Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	MB Docket No. 07-42
Leased Commercial Access	)	

OPPOSITION TO REQUEST FOR A STAY

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April 11 2008

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The Office of Communication, Inc. of the United Church of Christ ("UCC") respectfully opposes the *Request of National Cable & Telecommunications Association for a Stay* ("*Stay Request*") filed in the above-captioned docket on March 28, 2008.[1]

In the *Stay Request*, the National Cable & Telecommunications Association ("NCTA") argues that the Commission's February 1, 2008 *Report and Order and Further Notice of Proposed Rulemaking,* 23 FCCRcd 2909 (2008) ("*R&O*"), that it 1) has a strong likelihood of success on judicial review before in the United States Court of Appeals; 2) that it will incur irreparable harm in the absence of a stay, 3) that grant of stay will not harm other interested parties, and 4) that the public interest favors a stay. UCC disagrees about each of these claims.

INTRODUCTION AND SUMMARY

The Commission released the text of the *R&O* on February 1, 2008. It delayed the effective date of the new rate regulations for 90 days from the date of Federal Register publication to facilitate the submission of reconsideration requests.[2] Despite shedding elephant tears at the prospect of these provisions going into effect, NCTA waited almost two full months before filing its stay request,

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[1] By *Public Notice* released on April 4, 2008, the Chief, Media Bureau extended the deadline for filing of oppositions through and including April 11, 2008.

[2] *See R&O*, 23 FCCRcd at 2990 (Statement of Commissioner Adelstein). ("It is also appropriate that we provide a 90 day delay in the effective date of the new formula so that all parties can have opportunity to inform us of any concerns or file petitions for reconsideration.")

along with a request that the Commission respond within two weeks.

Preliminarily, two points bear special emphasis.

First, central to the disposition of this matter is the fact that NCTA has ***not*** filed a petition for reconsideration with the Commission. Its failure to do so is, by itself, sufficient basis to deny a stay request, as it means that there is no likelihood that NCTA can be successful on appeal, and it undermines NCTA's claims of harm and the irreparable nature of the damage it purportedly faces.

Second, NCTA mentions only in a passing footnote the fact that the Commission has specifically provided a mechanism for cable operators to petition for establishment of an "alternative rate which equitably balances the revenue requirements of the cable operator with the public interest goals of the leased access statute." *R&O*, 23 FCCRcd at 2930, ¶49. This further undermines any possibility of success on the merits of any appeal, and vitiates the possibility of economic harm or disruption from operation of the new rules.

Thus, it should not be surprising that, in an implicit concession as to the strength of its appeal, NCTA starts by quoting case law which holds that it need not establish a strong likelihood of success on the merits, so long as the other three traditional stay criteria "weigh heavily in the petitioner's favor." *Stay Request* at 4, *quoting Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). However, as with likelihood of success on the merits, none of the other three stay factors weigh in NCTA's favor, much less "heavily" so.

NCTA's effort to seek judicial review is premature and thus virtually certain to be dismissed. Its failure to seek reconsideration means that it has not exhausted administrative remedies which are a prerequisite to judicial review, and the reviewing court thus lacks jurisdiction to hear any appeal. *See* 47 U.S.C. §405. Moreover and in any event, NCTA's appeal, and its request for a stay, is not

ripe for adjudication because NCTA's members have not availed themselves of the right to obtain adjustments to the rate schedules they consider to be injurious.

Even if it were possible for a reviewing court to reach the merits of NCTA's petition for review, NCTA has no likelihood of success because the FCC has fully explained its position and has a rational basis for it.

For the same reason that NCTA's challenge is not ripe for judicial review, NCTA has not established that it faces irreparable harm in the absence of a stay. Until such time as the Commission declines to give rate adjustments to NCTA's members, the economic harm it claims to face will not attach. While NCTA also says that the fact that its members may have to adjust their program tiers is irreparable harm, it is in fact easily reversible with minimal disruption.

NCTA devotes but a single paragraph to the countervailing harms faced by content providers and by the public. In fact, the harm these other parties face is substantial, and has far greater weight than NCTA suggests.

Finally, the NCTA advances nothing to support the conclusion that the public interest favors a stay. In light of the fact that Congress directed that up to 15 per cent of a cable operator's capacity be set aside for commercial leased access, and the typical cable system currently leased 0.7 channels, there is a powerful public interest in obtaining meaningful enforcement of a twenty-four year old statute.

I. NCTA HAS FAILED TO DEMONSTRATE THAT IT HAS A LIKELIHOOD OF SUCCESS ON THE MERITS.

NCTA's effort to obtain judicial review cannot succeed because it is jurisdictionally barred and substantively flawed.

A. NCTA Has Failed to Exhaust its Administrative Remedies.

NCTA's failure to exhaust readily available administrative remedies dooms its prospects for success on appeal, and, thus, any claim it might have to a stay pending appeal. "Simple fairness...requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice." *U.S. v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37 (1952).

Section 405(a) of the Communications Act unambiguously provides that "filing of a petition for reconsideration shall not be a condition precedent for judicial review of any [FCC] order,...except where the party seeking such review...(2) relies on questions of fact or law upon which the Commission,...has been afforded no opportunity to pass."

NCTA presents four points in arguing that its appeal would be meritorious. Under Section 405 of the Communications Act, exhaustion of administrative remedies is a prerequisite to judicial review. NCTA cannot prevail on these claims because the Commission "denied the opportunity to consider the claim[s] in the first instance and correct any error." *Freeman Engineering Associates, Inc v. FCC*,.103 F.3d 169, 182 (D.C. Cir. 1997).

NCTA's first claim is that the Commission failed to explain its alleged departure from prior reasoning and precedent in its adoption of an average implicit fee mechanism. *Stay Request* at 6-9. In particular, it argues that the Commission previously held that rates for commercial leased access should not be structured for the purpose of increasing demand for such services. *Id.*,at 7. UCC believes that the Commission did not so hold, *see* p.8 *infra*, but, more importantly, because NCTA has not presented its "increased demand" argument to the Commission, it is barred from presenting it on appeal. *See AT&T Corporation v. FCC*, 113 F.3d 225, 229 (D.C. Cir. 1997) (requiring exhaus-

tion where party alleges agency failed to explain its reasoning). This fulfills the goal of Section 405 by permitting a court to review the Commission's reasoning without having to address arguments based on what NCTA might characterize as an ambiguous determination.[3]

NCTA's second claim is that the Commission's construction of Section 632 is contrary to the plain meaning of the statute. There is nothing in the comments NCTA or other parties have filed in this docket which sets forth the plain language argument NCTA makes here. That is exactly the kind of issue which requires exhaustion of administrative remedies. Reviewing courts do not review statutory arguments in the first instance; they review the rationality of agency's construction of a statute. Clearly then, exhaustion of remedies is required.

NCTA also claims that the final leased access rate mechanism the Commission has adopted is not supported by record evidence. This is, by definition, an argument which could not have been made until the Commission adopted its new rules, but it is also one upon which the law requires that the Commission have an opportunity to pass before it is subject to judicial review. *See* 47 U.S.C. §405 (applying exhaustion requirement to "questions of fact"). *See also Freeman Engineering Associates, Inc v. FCC,*103 F.3d at 182 (requiring exhaustion when there is dispute about record evidence).

NCTA's otherwise meritless claim that its members would be required to reveal confidential information is another aspect of its stay request which was not presented to the agency for

[3]The same is true for NCTA's arguments that the Commission previously rejected the notion of calculating "a particular program's" implicit fee, *Stay Request* at 8, and that the Commission has now allowed operators to suffer a loss in "suffering a loss in revenue or not being compensated at all." *Stay Request* at 9. UCC could and would dispute NCTA's understanding of what the Commission held, but there can be no doubt that NTCA's disagreements were not presented to the Commission.

reconsideration. This kind of argument is particularly well-suited for agency review because valid arguments about confidentiality can usually be remedied by modest administrative changes, such as the imposition of protective orders.

Finally, and most tellingly, NCTA contends that the Commission's rate formula was adopted without notice, in violation of the Administrative Procedure Act. UCC disagrees as to the adequacy of notice and whether the scheme adopted was a "logical outgrowth" of the Commission's proposals, but judicial review of this argument would in any event be extremely wasteful. [P]rocedural objections premised on the APA [are] precisely the sort appropriately raised before the Commission in the first instance. *American Relay League, Inc. v. FCC*, 617 F2d 875, 879 n.8 (D.C. Cir. 1980)." *Action for Children's Television v. FCC*, 906 F.2d 752, 755 (D.C. Cir. 1990). That is why exhaustion is required, since premature review of such an argument would be remedied by what would be a needless remand.

There is no doubt that the NCTA has forgone its opportunity to argue to the FCC that it was entitled to further notice and comment. It "indisputably failed to present [its] argument on the need for notice and comment to the FCC by means of a petition for reconsideration prior to seeking [judicial] review...." *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1169 (D.C. Cir. 1994); *City of Brookings Municipal Telephone Company v. FCC*, 822 F.2d 1153, 1163 (D.C. Cir. 1987) (refusing to review issue where petitioner failed to exhaust claims alleging inadequacy of published notice).

B. NCTA's Appeal Is Not Ripe for Judicial Review.

As noted above, the Commission has specifically provided that cable operators may petition for an adjustment if the specific leased access rate calculated pursuant to the new rules is inequitable. The *R&O* states that

> A petition for relief must present specific facts justifying the system's specific leased access rate and provide an alternative rate which equitably balances the revenue requirements of the cable operator with the public interest goals of the leased access statute.

R&O, 23 FCCRcd at 2930, ¶49.[4]

A centerpiece of NCTA's merits claim is that the Commission's new rules are arbitrary and capricious because their "formula results in a zero or near-zero rate for commercial leased access...." *Stay Request* at 5. This is not so, but even if it were true, NCTA's claims in this regard are not ripe for judicial review until such time as NCTA's members can demonstrate that the Commission's adjustment process is inadequate to address the claimed aggrievement. Absent such a record, there is no way for a reviewing court to assess the validity of NCTA's assertions. As the Supreme Court has explained,

> A claim is not ripe for adjudication if it rests upon "'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580-581 (1985) (quoting 13A Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure §3532, p. 112 (1984)).

Texas v. U.S., 523 U.S. 296, 300 (1998).

NCTA barely addresses the adjustment provisions, relegating them to a single footnote in which it confusingly asserts that "this does nothing to alleviate the serious substantive and procedural flaw of the *Order* itself." *Stay Request* at 5 n. 11. To the contrary, the very objective of this process is to remedy circumstances where the rule results in a rate which does not fulfill the statutory goal. It also objects that relief "would be available only on an individualized basis...," *id.*, but it does not explain what is wrong with that other than the entire cable industry is arguably affected.

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[4]The Commission presumes "that the mean value of the net revenue of the marginal networks, including those currently earning no license fee, provides the most reasonable approximation of the revenue which is forgone when a cable operator carries leased access programming.

The ripeness doctrine is precisely applicable when there is uncertainty as to the overall impact of an agency's decisions.

> Without undertaking to survey the intricacies of the ripeness doctrine it is fair to say that its basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.

Abbott Laboratories v. Gardner, 387 U. S. 136, 148-49 (1967).

C. Even If the Merits Were Reached, NCTA Has No Likelihood of Prevailing.

Although it is unlikely that NCTA's appeal will ever be considered on the merits, it would fail on that basis as well.

1. The Commission did not base its decision exclusively on increasing the demand for leased access channels.

As noted at p.4, *supra*, NCTA erroneously claims that the Commission improperly bases its decision on "increasing demand" for lease access channels. Rather, the Commission stated that it would not necessarily rely on underutilization ***alone*** as conclusive proof that rate was too high. R&O, 23 FCCRcd at 2928, ¶38. That is a far cry from NCTA's apparent position that the Commission will give no consideration to evidence of dramatic underutilization.

NCTA ignores the fact that the Commission acknowledged that it lacked real world experience and therefore stated it would "continue to monitor the ***availability*** of leased access channels and may revisit this issue if it appears that the average implicit fee formula no longer reflects a reasonable rate." *In the Matter of Implementation of Sections of the Cable Television Consumer*

Protection and Competition Act of 1992, 12 FCCRcd 5267, 5282 (1997)(emphasis added).[5]

Even if NCTA correctly characterized the Commission as refusing ever to consider a "lack of demand" (which NCTA equates with lack of use) as relevant to the question of whether the implicit fee formula "no longer reflects a reasonable rate," NCTA mischaracterizes the record on which the Commission relied. The Commission relied upon the evidence provided by existing leased access programmers (such as CaribeVision, the Leased Access Programmers Association, and others) and on potential leased access programmers deterred by the existing rate (such as the United States Conference of Catholic Bishops). In addition, the Commission reviewed its own record of leased access complaints to determine the areas of conflict between cable providers and leased access programmers in its ten years of using the previous rate formula. *R&O,* 23 FCCRcd at 2910, n.4 ("Approximately 70 leased access petitions have been filed since our 1997 rule changes. The majority of leased access complaints allege that the cable company has refused to provide rate information or is charging excessive rates and has refused to carry programming.").

This wealth of evidence certainly goes beyond mere reliance on a "lack of demand," demonstrated by a lack of use. There can be no stronger evidence than the ten year history of leased access complaints by leased access programmers and would be programmers compiled by the Commission, coupled with the evidence provided by existing users and would be users. Indeed, it is difficult to imagine how such evidence could rationally be excluded.

2. The adjustment process is not a "waiver"; it is an entitlement.

Nor is NCTA's merits argument correct in characterizing the adjustment provision as a

[5]Taking steps to increase utilization of leased access and thereby fulfill the goals of the statute is not the same as "increasing demand"; there is a pre-existing and pent-up demand for such channels which has not been satisfied.

"waiver." Thus, its reliance on *ALLTEL Corp. v. FCC*, 838 F.2d 551, 561 (D.C. Cir. 1988), which holds that an otherwise unlawful rule cannot be salvaged by "tacking on a waiver procedure...," *id.*, is misplaced. The adjustment process is not a waiver; rather, it is an alternate rate which the cable operator may demand as a matter of right if it has reason to believe the lowest implicit fee under-compensates it. *See Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151, 186 (D.C. Cir 1995) ("If any operator believes that it would be justified in charging higher rates, there is a safety valve: the operator may invoke the cost-of-service option. This ensures that every cable operator will be able to recover its reasonable costs and earn an 11.25 percent rate of return on investment.")

The decision to grant a waiver lies entirely within the discretion of the Commission, and is granted only on a showing that it will serve the public interest. Accordingly, parties seeking judicial review of decisions denying waivers face an extremely high burden to obtain reversal.[6] By contrast, under the new *R&O*, if the cable operator believes that the lowest implicit rate fails to compensate it adequately for its expenses,[7] it is ***entitled*** as a matter of law to charge a rate which adequately compensates it for the use of the capacity.

The lowest implicit rate formula is a proxy, *i.e.*, a means of estimating the actual cost in a way verifiable by the leased access programmer, just as was the average implicit rate formula it replaces. The Commission has merely shifted the burden of proving that the chosen proxy fails to set an

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[6] *See, e.g.*, *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("Presumptions of regularity apply with special vigor when a Commission acts in reliance on an established and tested agency rule. An applicant for waiver faces a high hurdle even at the starting gate. 'When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.' *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)."

[7] To be more precise, the required showing is that the rate is so low it would not comply with the statutory guarantee that it not "adversely affect the operation, financial condition, or market development of the cable system" *See* 47 U.S.C. §512(c).

appropriate rate from the leased access programmer to the cable operator.

3. Operators are entitled to recover direct costs.

NCTA is also wrong in contending that the new formula is arbitrary because it allegedly often "results in a zero or near-zero rate for commercial leased access...." *Stay Request* at 5. Even leaving aside the fact that the Commission's scheme includes an alternate rate and the absolute right to obtain it upon demonstration that the implicit fee formula adversely affect's an operator's financial condition; NCTA's argument is not factually sound. NCTA fails to mention that, even in the absence of an adjustment, a cable operator is also entitled to charge for any additional services it provides or expenses incurred, subject to a test of reasonableness and non-discrimination. If cable operators are profitably offering perhaps one fourth of their capacity using programming for which they pay zero in fees, it is difficult to see how a rate of zero ***plus*** whatever direct costs have been incurred by the cable operator is "inherently irrational." To demonstrate the rate to be "irrational," a cable operator would have to show that a rate of zero ***plus*** whatever charges the cable operator may assign as directly related to the cost of any services provided to the leased access programmer "adversely affect the operation, financial condition, or market development of the cable system...."

Nor is a rate of zero ***plus*** direct costs inherently irrational in the context of cable. Leased access is but one of the special obligations cable operators incur in exchange for their use of public rights of way, their special pole attachment rights and other privileges. Under the Commission's leased access scheme, operators are entitled, at a minimum, to recover their direct costs. Cable operators are better compensated under the leased access scheme than in the case of PEG channels, as to which cable operators must afford access for free, *i.e.*, a genuine rate of zero. Moreover, must carry channels are also provided without charge. In each of those cases, Congress made a decision that

offering these channels is a "cost of doing business."

4. NCTA's First Amendment Arguments Are Without Merit.

NCTA's First Amendment arguments likewise have no merit. In the first place, the *Time Warner* court previously affirmed that requiring cable operators to set aside the capacity designated by Congress does not violate the cable operator's First Amendment right to editorial discretion. *Time Warner Entertainment Co., LP v. FCC,* 93 F.3d 957, 969-971 (D.C. Cir. 1996). As the *Time Warner* court explained, either the leased access provision would attract programmers, in which case it was a valid means of increasing program diversity, or it would not attract programmers, in which case it would do no harm. *Id. See also Denver Area Educational Telecommunications Consortium v. FCC*, 518 U.S. 727 (1996) (Kennedy, J. concurring in part and dissenting in part) (leased access channels are a form of common carriage); *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 684 (1994) (O'Connor, J., dissenting) ("Congress might also conceivably obligate cable operators to act as common carriers for some of their channels, with those channels being open to all" because such a common carriage solution would not raise constitutional concerns). The fact that the Commission has adjusted the rate of compensation does not raise any First Amendment issues. *See generally Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151, 186 (D.C. Cir 1995) ("We shall assume that rules requiring cable operators to charge reasonable rates burden speech, although it is by no means clear how they do so."); *Amsat Cable Ltd. v. Cablevision of Connecticut, Ltd.*, 6 F.3d 867, 871 (2nd Cir. 1993) (loss of revenue to cable system due to city ordinance eliminating exclusive contracts does not raise First Amendment issues); *see also Time Warner Entertainment Co., LP v. FCC,* 240 F.3d 1126, 1140 (D.C. Cir. 2001) (regulation controlling attribution subject to rational basis because "the only effect of the rule is to limit the extent of petitioners' investments in a particular class of com-

panies").[8]

II. NCTA HAS UTTERLY FAILED TO ESTABLISH THAT IT IS OTHERWISE ENTITLED TO A STAY.

NCTA's allegations as to the irreparable harm it faces and its dismissal of the possibility of countervailing interests are unavailing.

A. NCTA Will Not Incur Irreparable Harm in the Absence of a Stay.

NCTA claims that if the Commission's new rules go into place, it will face irreparable harm because of disruption to "existing service packages" and the introduction of allegedly "unwanted and unwatched leased access programming." It also contends it will incur unrecoupable economic losses. These hyperbolic assertions are based on a flawed premise, and improperly treat their systems as being beyond reasonable regulation.

The highly speculative notion that there will be wholesale disruption of cable operators' schedules is based upon construction of a chain of dubious worst case scenarios, and upon on the erroneous premise that "[t]he formula established by the *Order* results in a rate of zero or near zero..." *Stay Request* at 16. Thus, there is no basis for NCTA's dramatic charge that "[t]he unlawful flood of leased access programmers invited by the *Order* will rob operators of channel capacity...." *Stay Request* at 17.[9]

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[8]NCTA's claim that C-SPAN will be removed fails for the reason that it is far too speculative. First, it is not at all clear that cable operators have to remove channels. Nor is it clear that the channel removed would be C-SPAN. In any event, the Supreme Court faced the same argument in Turner, and rejected it there.

[9]Despite NCTA's overheated rhetoric, it is highly unlikely that large numbers of leased access programmers will arrive immediately. There is a lead time in the establishment of commercially viable TV programming, and it will take months and years for new services to develop. Thus, the number of new leased access programmers which may appear during the pendency of this litigation is more likely to be a trickle than a flood.

As is explained above, NCTA overlooks entirely the operators' entitlement to an "alternative rate" and in any event the right to recover direct costs. More fundamentally, there is nothing "unlawful" about introduction of leased access programming. To the contrary, Congress contemplated that up to 15 per cent of an operators' capacity ***should*** be devoted to leased access. And the idea that making access available pursuant to a statutory mandate "robs" operators when they are assured of the recovery of direct costs and a rate scheme which includes the right to establish an alternative rate which does not cause disruption or adverse financial impact is, to be polite, fanciful.

Viewed in this context, cable's familiar scare tactic - that C-SPAN will be the first channel removed - is no more true here than it was when the same argument was made in opposition to must-carry, and more recently, during the program access dispute between Comcast and The America Channel.

NCTA's assertions that leased access programming is unwanted junk and somehow less worthy than what NCTA's members carry are without foundation. Commercial leased access programmers, many of which are LPTV licensees, are in business, too, and they are no more capable of surviving with unpopular or unwanted programming than are NCTA's own members. Moreover, to the extent that leased access programming will displace existing programming, the Commission found that the material being replaced will be the least popular of an operator's existing offering, since the rational cable operator will eliminate the least profitable programming first.

B. NCTA Entirely Overlooks the Countervailing Interests of Leased Access Programmers and the Public.

NCTA trivializes the interests of legitimate LPTV stations and other potential commercial leased access programmers which have been denied access to cable systems for more than twenty

years, saying in effect, "Let them eat the Internet."[10] This flies in the face of the Commission's finding that "poor customer standards are impeding independent programmers' efforts to lease cable channels on unaffiliated cable systems by dissuading them from pursuing their statutory right to designated commercial leased access channels." *R&O*, 23 FCCRcd at 2914, ¶10 (footnote omitted). It also ignores the fact that "the record suggests that the leased access regime has been extremely underutilized because of artificially high rates." *R&O*, 23 FCCRcd at 2910, n. 4, *see also*, *id.*, 23 FCCRcd at 2987 (Statement of Chairman Martin). So, too, does NCTA overlook the Commission's determinations that the old mechanism overcompensated cable operators at the expense of programmers, *R&O*, 23 FCCRcd at 2927, ¶41, and that the legislative purpose requires the Commission to "set the leased access rates as low as possible consistent with the requirement to avoid any negative financial impact on the cable operator." *R&O*, 23 FCCRcd at 2928, ¶42.

NCTA is even more dismissive of the public's rights to have access to diverse programming from diverse sources. It actually argues that the public is harmed when "cable operators suddenly lose editorial control over multiple cable channels and their channel line-ups." *Stay Request* at 28. The In fact, NCTA has it backwards; Congress believed that the public ***benefits*** from access to diverse sources of information. More fundamentally, NCTA ignores the public's constitutional right of have access. *See Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969) (Viewers have first amendment right "to receive suitable access to social, political, esthetic, moral, and other ideas and experiences.") *See also Turner Broadcasting System, Inc.*, 520 U.S. 180, 181 (1997) ("[T]here is a...governmental purpose of the highest order in ensuring public access to a multiplicity of information

[10] "There are numerous other outlets - including free distribution on a variety of Internet websites - where the creators of content and the public that is interested in that content can find each other." *Stay Request* at 27.

sources,....”)

C. The Public Interest Dictates that No Stay Should be Granted.

Congress has found, *inter alia,* that

> The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers, 47 U.S.C. §521(a)(4) nt.;
>
> [C]able operators have the incentive and ability to favor affiliated programmers, 47 U.S.C. §521(a)(5) nt;.
>
> There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media, 47 U.S.C. §521(a)(6) nt;

and that

> Cable systems should be encouraged to carry low-power television stations licensed to the communities served by these systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming. 47 U.S.C. §521(a)(21) nt.

For all the reasons set forth above, and in light of these findings, grant of a stay will impede the public interest, and allowing the Commission’s rules to go into effect will substantially benefit the public.

CONCLUSION

WHEREFORE, UCC asks that the Commission deny NCTA's Request for Stay and grant all such other relief as may be just and proper.

Respectfully submitted,

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April 11 2008

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I certify that on this 11th day of April, 2008, the foregoing *Opposition to Request for a Stay* was served electronically and by first class mail, postage prepaid, upon the following:

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