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FCC EXTENDS PROGRAM ACCESS EXCLUSIVITY RULES

Washington, D.C. – The Federal Communications Commission today issued a *Report and Order* extending for five years the statutory prohibition on exclusive contracts for satellite-delivered cable or satellite-delivered broadcast programming between cable operators and their affiliated programmers. The current prohibition on exclusive contracts will expire on October 5, 2002, unless the Commission affirmatively determines that the prohibition "continues to be necessary to preserve and protect competition and diversity in the distribution of video programming."

The prohibition was enacted as part of the Cable Television Consumer Protection and Competition Act of 1992. At that time, Congress found that cable operators dominated the market for the distribution of multichannel video programming, and concluded that the use of exclusive contracts between cable operators and their affiliated programmers inhibited the development of competition to cable. The exclusive contract prohibition was adopted to address this concern. The Commission was instructed by the statute to re-examine the continuing need for the general prohibition after it had been in effect for ten years.

In extending the prohibition for five years, the Commission found that without the prohibition on exclusivity, programmers that are affiliated with cable operators would have the incentive and ability to favor their cable affiliates over other cable operators and other competitive MVPDs, and this favoritism would result in the failure to protect competition and diversity. The Commission found that the prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

The Commission reviewed the changes in the market that had taken place during the last ten years and concluded that, although there has been a significant increase in competition from direct broadcast satellite service (DBS), few of the other terrestrial competitors to incumbent cable operators had developed to the extent anticipated when the 1992 Cable Act was adopted. The Commission found that programming affiliated with cable operators remains some of the most popular programming, and that the loss of even a small amount thereof would harm a cable competitor's ability to compete for subscribers. The Commission noted that regional programming, particularly regional sports programming, was an important component of any competitive service offering and that the regional clustering of cable systems that had taken place over the last ten years increased the likelihood that cable affiliated programmers would withhold programming from competitors.

The Commission further concluded that a partial sunset of the exclusivity prohibition affecting only DBS service providers is not warranted at this time. The Commission also found that the scope of the exclusivity prohibition should not be narrowed to apply to particular types of programming or specified geographic areas. The Commission determined that it does not have the discretion to expand the prohibition to terrestrially delivered programming or non-vertically integrated programming.

Consistent with Congress's recognition that exclusivity could be a legitimate business practice in a competitive environment, the Commission will continue to review, on a case-by-case basis, petitions for waiver of the prohibition to determine whether a particular exclusive agreement serves the public interest.

Action by the Commission June 13, 2002, by Report and Order (FCC 02-176). Chairman Powell and Commissioner Copps, with Commissioner Abernathy dissenting and issuing a statement, Commissioner Martin approving in part, concurring in part and issuing a statement, and Commissioner Copps issuing a separate statement.

CS Docket No. 01-290

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