

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of)
)
Annual Assessment of the Status of) **CS Docket No. 01-129**
Competition in the Market for the Delivery)
of Video Programming)

COMMENTS OF R. ANTHONY DIMARCANTONIO (WLOT-LP)

1. R. Anthony Dimarcantonio, licensee of Low Power Television Station WLOT-LP, Watertown, New York ("WLOT") hereby submits these comments in response to the *Notice of Inquiry* in this proceeding, in which the Commission seeks information the state of competition in the market for delivery of video programming. These comments are focused on the monopoly power held by, and the exercise of that power, by the cable television industry.

2. Mr. Dimarcantonio urges the Commission to examine competition and monopoly in the cable television industry a micro-basis as well as a macro-basis. Thus even if the cable industry as a whole faces competition from over-the-air broadcasting and other multichannel video service providers, it has an absolute monopoly on each individual television receiver to which its wires are attached. It absolutely controls access to each and every one of those receivers. Thus the only competition in the marketplace is to wean the subscriber away from the cable company altogether; there is no possibility of competition by those who seek to serve cable television viewers with programming unless they can persuade the cable gatekeeper to open the gate. The Commission has recognized similar bottleneck problems in the areas of local exchange telephone service and pole attachments. It is unrealistic to ignore the same strangulation that exists with cable television.

3. WLOT does not enjoy either cable must-carry rights or the power levels available to full power television stations. Thus WLOT must provide significant local service not otherwise available in order to win viewers. As a Class A-eligible station, WLOT is required to broadcast, and

does broadcast, an average of at least three hours of locally produced programming per week, a requirement not imposed on any full power television station.^{1/} Its local programming contributes significantly to the Watertown community. WLOT is also an affiliate of the UPN television network, bringing the services of that fledgling network to the Watertown market for the first time. UPN's continued growth will help WLOT grow and be able to enhance its overall service to the community.

4. WLOT has unsuccessfully sought carriage from the local cable operator, AOL Time Warner ("Time Warner"). Time Warner has been unwilling to do more than to quote prohibitive leased access rates. So determined is Time Warner not to carry WLOT that it has sought a direct affiliation with UPN,^{2/} and failing that, has come up with the idea of importing Super Station/UPN Affiliate WSBK-TV, Boston, Massachusetts.^{3/} Time Warner would rather import WSBK-TV, with no local component, at significant cost for delivery plus distant signal copyright fees, than carry WLOT's UPN programming and make WLOT's local programming available to its subscribers.

5. The Commission must take cognizance of this anticompetitive behavior by a cable operator in assessing the state of competition in the video industry. There is no reason for Time Warner to refuse to carry WLOT except to eliminate a competitive local advertising outlet, or perhaps to advance the fortunes of the rival WB Network, in which Time Warner has a significant ownership interest.^{4/}

6. Certainly Time Warner must compete against other multichannel video service providers to win subscribers in the first instance; but the point here is that Time Warner controls an absolute

^{1/} WLOT also is required to, and does broadcast, 18 or more hours a day.

^{2/} See *Low-Power and Powerless*, Steve McClellan, *Broadcasting and Cable* (June 25, 2001).

^{3/} *Id.*

^{4/} Keeping the local UPN broadcast affiliate off the cable hurts UPN and helps its competitor. It also allows Time Warner to sell directly advertising time that otherwise would be sold by WLOT.

monopoly gateway into each and every television receiver to which its wires are connected, and it is not required to offer access to that gateway except to the limited extent that the Communications Act forces a wedge for must-carry stations, public/educational/channels, and leased access.^{5/} The only way that a viewer can escape the gatekeeper's control is to take three steps: (a) disconnect the cable from the receiver, (b) attach an antenna to the receiver, and (c) reprogram the receiver's tuner to tune to broadcast rather than cable channels. The technical sophistication to do all that, and then to undo all three steps to resume cable viewing, is well beyond all but a very few diehard viewers. In other words, there can be virtually no competition among those who offer programming unless the cable operator opens the gate to the arena. As the keeper of the arena gate, the cable company enjoys significant monopoly power that the market place has not eroded, and essentially cannot erode.

8. WLOT urges the Commission to recognize the gateway monopoly in its Report and Order and in reports to Congress resulting from this proceeding. The Commission has recognized the bottleneck access problem in other contexts. Ignoring it in the cable context is both unrealistic and unjustified.

9. For example, the Commission has proposed to impose new and increased regulation on access charges imposed by competitive local exchange telephone carriers ("CLECs"), no matter how small their share of the overall market or how much competition they face for customers, because with respect to each individual telephone line they provide, they have absolute monopoly power over the terms and conditions under which calls originated by other local and interexchange carriers may be terminated. Although the Commission has traditionally viewed CLECs as highly competitive service providers, needing only minimal regulation, it came to realize the significance of the CLEC bottleneck when interexchange carriers threatened to stop delivering calls to CLECs

^{5/} The leased access rules permit such high prices that they are essentially ineffective. There is very little leased access going on in the cable industry today because of the price barrier that the Commission's Rules permit cable operators to erect.

whose rates they believed were excessive. The result would be that some callers would not be able to reach CLEC subscribers, leading the Commission to open a proceeding to explore how to deal with the absolute line-by-line monopoly.^{6/}

10. Similarly, the Commission has recognized the monopoly characteristic of utility poles and ducts to which cable television and telecommunications entities seek to attach their wires. Without access to poles or underground ducts, there can be no wired systems; and the likelihood of securing authority to erect an independent system of poles is virtually *nil*. See *In the Matter of Alabama Cable Telecommunications Assoc., et al. v. Alabama Power Company*, Order, PA 00-003, FCC 01-181 (released May 25, 2001), at par. 54. Therefore, the rates for pole and duct attachments are heavily regulated. The Commission understands that each individual pole presents a monopoly at the place where it stands. It must likewise understand and acknowledge that a cable operator has a monopoly over each individual television receiver it serves.

11. It is clear that the Commission must take a closer look at the different facets of cable company power than it has in the past. Looking at multichannel video provider competition is only half the picture. The impact on program providers of the cable monopoly over end user terminations is the other half. In Watertown, Time Warner has exercised its monopoly power with a vengeance, stifling the growth of WLOT and impairing achievement of the goal of Congress to encourage increased local programming services embodied in the Community Broadcasters Protection Act of 1999.^{7/} The first step is recognition of the problem, and this proceeding is the time and place to do that. Once there is recognition, the door will be open to consideration of appropriate remedial action.

^{6/} *In the Matter of Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96-262 (released April 27, 2001).

^{7/} Codified at Section 336(f) of the Communications Act.

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

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Respectfully submitted,

/s/ Peter Tannenwald
Peter Tannenwald
Jason S. Roberts

Counsel for R. Anthony Dimarcantonio