entry is intensified, moreover, by the fact that it has undertaken an ambitious expansion program to digitize its system and increase capacity to 200 channels. Because this appears to be a costly process, and because not all cable customers can be expected to purchase digital service, the cost per buyer—and thus the price—of digital services will be fairly high. How can TCI expect to induce subscribers to buy this expensive service if, through programming foreclosure, it has restricted the quantity and quality of programming that would be available on this service tier? [22]

The foregoing illustrates why foreclosure theories fell into intellectual disrepute: because of their inability to articulate how vertical integration harms competition and not merely competitors. The majority's analysis of the Program Service Agreement (''PSA'') illustrates this perfectly. The PSA must be condemned, we are told, because a TCI channel slot occupied by a TW program is a channel slot that cannot be occupied by a rival programmer. As Bork noted, this is a tautology, not a theory of competitive harm.[23] It is a theory of harm to competitors—competitors that cannot offer TCI inducements (such as low prices) sufficient to cause TCI to patronize them rather than TW.

All of the majority's vertical theories in this case ultimately can be shown to be theories of harm to competitors, not to competition. Thus, I have not been persuaded that the vertical aspects of this transaction are likely to diminish competition substantially. Even were I to conclude otherwise, however, I could not support the extraordinarily regulatory remedy contained in the proposed order, two of whose provisions merit special attention: (1) The requirement that TW sell programming to MVPDs seeking to compete with TW cable systems at a price determined by a formula contained in the order; and (2) the requirement that TW carry at least one ''Independent Advertising-Supported News and Information National Video Programming Service.''

Under Paragraph VI of the proposed order, TW must sell Turner programming to potential entrants into TW cable markets at prices determined by a ''most favored nation'' clause that gives the entrant the same price—or, more precisely, the same ''carriage terms''—that TW charges the three largest MVPDs currently carrying this programming. As is well known, most favored nation clauses have the capacity to cause all prices to rise rather than to fall.[24] But even putting this possibility aside, this provision of the order converts the Commission into a *de facto* price regulator—a task, as I have noted on several previous occasions, to which we are ill-suited.[25] During the investigation third parties repeatedly informed me of the difficulty that the Federal Communications Commission has encountered in attempting to enforce its nondiscrimination regulations. The FTC's regulatory burden would be lighter only because, perversely, our pricing formula would disallow any of the efficiency-based rationales for differential pricing recognized by the Congress and the FCC.[26]

Most objectionable is Paragraph IX of the order, the ''must carry'' provision that compels TW to carry an additional 24-hour news service. I am baffled how the Commission has divined that consumers would prefer that a channel of supposedly scarce cable capacity be used for a second news service, instead of for something else. More generally, although remedies in horizontal merger cases sometimes involve the creation of a new competitor to replace the competition eliminated by the transaction, no competitor has been lost in the present case. Indeed, there is substantial entry already occurring in this segment of the programming market, notwithstanding the severe ''difficulty'' of entering the markets alleged in the complaint.[27] Obviously, the incentives to buy programming from an independent vendor are diminished (all else held constant) when a distributor integrates vertically into programming. This is true whether the integration is procompetitive or anticompetitive on net, and whether the integration occurs via merger or via *de novo* entry.[28] I could no more support a must-carry provision for TW as a result of its acquisition of CNN than I could endorse a similar requirement to remedy the ''anticompetitive consequences'' of *de novo* integration by TW into the news business.

[FR Doc. 96–24599 Filed 9–24–96; 8:45 am]

BILLING CODE 6750–01–P

[22] Note too that there is an inverse relationship between TCI's ability to prevent programming entry and its incentives to do so. Much of the analysis in this case has emphasized that TCI's size (27 percent of cable households) gives it considerably ability to determine which programs succeed and which fail, and the logic of the proposed complaint is that TCI will exercise this ability so as to protect TW's market power in program sales to non-TCI MVPDs. But although increases in TCI's size may increase its ability to preclude entry into programming, at the same time such increases reduce TCI's incentives to do so. The reasoning is simple: as the size of the non-TW/non-TCI cable market shrinks, the supracompetitive profits obtained from sales of programming to this sector also shrink. Simultaneously, the harm from TCI (as a MVPD) from precluding the entry of new programmers increases with TCI's subscriber share. (In the limit—i.e., if TCI and TW controlled all cable households—there would be non non-TW/non-TCI MVPDs, no sales of programming to such MVPDs, and thus no profits to be obtained from such sales.) Any future increases in TCI's subscriber share would, other things held constant, reduce is incentives to ''foreclose;'' entry by independent programmers.

[23] /Bork, The Antitrust Paradox, *supra* n.9, at 304.

[24] *See, e.g., RxCare of Tennessee, Inc., et al.,* Docket No. C–3664, 5 *Trade Reg. Rep.* (CCH) ¶ 23,957 (June 10, 1996); *see also* Cooper and Fries, ''The most-favored-nation pricing policy and negotiated prices,'' 9 *int'l J. Ind. Org.* 209 (1991). The logic is straightforward: if by cutting price to another (noncompeting) MVPD TW is compelled also to cut price to downstream competitors, the incentives to make this price cut is diminished. Although this effect might be small in the early years of the order (when the gains to TW from cutting price to a large independent MVPD might swamp the losses from cutting price to its downstream competitors) its magnitude will grow over the order's 10-year duration, as TW cable systems confront greater competition.

[25] *See* my dissenting statements in *Silicon Graphics* and *Waterous/Hale, supra* n.13.

[26] Mirroring the applicable statute, the FCC rules governing the sale of cable programming by vertically integrated programmers to nonaffiliated MVPDs allow for price differentials reflecting, *inter alia,* ''economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor.'' 47 U.S.C. § 548(c)(2)(B)(iii); 47 C.F.R. 76.1002(b)(3).

[27] The Microsoft/NBC joint venture, MSNBC, already is in service; the Fox entry apparently will also be operational shortly.

[28] The premise inherent in this provision of the order is that TW can ''foreclose'' independent programming entry in independently (*i.e.,* without the cooperation of TCI, whose incentives to sponsor independent programming are ostensibly preserved by the stock ownership cap contained in Paragraphs II and III of the order). Given that TW has only 17 percent of total cable subscribership, I find this proposition fanciful.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Request for Nominations of Candidates to Serve on the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Hanford Health Effects Subcommittee

The Agency for Toxic Substances and Disease Registry and the Centers for Disease Control and Prevention are soliciting additional nominations for possible membership on the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee.

The Subcommittee is charged with providing advice and recommendations to the Director, Centers for Disease

Control and Prevention (CDC), and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR. The Hanford Health Effects Subcommittee (HHES) was established to advise the ATSDR and CDC on human health studies and public health activities that the agencies may undertake to address human exposures to historical releases of hazardous materials from the Hanford Nuclear Reservation in eastern Washington State.

Nominations are being sought to broaden the pool of available expertise, including the areas of occupational/environmental public health, social sciences/psychology, and science/health physics. Close attention will be given to minority and female representation so long as the effectiveness of the Subcommittee is not impaired.

Nominations for new members will be accepted by fax or written correspondence. Submissions must include the nominee's qualifications to serve, personal assets for working on the Subcommittee, and a current resume or curriculum vitae. The closing date for nominations is October 15, 1996.

Nominations should be sent to: Mr. James K. Carpenter, Executive Secretary, HHES, 1600 Clifton Road, NE, M/S E–28, Atlanta, Georgia 30333; Fax 404/639–0759, E-Mail jkc1@atsoaa1.em.cdc.gov.

Dated: September 18, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–24547 Filed 9–24–96; 8:45 am]

BILLING CODE 4163–70–M

Centers for Disease Control and Prevention

The National Center for HIV, STD, and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) Announces the Following meeting

Name: Consultation on Partner Notification Program Policies in Disease Control Efforts Conducted by Public Health Programs in the United States.

Time and Date: 8 a.m.–5 p.m., October 17, 1996; 8 a.m.–1 p.m., October 18, 1996.

Place: Atlanta Marriott North Central, 2000 Century Boulevard NE, Atlanta, Georgia, 30345, telephone 404/325–0000, fax 404/325–4920.

Status: Open to the public for participation, comment, and observation, limited only by the space available. The meeting room accommodates approximately 65 people.

Purpose: To invite comment from recognized representatives of public health agencies and the public on proposed public health principles and practices of partners notification services used to control infectious diseases such as HIV and STD in the United States.

Currently CDC requires all health department recipients of HIV prevention funding to ''establish standards and implement procedures for partner notification consistent with State/local needs, priorities, and resources availability.'' Summarily, STD cooperative agreements also require grantees to have provisions for partner notification services.

Matters to be discussed: The panel of expert consultants will examine future directions in partner notification policy, practice and research for the purpose of disease control in the United States concerning HIV and STD.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Jill Leslie, Division of HIV/AIDS Prevention, NCHSTP, CDC, M/S E40, 1600 Clifton Road, NE, Atlanta, Georgia 30303, telephone 404/639–2918.

Dated: September 19, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–24548 Filed 9–24–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96N–0075]

Hance Brothers and White Co., et al.; Withdrawal of Approval of 16 Abbreviated Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing 3 abbreviated antibiotic applications (AADA'S) and 13 abbreviated new drug applications (ANDA's). The basis for the withdrawals is that the sponsors have repeatedly failed to file required annual reports for these applications.

EFFECTIVE DATE: September 25, 1996.

FOR FURTHER INFORMATION CONTACT: Olivia A. Vieira, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs or antibiotics for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81).

In the Federal Register of March 15, 1996 (61 FR 10768), FDA offered an opportunity for a hearing on a proposal to withdraw approval of 17 abbreviated applications because the firms had failed to submit the required annual reports for these applications.

One application holder, Superpharm Corp. notified the agency in writing that ANDA 89–184, Acetaminophen and Codeine Phosphate Tablets, is no longer marketed and requested that approval of the application be withdrawn. FDA withdrew approval of ANDA 89–184 in the Federal Register of August 5, 1996 (61 FR 40649).

The holders of the other 16 applications did not respond to the notice of opportunity for a hearing. Failure to file a written notice of participation and request for a hearing as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products.

Therefore, the Director, Center for Drug Evaluation and Research, is withdrawing approval of the applications listed in the table in this document.