Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Leased Commercial Access	)	MB Docket No. 07-42
	)	
Development of Competition and Diversity in	)	
Video Programming Distribution and Carriage	)	

COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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September 11, 2007

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COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association ("NCTA"), by its attorneys, hereby submits its comments in the above-captioned proceeding. NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation's cable television subscribers, as well as more than 200 cable programming networks and services. NCTA's members also include suppliers of equipment and services to the cable industry. The cable industry is also the nation's largest broadband provider of high speed Internet access after investing $100 billion over ten years to build out a two-way interactive network with fiber optic technology.

INTRODUCTION

This proceeding arose from a review of the disposition of the cable systems owned by Adelphia Communications Corporation.[1] Claims raised in that proceeding about the FCC's leased access and program carriage rules led to issuance of the instant *Notice*. The *Notice* asks for information about how the commercial leased access provisions found in Section 612 of the

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[1] *Application for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., Assignors to Time Warner Cable, Inc., Assignees, et al.*, 21 FCC Rcd. 8203 (2006).

1992 Cable Act are working. It also explores whether changes should be made to the processes governing program carriage complaints.

The rules should not be modified to create additional or greater obligations for cable operators.

The FCC on several occasions has carefully considered and fine-tuned its leased access rules. Most recently, in 1997, the FCC comprehensively reevaluated its leased access rules and rate formulas.[2] Today, channels are being leased on cable systems, typically on a part-time basis. Any modifications to the rules to subsidize leased access use would undo the current rules' delicate balance of interests – a balance the D.C. Circuit has upheld as "a reasonable means of accomplishing the statute's purposes."[3]

Program carriage complaints, moreover, have been exceedingly rare. The *Notice* contains no evidence that the procedures need to be changed to more expeditiously handle the occasional complaint that may be filed.

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2 *Second Report and Order and Second Order on Reconsideration*, 12 FCC Rcd. 5267 (1997) ("*Second Report and Order*").

3 *Valuevision International, Inc., v. FCC*, 149 F. 3d 1204, 1209 (1998).

DISCUSSION

I. THE RULES SHOULD NOT BE MODIFIED TO INCREASE LEASED ACCESS OBLIGATIONS

A. Leased Access Channels Are Being Made Available

The *Notice* seeks comment on the "current status of leased access programming," asking about channel usage on a full-time or part-time basis.[4] While we are unaware of any source that contains statistics about current channel leasing on cable systems, anecdotal evidence from NCTA members suggests that leasing of access channels occurs on a variety of large and small systems throughout the United States.[5]

NCTA members report that most leasing occurs on channels leased to part-time lessees, typically purchasing half-hour and hour increments. Some operators also lease full-time channels to programmers. Full-time programmers generally are low power stations that also enjoy free over-the-air transmissions or other programmers (such as international programmers) that air pre-recorded programming.

The amount of capacity occupied by leased access users is to a large degree beside the point. The number of channels devoted to leased access use should not be viewed as the measure of success. The Commission has found as much: "as long as the maximum leased access rate is reasonable, we believe that minimal use of leased access channels would not indicate the rate should be lowered."[6]

Congress expressly allowed operators to use capacity that otherwise might be devoted to leased access "until the use of such capacity is obtained, pursuant to a written agreement, by a

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[4] *Notice* at ¶ 7.

[5] When the Commission last published statistics on channel leasing, it showed that as of January 2005, the typical cable system carried leased access programming on no more than one channel. *2006 Video Competition Report*, 21 FCC Rcd. 15087 (2006).

[6] *Second Report and Order*, 12 FCC Rcd. at 5278-79.

person unaffiliated with the operator."[7] The *Notice* wonders whether this right of cable operators to use channels to voluntarily provide programming, rather than keeping them dark, somehow "contribute[s] to programmers' lack of use of the set-aside channels?"[8]

There is no evidence that operator use of these channels has any effect on decisions whether to pursue leasing. Leased access, a regulatory invention of the early 1980s, before the advent of widespread satellite-delivered programming, has inherent limitations that make widespread leasing by programmers unlikely to occur.

As far back as 1991, Congress was aware that leased access might not be economically viable.[9] The D.C. Circuit explained in upholding the FCC's leased access order that "outside leased access, cable operators pay for the programs they select, offsetting the high cost of production borne by programmers. Yet under even the most generous formula, leased access programmers would be required to pay some fee to operators for access."[10] The economics of leasing, then, account for its limited utility as a tool for traditional programmers. Those traditional cable programmers generally depend on a combination of license fees from cable operators and advertising revenues to generate sufficient revenues to program a full-time channel. Commercial leased access users, though, generally rely on a single revenue stream generated either from direct solicitations from viewers or from advertising revenues alone.

As a result, some of the principal beneficiaries of government-mandated leased access are providers of infomercials and home shopping services, entities that generate revenues during transmissions. Not surprisingly, websites have sprung up designed to pitch leased access use as

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[7] 47 U.S.C. § 532(b)(4).

[8] *Notice* at ¶ 7.

[9] S. Rep. No. 102-92 at 31 (1991)(conceding that the "cable industry has a sound argument in claiming that the economics of leased access are not conducive to its use").

[10] *ValueVision*, 149 F.3d at 1209.

a means of providing low-budget commercials. One website announces that: "You'll be able to air programming virtually without censorship. *Leased access is the perfect means to start a direct response marketing program* … especially in markets where advertising on TV would otherwise be too expensive!" Leased access users have been counseled to "produce a 2-3 minute piece" and "*loop[] that into a 30 minute window*" for low budget offerings.[11] Sales pitches are a staple of leased access programming.[12]

In sum, in the decade since the FCC changed its leased access rules, there has been increased use of access on a part-time basis. Leased access still has limited utility for traditional cable programmers, and trying to force increased leased access use through artificially subsidizing its use will harm cable operators, programmers and their subscribers.

B. Costs and Procedures Associated with Leased Access

The *Notice* also asks whether leased access terms and conditions are similar to or different from those that operators may have with other programmers.[13] The relationship between operators and leased access users is *sui generis*. Cable operators may have local origination channels they program themselves at the local level. They may provide channel capacity and support for public, educational and governmental channels. But operators ordinarily do not enter into agreements at the local level with third-party programmers over which they can exercise no editorial control at government-determined prices.

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[11] http://www.geocities.com/leasedaccessinfo/frequent.htm (emphasis supplied).

[12] Some of these infomercials and advertisements appear in adult-themed programming. Leased access has spawned the development of programs such as "The Naked Shopping Network" – "a series of half-hour shows dedicated to selling a brand new line of erotic material for couples while pushing the limits of television." www.nakedshoppingnetwork.com. The show "takes a sexy and funny look at infomercials, soft-core erotica, and television censorship in general." www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/08-29-2. A leased access "consultant" explained one of the reasons: "[f]ederal rules make it difficult for cable providers to censor cable access programming, resulting in an ideal venue for infomercials with erotic content." "Soft-Core Filmmakers Go Direct on Cable Access," www.dmnews.com/cms/trackback/21536-1.

[13] *Notice* at ¶ 7.

The cable industry takes seriously its obligations to offer leased access channels. Compliance with these obligations, though, requires the expenditure of resources. Leased access imposes unusual costs and procedures not at all the norm. The rules appropriately allow operators to recover some of these costs. For example, inserting leased access programming into the cable system can require additional expenditures in personnel and equipment costs – and the FCC rules properly allow operators to recover these direct costs associated with equipment and technical support to the extent that operators may also recover these costs from non-leased access programmers.[14]

Since payment flows from the leased access programmer to the operator, rather than the other way around, there are risks of program failures and non-payment, for example, which also deviate from the norm. Unlike the usual case, where a cable operator may make a business decision to reject a potential client based on concerns about credit-worthiness (or lack thereof), cable operators must accept even the least financially viable leased access programmer. Not surprisingly, operators sometimes are forced to write off as bad debt sizable uncollected leased access payments.

The FCC has rightly allowed cable operators to protect themselves against some of the risks associated with leased access. For example, the Commission has permitted operators to require leased access users to obtain reasonable liability insurance and to require the payment of security deposits.[15] Operators should be entitled to avail themselves of these entirely legitimate business practices to obtain some assurance that leased access will not adversely affect system operations.

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14 *Second Report and Order*, 12 FCC Rcd. at 5324-25.

15 *Id.* at 5323; 47 C.F.R. § 76.971(c).

Leased access also imposes numerous other hidden costs that cannot be directly recovered under the existing FCC rules. Some costs arise from issues surrounding the content of programming a lessee might wish to air. Operators generally are prohibited from exercising editorial control over leased access programming content except where they have a written policy prohibiting indecent leased access programming.[16] But this limited exception does not entirely protect an operator against leased access content issues. Concerns about the nature and quality of leased access programming can generate ill-will among customers. Cable subscribers commonly assume the cable operator selects or approves leased access programming and cable subscribers frequently call cable operators to complain about poor quality or inappropriate leased access programming.

Cable operators' lack of editorial control can cause other problems. One operator reports that it has been faced with situations where the content of leased access programming has caused disputes with copyright owners to the programming. For example, one leased access programmer rented "Fahrenheit 911" from a local video store and brought it to a cable operator, demanding it be aired on the leased access channel. The copyright owner objected, since the lessee had no rights to authorize the transmission. This is not an isolated case, insofar as leased access users may be unaware of the need to obtain copyright clearances.

Even where operators have adopted a policy reasonably restricting indecent programming, disputes arise with lessees about that characterization of their programming. Operators may have to undertake a tape-by-tape review, answer objections to the show's content, or install equipment to block the leased access programming. These costs can multiply when

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[16] *Id.*, § 76.701.

legal proceedings are initiated.[17] Defending against sometimes baseless leased access complaints[18] or obtaining clarifications from the agency about permissible leased access policies also come with a price tag that is not reflected in the rates that can be recovered from lessees.

The *Notice* also asks about the process for resolving leased access disputes.[19] Existing procedures allow leased access users to file a petition for relief at the FCC.[20] Special procedures are also in place to allow evaluation of leased access rates by accountants to resolve local disputes.[21] The rules *already* provide the option of using alternative dispute resolution to address issues not resolved by the accountant report.[22] Nothing in the *Notice* suggests that these procedures are inadequate to quickly resolve any disputes that may arise regarding leased access rates.

C. Leased Access Rates

The *Notice* asks generally about the Commission's rate formula for leased access.[23] The FCC developed this methodology after extensive review.[24] The Court of Appeals rejected challenges to the rulemaking, finding that the FCC appropriately balanced the rights of lessees and cable operators in determining leased access rates. As the court explained: "to the extent that its rate cap makes leased access more affordable, the public arguably will benefit from the resulting diversity of information sources. …But the public's interest in diversity does not

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17 *See, e.g., Loce v. Time Warner Entertainment Advance/Newhouse Partnership*, 191 F.3d 256 (2d Cir. 1999) (leased access programmer sued cable company for failure to air indecent and obscene programming).

18 The *Notice* (¶ 1 n.1) notes that 70 leased access complaints have been filed since 1997.

19 *Notice* at ¶ 7.

20 47 C.F.R. § 76.975(b). Leased access users also may bring an action in federal district court. *Id.*, § 76.975(a).

21 *Id*., § 76.975(b)(emphasis supplied).

22 *Id.*, § 76.975(b)(5).

23 *Notice* at ¶ 8.

24 *Second Report and Order*, 12 FCC Rcd. at 5282-5283.

outweigh the statute's mandate that leased access rates not 'adversely affect' cable operators, any more than promoting leased access programming does."[25] The court upheld the FCC's average implicit fee formula, finding reasonable the agency's rejection of alternative approaches such as a cost-based formula or a flat rate. The D.C. Circuit also found that the statute's purpose of promoting diversity did not require preferential rates for non-profit programmers.[26] The *Notice* provides no reason for revisiting this carefully crafted rate formula.

The formula yields a tier carriage rate designed to ensure that operators and other programmers are not unfairly forced to subsidize commercial leased access users. Allowing full compensation for the use of valuable channel capacity is required by the Act, as the FCC has long understood: "Congress did not intend that cable operators subsidize leased access users."[27] Congress provided in adopting leased access that any rate established should be "at least sufficient to *assure that such use will not adversely affect* the operation, financial condition, or market development of the cable system."[28] The legislative history distinguished between commercial leased access arrangements and subsidized uses of public, educational, and governmental access channels: "the term commercial use is employed to distinguish from public access uses which are generally afforded free to the access user, whereas third party leased access envisioned by this section will result from a commercial arrangement between the cable operator and the programmer with respect to the rates, terms and conditions of the access use."[29]

The Commission has taken measures to ensure that its rate formula does not require lessees to pay more than their fair share. The FCC in 1997 reduced the amount that operators

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[25] *ValueVision*, 149 F.3d at 1209.

[26] *Id.* at 1213.

[27] *Second Report and Order*, 12 FCC Rcd. at 5279.

[28] 47 U.S.C. § 532(c)(1)(emphasis supplied).

[29] House Committee on Energy and Commerce, H.R. Rep. No. 934, 98th Cong., 2d Sess. (1984) at 48.

could recover from leased access users desiring placement on a tier, from the "highest implicit fee" to the "average implicit fee."[30] As it is, the average implicit fee produces extraordinarily low part-time rates. When calculated on an hourly or half-hourly basis, even leased access users tout the bargain rates: "Half hour TV Program Rates from $1!"[31] As one leased access consultant bragged, "the only advertising with a 'government regulated' price, rather than a price based on supply and demand. This means it is much less expensive, *virtually pennies on the dollar*."[32] "You can buy time for an entire ½ Hour Program for about the price of a :30 second spot! It's the best-kept secret in the world of advertising…"[33]

Sample rates for prime time half-hour segments cited by leased access advertisers range from $7.61 to reach nearly 20,000 cable customers to $158.79 to reach more than 330,000 cable customers.[34] Other leased access proponents explain that a half-hour of leased access time "generally costs anywhere from $25 to $300 for a 30-minute block depending on where you live and the time block you'd like to purchase."[35] Rates are so low that users can "cablecast[] … to thousands of viewers for less than the cost of a fine meal…."[36]

The FCC has already thoroughly considered and rejected pleas for subsidized rates for commercial leased access users. The D.C. Circuit upheld that determination over challenge.[37] Any reduction in leased access rates would fail to provide operators with the assurance, intended

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30 *Second Report and Order*, 12 FCC Rcd. at 5284. The "average implicit fee" is defined as "the average amount of subscriber revenue that full-time programmers cede to the operator to permit the operator to cover its costs and earn a profit."

31 www.leasedaccessinfo.com.

32 *Id.* (emphasis supplied).

33 *Id.*

34 *Id.*

35 www.videomaker.com/article/7673.

36 *Id.*

37 *ValueVision*, 149 F. 3d at 1212.

by Congress, to protect against adverse effects from commercial leased access. And it would similarly fail to protect cable networks from being disadvantaged in competing for channel space with leased programmers.

D. Tier and Channel Placement

Cable operators are required to "place leased access programmers that request access to a tier actually used by most subscribers on any tier that has a subscriber penetration of more than 50 percent, unless there are technical or other compelling reasons for denying access to such tiers."[38] The FCC allows operators within that tier to choose the channel on which leased access programming will be placed.[39] These rules serve an important purpose of minimizing the disruption to cable customers and other programmers caused by leased access. At the same time, the FCC rules ensure that leased access users reach most cable subscribers, as the legislative history suggests Congress intended.[40] The *Notice* provides no reason to change this rule to allow leased access programmers to demand carriage on a particular tier, and there are many good reasons to keep it.

The 50 percent rule represents a reasonable balance of interests. After all, unlike the situation with local broadcast stations,[41] Congress did not require leased access programming to be carried on the *most* widely distributed tier. That tier, of course, is channel-locked for most cable operators, as is the expanded basic tier of analog services. Therefore, in those cases where more customers take digital tiers than not, it is entirely reasonable to allow operators to place leased access programmers on those widely distributed service tiers. This placement allows

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[38] 47 C.F.R. § 76.971(a)(1).

[39] *Id.*, § 76.971(a)(2).

[40] *Second Report and Order*, 12 FCC Rcd. at 5308 (citing 1992 Senate Report).

[41] 47 U.S.C. § 543(b)(7).

leased access users to reach a majority of a cable system's customers at even lower rates than would be the case on the analog tier of service.

Any other tier placement rule would cause significant disruption to essentially all cable customers. New leased access users forcing their way on to channel-locked analog tiers would force operators to bump cable networks already carried, causing significant customer disruption and confusion. Operators must retain the modicum of flexibility that the rules provide to place leased access users on highly penetrated digital tiers to ensure that they can best use bandwidth to the benefit of leased access users and customers alike. The existing rules strike the right balance and should be retained.[42]

E. Technology and Marketplace Developments that Affect Leased Access

The *Notice* also seeks comment on ways that "advances in technology or marketplace developments should affect [the FCC's] leased access rules."[43] Technological and marketplace developments have achieved the goals that leased access was designed to accomplish. Therefore, the FCC should not artificially force more commercial leased access use on cable.

Congress adopted commercial leased access in 1984 to "assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems." Congress expressed concern that cable operators might not have incentives to provide cable programming from diverse sources, and reasoned that these programmers would be unable to reach audiences since in 1984 "cable [was] unique in its ability to provide a single outlet for diverse sources of programming to the

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[42] *Notice* at ¶ 10. The *Notice* also asks whether leased access should apply to "video-on-demand ("VOD") or other technologies that do not fit a traditional 'tier'?" Leased access already contemplates carriage of services on a stand-alone basis, such as "a la carte" premium services. However, the entire structure of leased access expressed by Congress applies only to *linear* channels of programming. The Act did not contemplate leasing anything other than channel space and the practical issues that would otherwise arise would be numerous. The Commission should refrain from mandating leased access on a VOD basis.

[43] *Notice* at ¶ 11.

community."[44] At that time, cable operators typically provided an average of 23 channels,[45] only 48 national program networks were off the ground,[46] and nearly half of those networks were vertically integrated with a cable operator.[47]

Times have decidedly changed. Cable vertical integration has continued to decline while the total number of networks has grown exponentially. Hundreds of program networks unaffiliated with the operator are carried on cable systems nationwide. Thus, traditional negotiated carriage arrangements, rather than leased access, have been the way through which unaffiliated programmers have reached cable audiences.

Leased access was premised in part on the equally outdated notion that unaffiliated programmers had no outlet other than cable. If ever true, that is no longer the case. Unaffiliated programmers can gain distribution on DBS and telephone company competitors to traditional cable systems. The Internet has arisen as another outlet for widespread distribution of video programming. Other outlets exist for reaching cable audiences with part-time programming, too. Providers of home shopping services and infomercials can lease time directly on cable networks that reach nationwide cable audiences. They can and do buy air time on local television and low power stations.

Given these increased opportunities for unaffiliated programmers to reach viewers, the purposes of leased access in today's MVPD marketplace have already been satisfied.

While the goals of leased access have been largely achieved through marketplace developments, the potential for adverse impact on cable operations from leased access users has

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44 S. Rep. No. 98-67, 98th Cong., 1st Sess. 22 (1984).

45 *Cable Television Service (Competition and Rate Deregulation Policies)*, 67 R.R. 2d 1771, 1832 (1990) at Appendix F (FCC data on channels available on average system).

46 NCTA, *Cable Television Developments* (Spring 1996) at 6.

47 *Id*.

not diminished. In fact, while cable has been expanding its capacity, its analog tier is channel-locked. Room for digital video programming is increasingly scarce. Every six megahertz of finite channel capacity devoted to leased access programming comes at the expense of other video and non-video options that customers might prefer. Every megahertz the FCC forces operators to set-aside for programmers that have a pay-for-access model discriminates against programmers – affiliated and unaffiliated alike – that depend on a dual revenue stream of advertising and subscriber revenues to provide quality programming. The FCC should consider all these marketplace realities when evaluating the state of leased access.

II. PROGRAM CARRIAGE PROCEDURES ARE WORKING

Section 616 provides the FCC authority to establish regulations governing "program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors." The *Notice* seeks comment on "whether and how [the FCC's] processes for resolving program carriage disputes should be modified."[48] The *Notice* contains no evidence that the existing procedures are flawed. Given that the agency has issued orders relating to only a handful of program carriage complaints over the 15 years since the 1992 Act,[49] no problem needs to be fixed.

Existing procedures are designed to assist in the expeditious resolution of any program carriage complaints that may be filed.[50] The Commission already has imposed reasonable time limits on cable operators' answer to any program carriage complaint.[51] And the Commission has

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48 *Notice* at ¶ 14.

49 *TCR Sport Holding v. Comcast Corp.*, 21 FCC Rcd. 8989 at ¶ 8 n.26 (2006) (noting that the Commission held only one previous program carriage proceeding).

50 *Implementation of Sections 12 and 19 of the Cable Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage*, 9 FCC Rcd. 2642, 2652 (1993).

51 Given the complicated factual situations that may arise, it is not unreasonable to provide operators with 30 days in which to respond to complaints, as provided in the current rules. 47 C.F.R. § 76.1302(d).

demonstrated its willingness to impose timelines on internal processes in order to bring these proceedings to a more rapid close.[52] Thus, short of a commitment to speed up the FCC's internal processes, it is unclear what additional measures could be taken.

The *Notice* also raises questions about negotiations regarding national carriage between operators and unaffiliated programmers.[53] It asks "whether the Commission should adopt rules that expressly allow independent programmers to seek nationwide access directly from multiple system cable operators and, if so, how such a process would operate." In adopting remedies for violations of the program carriage rules, the Commission explained that it would engage in a "case-by-case determination of the appropriate remedies based on the specific behavior involved in a particular violation…."[54]

There is no reason to presume that a failure to offer a nationwide carriage constitutes a program carriage violation and no reason for the Commission to adopt an extraordinary remedy of requiring operators to negotiate nationwide carriage agreements in the guise of enforcing the program carriage rules. Cable operators enter into a variety of carriage arrangements with different program networks. Program network launches may vary from system to system, depending on local tastes, proposed network content and channel availability, among other reasons. Thus, even assuming, *arguendo*, that the Commission could impose any type of forced carriage as a remedy for a proven program carriage violation, there is no reason to establish a process designed to force nationwide carriage of any program service.

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52 *TCR Sports Broadcasting Holding v. Comcast Corp.*, 21 FCC Rcd. 8989 (2006) (imposing 45 day period for Administrative Law Judge to return recommendations to the Commission).

53 *See Notice* at ¶ 17.

54 *Implementation of Sections 12 and 19 of the Cable Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage,* 9 FCC Rcd. at 2653.

III. THE COMMISSION SHOULD NOT IMPOSE ARBITRATION

Finally, the *Notice* asks whether arbitration processes should be used to resolve leased access and program carriage disputes.[55] One of the FCC's long-standing functions, dating to the Federal Radio Commission, is the resolution of disputes and the determination of remedies. Even assuming *arguendo* that the FCC could force cable operators to submit to arbitration, it should not do so here. Arbitration will only serve to prolong disputes and impose additional costs on cable operators. The Commission has ample resources to resolve the handful of disputes that have arisen under these sections.

As to leased access, as described above, the Commission already has in place rules intended to resolve disputes regarding rate calculations at the local level. It is unclear what, if anything, an additional procedural layer of arbitration would accomplish other than to increase costs and delay dispute resolution. The issue in these cases is whether a lawful rate is being offered, not whether the rate meets particular arbitration criteria. Other disputes, regarding the terms and conditions of leased access, are policy disputes arising under the FCC rules that the agency is uniquely positioned to resolve. Arbitration would be an inappropriate response to these types of complaints.

Only two program carriage disputes have been addressed by the FCC.[56] Under these circumstances, there is no reason to believe the Commission is incapable of resolving these disputes which, in any event, can be referred internally to an administrative law judge for additional fact gathering if necessary. Parties already can voluntarily agree to submit a dispute to

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[55] *Notice* at ¶ 19.

[56] *TCR Sports Broadcasting Holding. L.L.P., Complainant v. Comcast Corp.*, 21 FCC Rcd. 8989 (2006); *Classic Sports Network, Inc., v. Cablevision Systems Corp.*, 12 FCC Rcd. 22100 (CSB 1997) (dismissing program carriage complaint based on joint request for dismissal and noting that "the Commission encourages resolution of Program Carriage disputes through negotiations between the parties in an effort to avoid time-consuming, complex adjudication. This policy favoring private settlement and alternative dispute resolution conserves Commission resources and thereby serves the public interest.").

arbitration and any forced arbitration exceeds the Commission's authority.[57] At the very least, the agency would be required to permit *de novo* review at the Commission, thus prolonging resolution in contravention of the very goal the FCC seeks to achieve here.

For all these reasons, the Commission should not mandate arbitration.

CONCLUSION

For the foregoing reasons, the FCC should not modify its rules to impose additional obligations on cable operators.

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September 11, 2007

[57] Mandatory arbitration conflicts with the FCC's own alternative dispute resolution policy, which relies on ADR as a "purely voluntary" measure, as well as the Administrative Procedure Act. *See In re Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in which the Commission is a Party*, 6 FCC Rcd. 5669 ¶ 12 (1991); 5 U.S.C. § 572(a).