



NEWS

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See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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FCC INITIATES REVIEW OF EXCLUSIVE CONTRACT PROHIBITION BETWEEN CABLE OPERATORS AND THEIR AFFILIATED PROGRAMMERS

Washington, D.C.: Consistent with the Federal Communication Commission's (FCC) regulatory reform agenda and its efforts to examine regulations that may have become ineffective, the FCC today issued a Notice of Proposed Rulemaking (NPRM) initiating a review of the exclusive contract prohibition of the program access rules. Adopted approximately twenty years ago to promote competition in the video distribution market, this prohibition generally bans cable operators from entering into exclusive contracts with cable-affiliated programming vendors that deliver their programming to cable operators via satellite.

In the 1992 Cable Act, Congress provided that this prohibition would expire on October 5, 2002, unless the Commission found that the prohibition continued to be necessary for competition and diversity in the video distribution market. On two previous occasions, the Commission found that the exclusive contract prohibition continued to be necessary and therefore retained it for five years on each occasion. As a result of the most recent extension in 2007, the prohibition is now scheduled to expire on October 5, 2012.

The NPRM seeks comment on whether the prohibition continues to be necessary. The NPRM asks for input on various options, including (i) retaining the prohibition; (ii) allowing the prohibition to sunset and relying instead on protections provided by the program access rules that do not sunset; and (iii) relaxing the prohibition, such as by considering petitions to remove the prohibition on a market-by-market basis or retaining the prohibition only for certain "must have" programming, such as Regional Sports Networks. The NPRM also asks about the First Amendment implications of the various options, the costs and benefits of these options, and the impact of a sunset of the prohibition.

In addition, the NPRM seeks input on how the program access procedural rules should be revised to accommodate the case-by-case consideration of complaints alleging a violation of the program access rules. The NPRM also requests comment on whether the program access rules adequately address potentially discriminatory volume discounts and uniform price increases and, if not, how these rules should be revised to address these concerns.

Action by the Commission March 20, 2012, by Notice of Proposed Rulemaking (FCC 12-30). Chairman Genachowski, Commissioners McDowell and Clyburn.

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