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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992 **Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-trafficking Provisions**	)	MM Docket No. 92-264

COMMENTS OF

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SUMMARY

Continental Cablevision Inc., although it is the third largest multiple cable system operator, represents just 5.5% of the total number of U.S. cable subscribers. Continental's operations, however, like those of many cable MSOs, are organized into regional geographic clusters.

Continental urges the FCC not to adopt any regional subscriber limits. No record was created before Congress to suggest that any regional limits should be placed on the size of an MSO. And there are a host of consumer benefits that result from an MSO's ability to cluster its systems regionally.

Regionalization stimulates advances in technology. Continental, like other regionally concentrated MSOs, has built a fiber backbone network throughout Southern New Hampshire and Eastern Massachusetts, reaching approximately 65 cities and towns. This technology connects school districts for distance learning applications and provides dedicated video transport for television networks and telecommunications paths for area businesses and institutions.

Regional concentration also increases customer service efficiencies. Continental's Eastern New England regionalization has allowed it to create a large centralized data processing center that dramatically improves our customer service response time beyond that of smaller separately owned cable systems.

Regionalization also enhances cable employee training efforts. Continental established in 1985 a New England Regional Training Center. Continental has invested more than $1 million in capital expenditures in the Center, and an annual budget of $1 million. This facility will offer 50 courses to 1,400 Continental New England employees in 1993.

Regionalization of subscribers also stimulates regional programming ventures. New England Cable News, a 24-hour regional news service, could not have been created without Continental's large New England market position. The 1992 Cable Act warns the FCC not to impose subscriber limitations that would "impair the development of diverse and high quality video programming." To launch a regional cable news service and incur its substantial startup losses requires a critical mass of subscribers.

The fact that not all New England cable operators have affiliated with New England Cable News shows that: (1) Continental cannot dictate to other operators in the region and (2) without a large regional presence by one investing operator, regional cable news channels are unlikely to succeed. Continental's strong New England presence also has not inhibited the development of regional programming by others. Two other regional New England programming services, New England Sports Network and SportsChannel of New England, in neither of which does Continental hold any ownership interest, are carried on Continental's New England systems.

Regionalization also facilitates cable advertising efforts. By establishing a regional cable advertising business separate from our cable operations, Continental has been able to develop a potentially significant future revenue stream that in the long run could help offset necessary cable subscriber rate increases.

In addition to these public benefits, regionalization will also allow cable operators to compete in the dynamic telecommunications marketplace of the 1990s. Even as the largest cable operator in Massachusetts and New Hampshire, Continental is dwarfed in size by New England Telephone (NET). In order to provide alternative voice and data access services competitive to NET, it is essential for Continental to be able to offer a service that is ubiquitous, or at least has a high degree of connectivity, to prospective business customers within the region.

Cable participation in PCS, alternate access, and data communications services, if freed from artificial regulatory barriers to entry, holds the promise for greater service and technology innovations benefiting the public. Restricting an individual cable MSO's concentration of ownership in a region would dramatically limit the cable industry's ability to remain competitive with the much larger regional presence of the telephone companies.

If regional cable MSO ownership restrictions were imposed by the FCC, the regional Bell Operating Companies would be the biggest winners. This regulatory windfall would give the RBOCs the upper hand over cable in voice, data and video services. Without the ability to respond to new market opportunities or to new competition on a regional basis, a cable operator's long term viability as a player in the communications industry is threatened. The FCC has recognized the critical nature of regional clustering by non-wireline systems to meet competition by wireline carriers in the area of cellular telephone service. It should also do so here.

If the Commission were to establish regional size limits, it should define a region within which concentration was to be tested as no smaller than the size of a Regional Bell Operating Company's service area. Within such a region, the cable operator would need a very significant subscriber base to compete effectively with the regional BOC, particularly if the BOCs are to be allowed to provide "video dialtone" service in competition with cable.

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COMMENTS OF

CONTINENTAL CABLEVISION, INC.

Introduction

Continental Cablevision, Inc. ("Continental") submits these comments to assist the Commission in its consideration of what, if any, limits should be placed on the number of subscribers that any multiple cable system operator ("MSO") is authorized to serve. Continental serves approximately 2.85 million cable television subscribers across the United States. Although it is the third largest MSO, Continental subscribers represent just 5.5% of the total number of U.S. cable subscribers. Continental's operations, however, like those of many MSOs, are organized into regional geographic clusters of subscribers. Thus, the issue of whether the FCC should adopt any regional subscriber limits is of principal concern to Continental.

Section 11 of the 1992 Cable Act directs the FCC to set "reasonable limits" on the "number of cable subscribers" that a multiple cable system owner may "reach" through systems it owns or in which it has an "attributable interest." This section of the Act lists a series of "public interest objectives" that the FCC must consider in adopting these horizontal concentration rules. Some of these are favorable to integrated ownership, such as requiring the FCC to recognize "efficiencies and other benefits that might be gained through increased ownership or control."[1/]

The FCC's NPRM devotes the bulk of its discussion to Congressional concerns about horizontal concentration in the cable industry as viewed on a national basis. The Commission repeats statistics from the Congressional analysis of the cable industry on a national basis. Neither it, nor Congress, cited any regional concentration figures.

While acknowledging that the "legislative history of the 1992 Cable Act focuses upon the establishment of national subscriber limits," the FCC states that "regional concentration

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1/ Section 613(f)(2)(D) of the Communications Act of 1934, added by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 (the "1992 Cable Act" or "the Act").

is also mentioned."[2/] The Senate Report did state once in passing that the Committee had received comments about "horizontal integration at the regional and national level."[3/] But neither that report nor the House Report spoke thereafter about regional concentration. Although it was not, as recognized by the FCC, the principal focus of Congressional concern, the Commission asks in its NPRM whether regional limits placed on the number of subscribers that any MSO serves are "necessary or appropriate to implement the objectives of the 1992 Cable Act."[4/]

Continental strongly believes that since there was no record created before Congress to suggest that any regional limits should be placed on the size of an MSO, the FCC should not do so. To the contrary, there are a multitude of consumer benefits that result from an MSO's ability to cluster systems regionally. Because regional concentration limits could seriously impede the growth and development of the cable industry, and eliminate many

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[2/] Notice of Proposed Rulemaking and Notice of Inquiry, MM Docket No. 92-264 (rel. December 28, 1992) at ¶35 ("NPRM").

[3/] S. Rep. No. 92, 102d Cong., 1st Sess. (1991) at 32 ("Senate Report").

[4/] NPRM at ¶35.

of these public benefits, Continental will focus its comments on this issue.[5/]

I. Clustering Of Cable Systems On A Regional Basis, As Continental Has Done, Creates Many Important Public Benefits.

In recognition of the inherent operating efficiencies that result from the clustering of cable systems, Continental and many other MSOs have organized their cable systems on a regional basis. In this regard, Continental's 145 cable systems are organized geographically into 10 management regions ranging in size from 140,000 subscribers in Virginia to 531,000 subscribers in New England. Since New England is Continental's largest region, it presents an excellent case study of the public benefits that flow from regionalization.

[5/] In order to implement Section 613, the Commission has asked how to measure when a cable operator has an "attributable" interest. NPRM at ¶¶ 38 (horizontal interests), 46 (vertical interests). The 1992 Act itself does not define an "attributable interest." Nor does the House version of the bill, which was adopted by the Conference Report. The Senate Report, however, states that the FCC may use any criteria it deems appropriate. Senate Report at 78. Continental addressed this issue at length in its comments in MM Docket No. 92-265, on Sections 12 and 19 of the 1992 Act, dealing with access by competitors to cable programming and the regulation of carriage agreements between cable programmers and distributors. Continental believes that the same considerations should be applied here.

Continental's New England region serves 531,000 subscribers in Massachusetts, New Hampshire and Maine.[6/] Continental's Western New England/New York region serves an additional 109,000 subscribers in Western Massachusetts and 34,000 in Connecticut. In total, therefore, Continental serves a total of 674,000 New England cable subscribers, which represents 19.8% of the total number of cable subscribers in New England.[7/]

The benefits from regionalization are reflected in virtually every area of Continental's business, including technological innovation, customer service, employee training, and regional programming.

A. Advances and Efficiencies In Technology Are Stimulated By Regionalization

Continental has built a fiber backbone network throughout southern New Hampshire and eastern Massachusetts. The network includes approximately 10,000 miles of fiber and reaches some 65 cities and towns. The fiber has been deployed primarily because it is a cost effective and reliable technological means to bring

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6/ Massachusetts - 415,500 subscribers
New Hampshire - 96,300 subscribers
Maine - 19,200 subscribers

7/ According to the New England Cable Television Association, there are currently 3,389,800 cable television subscribers in New England.

additional video channels into people's homes. But it has also opened up new markets that would not be possible to serve without fiber optic technology. This network connects school districts for distance learning applications, provides dedicated video transport for television networks, and telecommunications paths for area businesses, institutions and Teleport-Boston.[8/]

On the operations side, our regional networking approach has yielded significant cost savings and customer service enhancements. Among them are such customer-friendly improvements as expanded service and installation hours, staffed headend facilities during primetime viewing, and multi-million dollar investment in state-of-the-art headend and signal enhancement equipment serving large numbers of subscribers from a single reception facility. None of this would have been economically feasible without the wider regional distribution of the costs of equipment and service facilities needed by many individual systems within a single geographic region.

[8/] At the recent Little Rock economic conference, attention was focused on the need to develop in the United States an electronic superhighway capable of transporting large quantities of data, voice and video information. As cable operators consolidate systems regionally with fiber optic technology, that highway is being built. A simple means to encourage further development of this highway, without federal subsidies or tax incentives, is to allow cable operators to expand regionally.

Continental's regional concentration has also positioned us to provide a rapid response for disaster recovery. When, in 1990, Hurricane Bob ripped through southeastern Massachusetts, damaging approximately 12,000 service drops and 10 miles of distribution plant, we were able to amass the resources necessary from around New England to restore service within a few days. In 1988, when a headend facility in Saugus, Massachusetts was destroyed by the collapse of a nearby water tower, we were able to move technical personnel and equipment from other nearby Continental systems to restore partial service within eight hours, and full service within 72 hours.

B. Regionalization Increases Customer Service Efficiencies

With over 530,000 subscribers served from over 40 office locations in eastern New England, Continental has been able to support the creation of a large centralized data processing center within the region. This regional data processing center was established in the mid-1980's in order to enhance customer service transaction processing and management information access. The size of our regional subscriber database allows us to maintain an in-house computer system and a 24-hour data center support staff.

By directly managing our data processing system and its on-line database we are able to share with our local cable system offices the responsibility of providing quality customer service on a regional basis. This dramatically improves our response time beyond that of smaller, separately owned cable systems.

Recent technological advancements in addressability applications such as ANI and impulse pay-per-view ordering underscore the 24-hour-a-day database access requirements of the cable business that are facilitated by our data center staff's 24-hour monitoring. Anticipated future applications will produce increased direct database interaction by subscribers seeking convenient 24-hour ordering capability.

Only by having a large regional subscriber base can we economically support one of the most responsive customer service operations in the cable industry. Direct on-site control of computer response time assures efficient, timely processing of subscriber orders, billing inquiries, service call scheduling and dispatching, and payment processing.

Each subscriber's account is continuously and immediately updated in the database to accurately reflect current services and charges, equipment status by outlet, service call activity and history, and to provide detailed current billing information with payment history. When responding to subscriber inquiries and processing subscriber orders, our customer service representatives are thus assured of accessing accurate information up to the minute.

Continental's regional on-line database also provides prompt service outage detection by geographic location. This allows immediate efficient routing of our technical response staff to service problem areas based on current vehicle location information, job type, and available personnel and equipment. As service problems are resolved, the database is updated to reflect repair history for each individual residence. On-demand technical reports also enable management to review all service problem activity and to assess potential plant maintenance needs.

In addition to producing technical reports, responses to management information requests are customized to analyze employee productivity, subscriber service activity, and the effectiveness of different marketing tools. Software is regularly updated to meet new application demands in providing new services to subscribers, and enhancements in ordering methods and service delivery.

C. Regionalization Enhances Employee Training Efforts

Another benefit of regionalization is our ability to provide more efficient and comprehensive employee training. Continental's New England Regional Training Center was established in 1985. Creation of this facility represented a realization that customer service excellence directly depends on the performance of individual employees, and the quality of their performance is in direct proportion to the training they and their managers receive.

Our 7,000 square foot Regional Training Center in Portsmouth, New Hampshire replicates the local cable system experience for both employees and customers. Continental's capital investment alone in this facility exceeds $1 million. Those expenditures include a state of the art technical laboratory, equipped with fiber optic fusion splicers and fiber optic transmitters, an operational head-end facility, more than five kilometers of coaxial cable and fiber optic distribution plant, a pole climbing field, a practice building for installations, a resource library and six classroom/simulation rooms.

Despite the critical role training plays in achieving excellence in customer service, 14 years passed between the activation of Continental's New England first customer and the graduation of Continental's first employee from its Regional Training Center. It was not until 1985 that Continental began to reach a critical mass in terms of customers and number of employees to support a regionalized undertaking of this nature.

The New England Regional Training Center's curriculum offers 50 courses divided into technical, customer service, community programming and management training. With a $1 million annual operating budget, the Training Center's staff of seven instructors will offer training to 1,400 Continental New England employees in 1993.

All Continental employees whose job involves contact with customers participate in a formal career path program. These career path programs for technical and customer service employees allow for advancement within these specialty fields through performance evaluation and experience, plus a continuing education requirement satisfied by attending two required multi-day courses per year at the Regional Training Center.

The objective is for Continental's customers to encounter knowledgeable customer service representatives sensitive to their needs and competent to meet their service demands promptly. The New England Regional Training Center is one of the finest training facilities in the cable or, for that matter, any industry. Without the regional concentration of subscribers that Continental has built in New England, however, it could not support such a facility.

D. Regionalization Stimulates Regional Programming Ventures

Another consumer benefit that we have been able to provide because of our regional concentration in New England is the creation of New England Cable News, a 24-hour regional news channel. Continental Cablevision and Hearst Corporation fund this venture on a 50-50 basis, and make this service available to all cable operators in New England. Our objective in forming this venture was to provide a service not available through any other resource that would provide a unique benefit to cable customers.

The start-up capital requirement for this venture was over $3 million, and the first year's operating loss was an additional $6 million. We also anticipate a $5 million dollar loss in the second year of operation. This represents a significant financial commitment that simply would not have been possible without our large position in the New England market.

Continental and Hearst launched the channel in March 1992, and in doing so created almost 100 new jobs. In less than a year, New England Cable News has received much local recognition and positive feedback. New England Cable News covers breaking news and regularly carries discussions of topical regional issues.

Because of its format, New England Cable News goes beyond twenty second sound bites. It is able to go live with a major story such as special news conferences, trials, and political addresses. It has brought major figures such as Governors Weld of Massachusetts and Gregg of New Hampshire, and Senators Kennedy and Kerry of Massachusetts, into its studios for in-depth public affairs programs. It has established reciprocal news arrangements with more than half a dozen broadcasters across New England and with CNN.

The 1992 Act warns the FCC not to "impose limitations which would impair the development of diverse and high quality video programming."[9/] To launch a regional cable news service of this nature and incur its substantial start-up losses requires a critical mass of subscribers. Continental, as the largest cable operator in New England, was uniquely able to bring this critical mass to the venture. Even at that, the ultimate success of New

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9/ Section 613(f)(2)(G).

England Cable News cannot be assured without the participation of other major New England cable operators. Not all these operators have affiliated with New England Cable News. This shows not only that Continental cannot dictate to other operators in the region, but also that without a large regional presence by one operator, regional cable news channels are unlikely to succeed.[10/]

Much of Congress' concern about the size of large MSOs nationally has to do with their potential to inhibit the development of programming. Thus it is instructive that there are three regional New England programming services, New England Sports Network, SportsChannel of New England and New England Cable News, each with different ownership.[11/] All three of these services are carried on Continental's New England systems.

10/ The first such regional news channel, News 12 Long Island, for example, was made possible through the strong regional presence of a single operator on Long Island, Cablevision Systems Corporation.

11/

New England Cable News	-	50% Continental 50% Hearst Corporation
New England Sports Network	-	48% Boston Red Sox 32% Delaware North (Boston Bruins) 20% New Boston Television (Gillette Broadcasting)
SportsChannel of New England	-	50% Rainbow Programming (Cablevision Systems Corp.) 50% NBC (General Electric)

E. Regionalization Facilitates Cable Advertising Efforts

Another area of our business aided by the regional clustering of our systems is advertising sales. Sale of local advertising within CNN, ESPN, and other national cable networks (typically two minutes per hour) represent a relatively minor revenue stream for cable operators. It provides only about four percent of cable operator revenue, and an even lesser percent of a cable company's operating income. In many less regionally centralized cable organizations the ad sales person or department reports to the local cable system's general manager. This small and very different business can pull the system general manager away from full concentration on the primary cable delivery service business. Each local system is also forced to design its own sales strategy, pricing, and order fulfillment procedures. This makes it more difficult and ultimately more expensive for the advertising client to buy advertising time in an area.

Because of the number and geographic concentration of our New England systems, Continental was able to set up a cable advertising business, Cable Ads, separate from our cable operations. The Cable Ads General Manager oversees ad sales for the entire New England region, and for our Western New England Region, and for several other cable companies that have negotiated arrangements for us to handle advertising sales for them as well. Cable Ads reports to a Regional Marketing Vice President, and thus does not occupy our local system managers' time or attention.

Cable Ads is one of the largest organizations of its type in the country, serving systems with over 800,000 subscribers, mostly in Massachusetts. It generates approximately $10 million in sales, and employs about 115 people. The sales force is professionally managed, with its own specialized training.

Without having a large regional subscriber base in New England, Continental would not be positioned to develop this potentially significant future revenue stream, which in the long run could help offset necessary cable subscriber rate increases.

II. Regionalization Will Allow Cable Operators To Compete In The Dynamic Telecommunications Marketplace Of The 1990s

As cable further diversifies its revenue base, the ability to cluster cable systems regionally will be even more important. This is especially true as cable companies respond to the telecommunications needs of business users.

Even as the largest cable operator in Massachusetts and New Hampshire, Continental is dwarfed in size by New England Telephone (NET), which has 3,623,000 access lines in

Massachusetts and 595,000 in New Hampshire.[12/] In order to provide competitive alternate access services, it is essential for Continental to be able to offer a ubiquitous service to prospective business customers in the region. At present, only NET has the ability to do this.

The 1992 Act warns the Commission to insure that any rules it adopts in this area reflect "the dynamic nature of the communications marketplace."[13/] Telecommunications is one of the largest growth segments of the communications market. This includes wireless technologies like PCS, alternate voice and data access for specialized customers, and a broad array of future data services to the home, including multimedia. Unlike traditional core service offerings of one to many, such as broadcasting, that can thrive within a static geographic franchise boundary, these emerging interactive services, based on one to one or many to one communications, require connectivity beyond the boundaries of a given franchise area.

As the competitive forces of the video entertainment market continue to increase in the 1990s, and the television, telephone, and computer become indistinguishable to the consumer, the cable

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12/ FCC Report 43-07, ARMIS Infrastructure Report, Line 0120, CY 1991.

13/ Section 613(f)(2)(E).

industry must have the ability to compete without subscriber limits creating an insurmountable regulatory barrier to entry. We believe that cable participation in PCS, alternate access, and data communications services, if freed from artificial regulatory barriers to entry, holds the promise for greater service and technology innovations benefiting the public. The cable industry today represents less than 10 percent of the total U.S. communications sector. Restricting an individual cable MSO's concentration of ownership in a region would create a senseless barrier to competition that would dramatically limit the cable industry's ability to remain competitive with the much larger regional presence of the telephone companies during the 1990s.

While the public would lose the benefits of expanded telecommunications competition, the Regional Bell Operating Companies would be the biggest winners if the FCC imposed regional MSO ownership restrictions. This regulatory windfall would give the RBOCs the upper hand over cable in four key areas essential to competition in voice, data and video services:

(1) <u>Ubiquitous Service Areas</u> Market connectivity that is critical to offering seamless telecommunications services.

(2) Economies of Scale — The ability to maximize both human and material resources in delivering these capital intensive services.

(3) Marketing — The ability to offer the same products throughout a market at a consistent price.

(4) Distribution — The added dimension ubiquity brings to the distribution infrastructure through redundancy and the capability for information exchange.

Competition is the heart of the issue. Whether it is positioning for future competition in voice and data, or for competing in our core video business, regional limits could strangle Continental's competitive potential. Indeed, without the ability to respond to new market opportunities or to new competition, a cable operator's long-term viability as a communications industry player is threatened.

To illustrate this point, the Commission should consider Continental's experience in the point-to-point video distribution market. We compete with NET today in this market, within our franchise boundaries. Because we are limited in our geographic reach, NET virtually controls the entire point-to-point video