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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket 92-264; FCC 95-147]

Cable Television Act of 1992—Vertical Ownership Rules

AGENCY: Federal Communications

Commission.

ACTION: Order on reconsideration.

SUMMARY: On reconsideration of the cable television vertical ownership (or channel occupancy) rules adopted in its Second Report and Order, the Federal Communications Commission (the "Commission") has adopted a Memorandum Opinion and Order on Reconsideration of the Second Report and Order ("Reconsideration Order"). The Reconsideration Order denies petitions for reconsideration filed by the Center for Media Education/Consumer Federation of America (collectively "CME") and Bell Atlantic Corporation ("Bell Atlantic"). Specifically, the Reconsideration Order: Denies CME's petition requesting that the Commission; reduce the percentage of activated channels that a cable operator may devote to video programming in which it has an attributable interest from 40% to 20%; reverse the Commission's decision to include overthe-air broadcast, public, educational, governmental ("PĒG"), and leased access channels when calculating total channel capacity; reverse the Commission's decision to exempt local and regional networks from the channel occupancy limits; reverse the Commission's decision not to apply channel occupancy limits beyond a system's first 75 channels; and reverse the Commission's decision to grandfather all vertically integrated programming services being carried as of the effective date of the 1992 Cable Act. The Reconsideration Order also denies Bell Atlantic's petition asking that the Commission reconsider its decision to apply the vertical ownership limits to cable systems facing actual head-to-head competition.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Memorandum Opinion and Order on Reconsideration of the Second Report and Order

("Reconsideration Order") in MM Docket 92–264, adopted April 5, 1995 and released April 6, 1995. This Reconsideration Order responds to petitions for reconsideration filed in response to the Commission's Second Report and Order, 58 FR 60135 (November 15, 1993). The Second Report and Order was established pursuant to section 11(c)(2)(B) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Public Law 102–385, 106 Stat. 1460 (1992).

The complete text of this Reconsideration Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS, Inc.") at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Memorandum Opinion and Order on Reconsideration of the Second Report and Order

A. Background

Pursuant to section 11(c)(2)(B) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Pub. L. 102-385, 106 Stat. 1460 (1992), the Commission's Second Report and Order, 58 FR 60135 (November 15, 1993), established cable channel occupancy rules, including the following rules relevant here: (1) Cable operators generally may devote no more than 40% of their activated channels to the carriage of programing services in which they have an attributable interest; (2) all activated channels will be included in calculating channel capacity, including broadcast, PEG and leased access channels; (3) channal occupancy limits will apply only to "national" programming services (i.e., local and regional programming services are exempt); (4) channel occupancy limits will apply to a maximum of 75 channels per system; (5) all vertically integrated programming services carried as of the effective date of the 1992 Cable Act (December 4, 1992) could continue to be carried; and (6) channel occupancy limits will not be eliminated in communities where actual head-to-head competition exists.

B. Petitions for Reconsideration

The Center for Media Education and the Consumer Federation of America (collectively "CME") filed a joint Petition for Reconsideration asking the Commission to reconsider several issues decided in the Second Report and Order. Specifically, CME asked the Commission to: (1) Reduce the channel occupancy limit from 40% to 20%; (2) require that broadcast, PEG, and leased access channels be subtracted from the number of activated channels before calculating total channel capacity; (3) eliminate the exemption for local and regional networks; (4) apply channel occupancy limits beyond a system's first 75 channels; and (5) reverse the decision to grandfather all vertically integrated programming services carried as of December 4, 1992.

After consideration of the various submissions, the Commission declines to modify the 40% channel occupancy limit. In requiring the Commission to establish "reasonable" channel occupancy limits, Congress directed the Commission to balance the risks of vertical integration against benefits such as the development of diverse and high quality video programming. The Commission continues to believe that the 40% limit strikes the appropriate balance between these competing

objectives.

Moreover, CME may have overstated the practical effect of must-carry, PEG and leased access requirements on unaffiliated programmers' ability to obtain carriage. In the absence of record evidence on this point, the Commission examined an unscientific sampling of 25 Tele-Communications, Inc. ("TCI") and Time Warner Entertainment Company, L.P. ("Time Warner") cable systems (those being the most vertically integrated cable operators) in order to determine whether, in fact, broadcast, PEG and leased access channels occupied all, or nearly all, of the systems' unaffiliated programming channels. Generally, the Commission found that, even after excluding broadcast, PEG and leased access channels (and even assuming the presence of two local or regional networks), all of the systems had capacity remaining for additional unaffiliated programming.

Next, CME claims that the Commission overstated the benefits of vertical integration. As proof, CME states that the Cable News Network, Inc. ("CNN"), Black Entertainment Television, Inc. ("BET"), and Nickelodeon were successful prior to their relationship with cable operators, and that "there has been no successful launch of an unaffiliated video programmer since the cable industry began the trend toward vertical integration." Whether or not CNN, BET and Nickelodeon achieved some initial independent success, there is evidence in the record that these and other programmers would have had difficulty