

transaction is consistent with Congress' intent regarding treatment of such transactions and notes that it sees no compelling basis to insist that such transactions be treated differently than pro forma and involuntary transfer transactions.

23. The Commission declines to reconsider its decision to provide favorable treatment to MSO waiver requests, but clarifies two aspects of the MSO transfer rules. Section 617(b) of the Communications Act provides that in the case of MSO transfers, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such systems to one or more third parties, such transfers shall be considered a part of the initial transaction. The implementing rules specify that in order to qualify as part of the initial transaction, a request for approval of the subsequent transfer must be filed with the local franchise authority within ninety days of the closing date of the original transfer and the closing date of the subsequent transfer must be no later than ninety days following the grant of the transfer approval by the local franchise authority. If local franchise approval is not required, the rules specify that the subsequent transfer must be completed within 180 days of the date of the closing of the original transaction in order to qualify as part of the original transaction. The rules do not address the situation where the subsequent transfer involves multiple systems with differing franchise approval requirements. The Commission thus concludes that where a subsequent transfer involves both systems that require franchise approval and systems that do not, the original transferee must complete the subsequent transfers of all affected systems within 90 days of the date the last system involved receives franchise authority approval of the transfer.

24. The Commission also clarifies that the three-year holding period does not begin anew when the system extends lines into existing or new communities, or when the system integrates previously separate communities through line extension. The Commission believes this clarification renders the rules neutral as to system upgrades, and permits expansion and deployment of new technologies without potentially adverse regulatory consequences.

25. The Commission declines to revise its blanket waiver of the three-year holding requirement for small systems at this time, concluding that the decision in the FR&O that weighed and assessed costs and benefits was

precisely the type of consideration of the public interest required under the Commission's waiver authority under the Communications Act.

26. Finally, the Commission notes that its experience to date with requests for waiver of the anti-trafficking rules has demonstrated that systems owned less than three years are not being transferred or assigned purely for purposes of quick economic gain. Rather, those waiver requests have been premised upon proposed transfers involving bankruptcy, systems barely over the subscriber limit established for the small system blanket waiver, a system with no change in de facto control and systems qualifying for treatment under our MSO transfer rules. The Commission believes that it is appropriate, after one year of strictly scrutinizing waiver requests, to revise its approach to waiver requests. Thus, the Commission announces that it generally will look favorably on waiver requests unless the transaction raises serious concerns on its face or any objections we receive to grant of the waiver provide other public interest bases for concern.

27. Accordingly, the Commission: (1) denies in part and grants in part the petitions for reconsideration of the FR&O filed by Wireless Cable Association International, Inc. ("WCA"), Multivision Cable TV Corp. and Providence Journal Company ("Multivision"), Time Warner Entertainment Company, L.P. ("Time Warner"), National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively referred to as "NATOA"), Oklahoma Western Telephone Company ("Oklahoma Western"), National Private Cable Association, MSE Cable Systems, Cable Plus and Metropolitan Satellite (collectively referred to as "NPCA"); (2) adopts the MO&O; and (3) amends Section 76.501 and 76.502 of its rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

47 CFR, Part 76, is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. §§ 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552, 554.

2. Section 76.501 is amended by revising paragraphs (d) and (e); adding paragraph (f); transferring Notes 1 through 4 following paragraph (b) to the end of the section and adding Note 5 to read as follows:

§ 76.501 Cross-ownership.

* * * * *

(d) No cable operator shall offer satellite master antenna television service ("SMATV"), as that service is defined in § 76.5(a)(2), separate and apart from any franchised cable service in any portion of the franchise area served by that cable operator's cable system, either directly or indirectly through an affiliate owned, operated, controlled, or under common control with the cable operator.

(e) (1) A cable operator may directly or indirectly, through an affiliate owned, operated, controlled by, or under common control with the cable operator, offer SMATV service within its franchise area if the cable operator's SMATV system was owned, operated, controlled by or under common control with the cable operator as of October 5, 1992.

(2) A cable operator may directly or indirectly, through an affiliate owned, operated, controlled by, or under common control with the cable operator, offer service within its franchise area through SMATV facilities, provided such service is offered in accordance with the terms and conditions of a cable franchise agreement.

(f) The Commission will entertain requests to waive the restrictions in paragraphs (d) and (e) of this section when necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service. Such waiver requests should be filed in accordance with the special relief procedures set forth in § 76.7.

Note 1: * * *

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Note 5: In applying the provisions of paragraphs (d) and (e) of this section, control and an attributable ownership interest shall be defined by reference to the definitions contained in Notes 1 through 4, provided however, that:

(a) The single majority shareholder provisions of Note 2(b) and the limited partner insulation provisions of Note 2(g) shall not apply; and

(b) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.