most important regulatory measure to restore real competition to a dysfunctional, monopolized market. Lifting this ban would not amount to an "added burden" on the small, non-cable MVPDs, pushing them, perhaps, to compete more effectively; on the contrary, lifting the ban would constitute a death sentence on the only industries which might, should genuine competition for the delivery of video programming become a reality, constitute a natural constraint on the abusive practices of big cable in what could accurately be characterized as a "free market."

For all of the reasons set forth above, IMCC urges the Commission not to lift the ban on exclusive programming contracts.

Respectfully submitted,

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