

218. We also disagree with commenters who argue that multiplexed channels should not be counted towards the channel occupancy limits because they provide subscribers with time diversity. While we recognize that time diversity is beneficial to consumers, we believe that Congress was specifically concerned with ensuring that a diversity of programming sources is available to cable subscribers. We do not believe that this diversity objective would be well served by exempting multiplexed channels from the channel occupancy limits. We also reject the argument advanced by some commenters that we should assume that cable operators engage in multiplexing only when they are already carrying a full array of programming. Multiplexing is an inexpensive service that cable operators can provide to their pay channel subscribers without incurring any additional subscriber fees.

219. We propose, however, to exempt local and regional networks from the channel occupancy limits in order to encourage the development of local cable programming. Such local and regional cable networks are responsive to the needs and tastes of local audiences and serve Congress' objectives of promoting localism.²¹⁸ We are persuaded that such an exemption is necessary to encourage continued MSO investment in the development of local and regional cable networks. We ask commenters to address these tentative conclusions and to suggest an appropriate definition for local and regional programming services that should qualify for this exemption.

220. We do not believe that an exception for popular programming as proposed by several commenters is necessary or appropriate. While it is true that widespread carriage of a programming service may be evidence that its carriage on affiliated systems is not motivated by anti-competitive intent, Congress was also concerned with ensuring that a diversity of voices are available to cable subscribers. In this regard, an exception for popular programming would not serve Congress' objectives. Moreover, we regard as minimal the risk that such popular programming services will be dropped from cable systems as a result of the channel occupancy limits. Carriage of these popular programming services is an important means by which cable operators attract and maintain subscribership.

221. In addition, we are not persuaded by commenters arguments that we should exempt new programming services from channel occupancy caps for a period of five years. While such an exemption may encourage continued MSO investment in new programming services and would allow such services adequate time to develop a subscriber base, we are not convinced that such an exception is warranted. We are concerned that the creation of a broad general exception for "new" programming services could undermine the effectiveness of channel occupancy limits. In any event, we believe that if the channel occupancy limit is set at the appropriate level, such an exception for new programming services should be unnecessary. We seek

²¹⁸ The 1992 Cable Act states that "A primary objective and benefit of our nation's system of regulation of television of broadcast television is the local origination of programming." 1992 Cable Act, Section 2(a)(10).

further comment on whether such an exception is necessary given the proposed 40% channel occupancy limit. We also ask commenters to indicate whether, alternatively, the Commission should grant waivers to permit carriage of new programming services in appropriate circumstances. Commenters favoring such a waiver provision should suggest the criteria that would be appropriate in connection with such waiver requests.

G. Effect of Fiber Optic Cable and Digital Signal Compression.

222. Notice. The Notice asked commenters to address whether emerging technologies such as digital signal compression and fiber optic cable would reduce the need for channel occupancy limits such that the Commission should establish a channel capacity threshold, beyond which the channel occupancy limits would no longer be applicable.

223. Comments. NCTA and several cable commenters propose capping the channel occupancy limits at 54 channels,²¹⁹ noting that 64% of subscribers receive between 30 and 53 channels, while only 28% receive 54 or more channels. Time Warner and TCI agree that such expanded channel capacity justifies elimination of the channel occupancy limits. According to Time Warner, digital compression and fiber optic cable will afford cable operators the ability to expand channel capacity beyond their ability to develop new programming. Thus, Time Warner asserts that cable operators will be induced to increase their carriage of unaffiliated programming services making channel occupancy limits unnecessary.

224. Alternatively, Viacom proposes that to encourage implementation of digital compression, the Commission should not apply channel occupancy limits to any increased channel capacity that results from the use of compression technology. Under Viacom's suggested approach, a system that is able to deliver three channels using the spectrum ordinarily needed to deliver one channel, would be entitled to exempt the two additional channels from the channel occupancy limits.

225. In contrast, MPAA opposes the establishment of a channel occupancy cap at the present time. MPAA asserts that it is too early to know what effect a 500 channel system will have on the need for such limits and suggests that instead the FCC review the caps every five years and make adjustments accordingly. INTV maintains that any additional channel capacity resulting from new technologies should be made available to independently owned programming services.

226. Discussion. We continue to support our proposal in the Notice to establish a channel capacity threshold beyond which the channel occupancy limits would not apply. As we previously indicated, the expanded channel capacity that will result from fiber optic cable and digital compression technology will most likely eliminate the need for such limits to encourage

²¹⁹ NCTA Comments at 32-33; Viacom Comments at 15-17; Time Warner Comments at 56-58; E! Entertainment Comments at 10; Liberty Media Comments at 25-28; Discovery Comments at 17.

cable operators to carry unaffiliated or competing programming services. Nevertheless, we tentatively conclude that it is premature for the Commission to establish such a ceiling at this time.

227. Fiber optics and digital signal compression are still in the experimental phases and are presently being tested in only a few markets. Given the various potential applications of such technologies to provide communications, information and other non-video services, we are unsure what effect such developments will have on the ability of unaffiliated video programmers to obtain access to vertically integrated systems. Accordingly, we propose to consider the adoption of an appropriate channel occupancy ceiling at a later date when the Commission has had an opportunity to study the effects of fiber optic cable and digital signal compression on the carriage of video programming. Alternatively, we ask commenters to indicate whether there is an identifiable channel capacity threshold associated with the next generation of cable technology which would provide an appropriate level beyond which channel occupancy limits should no longer apply. We also seek comment on whether we should follow MPAA's proposal and review channel occupancy limits every five years making such adjustments as are appropriate at that time.

H. Effective Competition.

228. Notice. In the Notice we observed that once effective competition has been established and a cable operator no longer occupies a program access bottleneck position, channel occupancy limits may no longer be necessary or desirable. In this regard we asked commenters whether it would be appropriate and consistent with congressional intent to phase out channel occupancy limits in communities where effective competition develops.

229. Comments. Cable commenters addressing this issue all favored our proposal to phase out channel occupancy restrictions in communities where effective competition has developed.²²⁰ Where effective competition exists, these commenters assert that non-vertically integrated programmers clearly have alternative outlets for programming. In addition, these commenters indicate that there is no incentive for cable operators to favor their affiliated programming services over unaffiliated or competing programming services in a competitive marketplace. According to one cable commenter, maintaining such limits where effective competition is established might hinder competition, by enabling a multichannel program distributor to carry programming owned by a cable operator that the cable operator would not be permitted to carry.

230. Only MPAA opposes lifting channel occupancy limits where effective competition develops. MPAA observes that a competing multichannel distributor may also be vertically integrated and removing channel caps in these instances would result in foreclosure of nonaffiliated programmers

²²⁰ NCTA Comments at 34-45; Liberty Media Comments at 27-28; Time Warner Comments at 58-89; TCI Comments at 39; Viacom Comments at 17-18.

from either outlet.

231. Discussion. We propose to eliminate channel occupancy limits in any community where effective competition, as defined under Section 3 of the 1992 Cable Act, is established.²²¹ We believe that this proposal is appropriate since effective competition will preclude cable operators from exercising the market power which originally justified channel occupancy limits. Where systems face effective competition, their incentive to favor an affiliated programmer will be replaced by the incentive to provide programming that is most valued by subscribers. In addition, a diversity of voices will be available as a result of the presence of competing video distribution systems.

232. We ask commenters to address this proposal and to indicate whether channel occupancy limits should be automatically phased out where effective competition is established or whether cable operators should be required to obtain a Commission waiver. We also ask commenters to indicate whether the statutory definition of "effective competition" applicable to rate regulation should also be used for this purpose or whether another standard of effective competition would be more appropriate. Specifically, we question whether we should include for this purpose the definition of effective competition which applies to cable systems subscribed to by fewer than 30% of the households in the franchise area. We ask commenters to address whether this definition of effective competition is relevant to the competitive concerns which underlie the establishment of channel occupancy limits.

H. Grandfathering Carriage of Vertically Integrated Programmers.

233. Notice. In the Notice we proposed to grandfather any existing vertical relationships which exceed the channel occupancy limits we ultimately adopt and asked commenters to address this proposal.

234. Comments. Most cable commenters addressing this issue support the Commission's proposal to grandfather existing vertical relationships in order to minimize disruption to established industry arrangements and to prevent subscriber confusion.²²² Viacom observes that deletion of vertically integrated programming services is unwarranted and would disrupt subscriber service. Moreover, Viacom submits that program deletion would interfere with existing financial arrangements between programmers, operators and advertisers which rely on certain penetration levels and continued carriage of programming services.

235. Liberty Media argues that the Commission should adopt a flexible approach in grandfathering existing vertical relationships which exceed the

²²¹ 47 U.S.C. § 543(1).

²²² NCTA Reply Comments at 9; MPAA Comments at 8; Discovery Comments at 16-17; Turner Comments at 18; Time Warner Comments at 60; Viacom Comments at 9-11; E! Entertainment Comments at 12; LMC Comments at 28-29.

new channel occupancy limits. According to Liberty Media, cable operators with grandfathered programming should not be prevented from developing or investing in additional programming services. Liberty Media adds that in order to avoid penalizing cable operators who already have invested in new programming services, the Commission should establish special channel occupancy limits for grandfathered systems at levels two or three channels above existing carriage levels.

236. Discussion. We do not believe that the public interest would be served by requiring cable operators to delete vertically integrated programming services in order to comply with the channel occupancy caps. Accordingly, we propose to grandfather all vertically integrated programming services that were carried as of December 4, 1992 (the effective date of the 1992 Cable Act), which exceed the channel occupancy limits we ultimately adopt. We believe that this proposal will minimize the disruption to existing programming relationships and will prevent subscriber confusion, which could result from divestiture or program deletion. We note, however, that once additional capacity becomes available on a grandfathered system, we believe that such system should be prohibited from expanding its carriage of vertically integrated programming services until such system is in full compliance with the channel occupancy limits.

237. We recognize that grandfathering existing vertical programming relationships protects established services and favors the largest and most vertically integrated cable operators. However, we believe that such considerations are outweighed by the need to prevent subscriber confusion and minimize the disruption to existing carriage agreements. Moreover, we believe that this proposal is fully consistent with Congressional intent since Section 11 of the 1992 Cable Act instructs the Commission to "take particular account of the market structure, ownership patterns, and other relationships in the cable television industry" in establishing such limits.²²³ We invite commenters to address these concerns.

I. Enforcement.

238. Notice. In the Notice we observed that the 1992 Cable Act and its legislative history were silent on the issue of enforcement of the channel occupancy limits. We proposed to rely on the local franchise authorities for primary enforcement of such limits, since they are most familiar with the channel capacity and programming services carried on the systems within their jurisdiction. Because we sought to minimize the burden imposed on local franchise authorities and cable operators by these restrictions, we proposed that such channel occupancy limits should be enforced by a process of certification whereby cable operators would certify annually to the franchise authority that they are in compliance with the channel occupancy limits.

239. Comments. NATOA agrees with the Commission's proposal to rely on local franchise authorities to monitor compliance with channel occupancy

²²³ 47 U.S.C. § 533(F)(2)(C).

limits. NATOA asserts that local enforcement would be most efficient since local authorities are more familiar with their local cable operator and are better able to monitor the local programming line up.²²⁴ To enable franchise authorities to carry out their enforcement responsibilities, NATOA suggests requiring each cable operator to submit to the FCC information regarding all programmers in which such cable operator has a cognizable interest under the FCC's attribution rules. NATOA proposes that the FCC publish such ownership information on a quarterly basis so that franchise authorities can determine whether their cable system is in compliance with the channel occupancy limits.

240. Community Broadcasters Association ("CBA") agrees that enforcement of the channel occupancy caps should be performed by local franchising authorities.²²⁵ According to CBA, strict enforcement of the channel occupancy limits is essential to induce cable operators to be more responsive to the needs of their local communities and less concerned with the advancement of their own programming investments. CBA indicates that cable operators often refuse carriage to local LPTV stations, claiming an unavailability of channel capacity, yet such cable operators continually increase carriage of vertically integrated programming services.

241. NCTA, Viacom and Time Warner all oppose local enforcement of the channel occupancy limits.²²⁶ NCTA argues that local authorities do not have the resources or the expertise to determine the ownership structure of various programming services being offered. NCTA and Time Warner suggest that the FCC should enforce the channel occupancy limits on a complaint only basis. NCTA favors limiting standing to bring such complaints to unaffiliated programmers who have been denied system access. Viacom propose requiring cable operators to certify compliance with channel occupancy limits to the FCC as part of their annual reporting requirement in connection with rate regulation. Viacom submits that placing the certification burden on the local authorities would be unduly burdensome and would result in inconsistent applications of the attribution rules.

242. Discussion. While we proposed in the Notice to rely primarily on local franchise authorities to monitor compliance with the channel occupancy limits, the record in this proceeding has caused us to question whether local authorities have either the resources or the expertise to effectively monitor compliance with the Commission's channel occupancy limits. We observe that MSO ownership of cable programming services often involves complex corporate or partnership structures that may make determining

224 NATOA Comments at 21-22.

225 CBA Comments at 2.

226 NCTA Comments at 35; Viacom Comments at 18-19; Time Warner Comments at 56-60.

attribution issues difficult.²²⁷ For this reason we propose for the Commission to retain responsibility for monitoring and enforcing compliance with the channel occupancy limits. We ask commenters to suggest how the Commission can most effectively enforce such limits. We tentatively reject the proposal of some commenters that we enforce channel occupancy limits on a complaint only basis. Such complaint based enforcement would only ensure that anti-competitive practices are prevented. However, Congress also intended such limits to ensure that a diversity of voices is available to cable subscribers. This objective can only be accomplished by ensuring that all cable operators are in compliance with the carriage limits on vertically integrated programming.

IV. ADMINISTRATIVE MATTERS

A. Regulatory Flexibility Analysis.

243. The Commission's final regulatory flexibility analysis for the Report and Order and the Commission's initial regulatory flexibility analysis for the Further and Notice are set forth in Appendix C.

B. Ex Parte. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. Sections 1.1202, 1.203 and 1.206(a).

C. Comments. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before August 23, 1993 and reply comments on or before September 3, 1993.

D. Ordering Clauses.

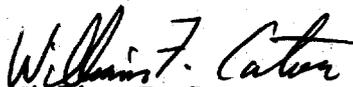
244. Accordingly, IT IS ORDERED that pursuant to the authority contained Sections 2(a), 4(i) and (j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Protection and Competition Act of 1992, Pub. L. No. 102-385, Part 21 of the Commissions Rules, 47 C.F.R. Part 21, and Part 76 of the Commission's Rules, 47 C.F.R. Part 76, ARE AMENDED as set forth in Appendix D below, and will become effective 30 days after their publication in the Federal Register, except 47 C.F.R. § 76.502(i) which will become effective 90 days after publication in the Federal Register.

²²⁷ We note that NATOA supports local enforcement, but proposes that the Commission collect ownership information from cable operators and publish such information on a quarterly basis. Such a system of enforcement would result in significant administrative burdens on the Commission and in a duplication of efforts between the Commission and the local franchise authorities.

E. Additional Information.

245. For additional information regarding this proceeding, contact Jacqueline Chorney, Mass Media Bureau, (202) 632-6990.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A

List of Commenters

Initial Comments

Affiliated Regional Communications, Ltd. ("ARC")
Annenberg School for Communications/University of Southern California
(David Waterman)
The Association of Independent Television Stations, Inc. ("INTV")
BellSouth Telecommunications, Inc. ("BellSouth")
Cablevision Industries Corporation/Comcast Corporation ("CIC/CC")
Cablevision Systems Corporation ("Cablevision Systems")
Cablevision of Texas III, L.P. ("Cablevision of Texas")
Cities of Inverness, Crystal River, et.al. (Joint Florida Cities")
Coalition of Small System Operators ("Small System Coalition")
Cole, Raywid & Bravenman ("CR&B")
Community Broadcasters Association ("CBA")
Consumer Federation of America ("CFA")
Continental Cablevision, Inc. ("Continental")
Corporate Partners
Discovery Communications, Inc. ("Discovery")
E! Entertainment Television, Inc. ("E! Entertainment")
GTE
Intermedia Partners
International Family Entertainment ("IFE")
Liberty Cable Company, Inc. ("Liberty Cable")
Liberty Media Corporation ("Liberty Media")
The Motion Picture Association of America ("MPAA")
The National Association of Telecommunication Officers & Advisors, The
National League of Cities, The United States Conference of Mayors, and
the National Association of Counties (collectively "NATOA")
The National Cable Television Association, Inc. ("NCTA")
The National Private Cable Association, Maxtel Associates Ltd. ("NPCA")
The National Telephone Cooperative Association
Nationwide Communications, Inc. ("NCI")
The New York State Commission on Cable Television ("N.Y. Cable Commission")
Sandler Capital Management ("Sandler")
New Jersey Board of Regulatory Commissioners ("New Jersey Cable Board")
Tele-Communications, Inc. ("TCI")
Three Rural Telephone/Cable Companies
Time Warner Entertainment Company, L.P. ("Time Warner")
Transworld Telecommunications, Inc. ("TTI")
Tribune Regional Programming, Inc. ("TRB")
Turner Broadcasting System, Inc. ("Turner")
Viacom International, Inc. ("Viacom")

Reply Comments

Bell Atlantic Communications
Cablevision of Texas III, L.P.
Coalition of Small System Operators
Cole, Raywid & Braverman
Discovery Communications, Inc. ("Discovery")
GTE
Liberty Media Corporation
The Motion Picture Association of America
The National Association of Telecommunication Officers & Advisors, The
National League of Cities, The United States Conference of Mayors, and
the National Association of Counties (collectively "NATCA")
The National Cable Television Association, Inc.
The National Telephone Cooperative Association
Nationwide Communications, Inc.
Oklahoma Western Telephone Company
Satellite Broadcasting Association
Tele-Communications, Inc.
Time Warner Entertainment Company, L.P.
The United States Telephone Association
Viacom International, Inc.

eff. 1/1/81
DUE 1/1/81

(1/1/81)

APPENDIX B

APPLICATION FOR FRANCHISE AUTHORITY CONSENT
TO ASSIGNMENT OR TRANSFER OF CONTROL
OF CABLE TELEVISION FRANCHISE

INSTRUCTIONS FOR COMPLETION OF FCC FORM 394

A. This form shall be used when applying for franchise authority approval to assign or transfer control of a cable television system owned for three years or more, pursuant to the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). As required by Section 617(e) of the 1992 Cable Act, the franchise authority shall have 120 days from the date of filing of this form, complete with all exhibits and any information required by the franchise agreement or applicable state or local law, to act upon such request. If the franchise authority fails to render a final decision on such request within 120 days, such request shall be deemed granted unless the requesting party and the franchise authority agree to an extension of time.

This form consists of the following sections:

- I. GENERAL INFORMATION: TRANSFEROR/ASSIGNOR (PART I); TRANSFEREE/ASSIGNEE (PART II)
- II. TRANSFEREE'S/ASSIGNEE'S LEGAL QUALIFICATIONS
- III. TRANSFEREE'S/ASSIGNEE'S FINANCIAL QUALIFICATIONS
- IV. TRANSFEREE'S/ASSIGNEE'S TECHNICAL QUALIFICATIONS
- V. CERTIFICATION: TRANSFEROR/ASSIGNOR (PART I); TRANSFEREE/ASSIGNEE (PART II)

The transferor/assignor will fill out Part I of Section I and Part I of Section V.

The transferee/assignee will fill out Part II of Section I; all of Sections II, III and IV; as appropriate; and Part II of Section V.

- B. In addition to the information requested on this form, cable operators are required to submit all information required by the cable franchise agreement or applicable local law or that the franchising authority deems necessary or appropriate in connection with the transfer determination. Requests for such additional information by the franchise authority shall not toll the 120-day limit on franchise authority consideration of transfer requests.
- C. This form should be filed with the local franchising authority. Prepare and submit an original and two copies of this form and all exhibits associated therewith. Number exhibits serially in the space provided in the body of the form and date each exhibit.
- D. The names of the applicants shall be the exact corporate names, if corporation; if partnerships, the names of all general partners and limited partners with equity interests above 5%, and the names under which the partnerships do business; if unincorporated associations, the names of executive officers, their offices, and the names of the associations.
- E. This application shall be personally signed by the applicant, if the applicant is an

individual; by one of partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; or by the applicant's attorney in case of the applicant's physical disability or of his/her absence from the United States. The attorney shall, in the event the attorney signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

F. All items must be answered fully and all necessary information furnished. Time and care should be devoted to all replies, which should reflect accurately the applicants' responsible consideration of the questions asked. If any items of the application are not applicable, write N.A. Defective or incomplete applications may be returned without consideration.

G. (1) the disclosure of said information is solicited under the Communications Act of 1934, as amended, 47 U.S.C. § 537.

(2) the disclosure of said information is required to obtain the requested authority;

(3) the principal purpose of said information is to provide basic legal, technological, financial and ownership data concerning the qualifications of the proposed transferee/assignee.

SECTION I - GENERAL INFORMATION

Date: _____

1. Application for: Assignment of Franchise
 Transfer of Control
2. Franchising Authority: _____
3. Identify System/franchise that is the subject of the assignment or transfer of control: _____
4. Community Unit Identification Number: _____
5. Date System was acquired or (for System's constructed by the transferor/assignor) the date on which service was provided to the first subscriber in the franchise area _____
6. Proposed effective date of closing of the transaction assigning or transferring ownership of the system to transferee/assignee _____
7. Attach as an exhibit a schedule of any and all additional information or material filed with this application that is identified in the franchise as required to be provided to the franchising authority when requesting its approval of the type of transaction that is the subject of this application.

Exhibit No. _____

Part 1 - Transferor/Assignor

1. Indicate the name, mailing address, and telephone number of the transferor/assignor.

| | | | | |
|--|-------|----------|-----------|---------------|
| LEGAL NAME OF TRANSFEROR/ASSIGNOR (if individual, list last name first.) | | | | |
| ASSUMED NAME USED FOR DOING BUSINESS (if any) | | | | |
| MAILING STREET ADDRESS OR P.O. BOX | | | | |
| CITY | State | Zip Code | Area Code | Telephone No. |

2. (a) Attach as an Exhibit a copy of the contract or agreement that provides for the assignment or transfer of control (including any exhibits or schedules thereto necessary in order to understand the terms thereof). If there is only an oral agreement, reduce the terms to writing and attach. (Confidential trade, business, pricing or marketing information, or other information not otherwise publicly available, may be redacted).

Exhibit No. _____

- (b) Does the contract submitted in response to (a) above embody the full and complete agreement between the transferor/assignor and the transferee/assignee?

Yes No

If No, explain in an Exhibit.

Exhibit No. _____

Part II - Transferee/Assignee

1. (a) Indicate the name, mailing address, and telephone number of the transferee/assignee.

| | | | | |
|--|-------|----------|-----------|---------------|
| LEGAL NAME OF TRANSFEREE/ASSIGNEE (If individual, list last name first.) | | | | |
| ASSUMED NAME USED FOR DOING BUSINESS (if any) | | | | |
| MAILING STREET ADDRESS OR P.O. BOX | | | | |
| CITY | State | Zip Code | Area Code | Telephone No. |

(b) Indicate the name, mailing address, and telephone number of person to contact, if other than transferee/assignee.

| | | | | |
|---|-------|----------|-----------|---------------|
| NAME OF CONTACT PERSON (Last name first.) | | | | |
| FIRM OR COMPANY NAME (if any) | | | | |
| MAILING STREET ADDRESS OR P.O. BOX | | | | |
| CITY | State | Zip Code | Area Code | Telephone No. |

Attach as an Exhibit the name, mailing address, and telephone number of each additional person who should be contacted, if any.

Exhibit No. _____

(d) Indicate the address where the System's records will be maintained.

| | | |
|----------------|-------|----------|
| STREET ADDRESS | | |
| CITY | State | Zip Code |

2. Indicate on an attached exhibit any plans to change the current terms and conditions of service and operations of the System as a consequence of the transaction for which approval is sought.

Exhibit No. _____

SECTION II - TRANSFEREE'S/ASSIGNEE'S LEGAL QUALIFICATIONS

1. Transferee/Assignee is:

Corporation

- a. Jurisdiction of incorporation: _____
- b. Date of incorporation: _____
- c. For-profit or not-for-profit: _____
- d. Name & address of registered agent in jurisdiction: _____

Limited Partnership

- a. Jurisdiction in which formed: _____
- b. Date of formation: _____
- c. Name & address of registered agent in jurisdiction: _____

General Partnership

- a. Jurisdiction whose laws govern formation: _____

b. Date of formation: _____

Individual

Other

(Describe on an Exhibit)

Exhibit No. _____

2. List the transferee/assignee, and, if the transferee/assignee is not a natural person, each of its officers, directors, stockholders beneficially holding more than 5% of the outstanding voting shares, general partners, and limited partners holding a partnership interest of more than 5%. Use one column for each individual or entity. Attach additional pages if necessary. (Read carefully - the lettered items below refer to corresponding lines in the following table.)

- (a) Name, residence, occupation or principal business, and principal place of business. (If other than an individual, also show name, address and citizenship of natural person authorized to vote the voting securities of the applicant that it holds). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and/or partners.
- (b) Citizenship.
- (c) Relationship to the transferee/assignee (e.g., officer, director, etc.)
- (d) Number of shares or nature of partnership interest.
- (e) Number of votes.
- (f) Percentage of votes.

| |
|-----|
| (a) |
| (b) |
| (c) |
| (d) |
| (e) |
| (f) |

3. If the applicant is a corporation or a limited partnership, is the transferee/assignee formed under the laws of, or duly qualified to transact business in, the State or other jurisdiction in which the System operates?

Yes No

If the answer is No, explain in Exhibit:

Exhibit No. _____

4. Has the transferee/assignee had any interest in or in connection with an application which has been dismissed or denied by any franchise authority?

Yes No

If the answer to any of the questions in 4 is Yes, describe circumstances in an Exhibit.

Exhibit No. _____

5. (a) Has an adverse finding been made or an adverse final action been taken by any court or administrative body with respect to the transferee/assignee in a civil, criminal or administrative proceeding, brought under the provisions of any law or regulation related to the following: any felony; revocation, suspension or involuntary transfer of any authorization (including cable franchises) to provide video programming services; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or employment discrimination?

Yes No

- (b) Is there now pending in any court or with any administrative body any proceeding involving any of the matters referred to in (a) above?

Yes No

If the answer to either (a) or (b) is Yes, attach as Exhibit a full description of the persons and matter(s) involved, including an identification of any court or administrative body and any proceeding (by dates and file numbers, if applicable), and the disposition or present status of such proceeding.

Exhibit No. _____

6. Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights with respect to any attributable interest as described in Question II.3(a) (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)?

Yes No

If Yes, provide particulars in an Exhibit.

Exhibit No. _____

7. Do documents, instruments, agreements or understandings for the pledge of stock of

the transferee/assignee, as security for loans or contractual performance, provide that: (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of any ownership rights by a purchaser at a sale described in (b), any prior consent of the FCC and/or of the franchising authority, if required pursuant to federal, state or local law or pursuant to the terms of the franchise that is the subject of this application is made will be obtained?

Yes No

If No, attach as an Exhibit a full explanation.

Exhibit No. _____

SECTION III-TRANSFEREE'S/ASSIGNEE'S FINANCIAL QUALIFICATIONS

(a) The transferee/assignee certifies that it has sufficient net liquid assets on hand or available from committed resources to consummate the transaction and operate the facilities for three months.

Yes No

(b) Attach as an exhibit the most recent financial statements, prepared in accordance with generally accepted accounting principles, including a balance sheet and income statement for at least one full year, for the transferee/assignee or parent entity that has been prepared in the ordinary course of business, if any such financial statements are routinely prepared. Such statements, if not otherwise publicly available, may be marked CONFIDENTIAL and will be maintained as confidential by the franchise authority and its agents.

Exhibit No. _____

SECTION IV- TRANSFEREE'S/ASSIGNEE'S TECHNICAL QUALIFICATIONS

1. Set forth on an Exhibit a narrative account of the transferee's/assignee's technical qualifications, experience and expertise regarding cable television systems, including, but not limited to, summary information about appropriate management personnel that will be involved in the System's management and operations. The transferee/assignee may, but need not, list a representative sample of cable systems currently or formerly owned or operated.

Exhibit No. _____

SECTION V-CERTIFICATIONS

Part I-Transferrer/Assignor

All the statements made in the application and attached exhibits are considered material representations, and all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

| | | |
|---|-----------------|------|
| I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith. | SIGNATURE | DATE |
| WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001. | PRINT FULL NAME | |
| (Check appropriate classification) <input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input type="checkbox"/> Corporate Officer (Indicate Title: _____), <input type="checkbox"/> Other (Explain: _____) | | |

Part II-Transferee/Assignee

All the statements made in the application and attached exhibits are considered material representations, and all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

The transferee/assignee certifies that he/she:

- (a) Has a current copy of the FCC's Rules governing cable television systems.
- (b) Has a current copy of the franchise that is the subject of this application, and of any applicable state laws or local ordinances and related regulations.
- (c) Will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation of the System, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.

| | | |
|---|------------------|------|
| I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith. | SIGNATURE | DATE |
| WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001. | PRINT FULL NAME: | |
| (Check appropriate classification) <input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input type="checkbox"/> Corporate Officer (Indicate Title: _____), <input type="checkbox"/> Other (Explain: _____) | | |

APPENDIX C

Report and Order -- Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

1. Need and purpose for this action: This action is taken to implement the provisions of the Cable Television Consumer Protection and Competition Act of 1992 relating to anti-trafficking and cross-ownership of cable systems and multichannel multipoint distribution services ("MDS") and cable systems and satellite master antenna television systems ("SMATV").

2. Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis: No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis, however, comments received in response to the Notice of Proposed Rule Making and Notice of Inquiry indicate that smaller cable systems are concerned about the application of the anti-trafficking rule to such systems and about local enforcement of the anti-trafficking rule. These commenters indicate that the anti-trafficking rule disproportionately burdens small systems which operate close to the margin.

3. Significant alternatives considered and rejected: None. In this Report and Order/Further Notice we adopt a blanket waiver from the anti-trafficking rule for systems serving 1000 subscribers or less.

Further Notice -- Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

4. Reason for the Action: The purpose of this Further Notice is to establish rules and regulations in accordance with the Cable Television Consumer Protection and Competition Act of 1992 relating to the development of horizontal and vertical ownership limits.

5. Objective of this Action: The 1992 Act and the subsequent actions to implement it are intended to encourage competition in the cable industry and prevent the exercise of undue market power by horizontally or vertically integrated cable systems. This action is meant to assist the Commission in adopting reasonable subscriber limits and channel occupancy limits required by the 1992 Cable Act.

6. Legal Basis: Authority for the actions proposed in this Notice may be found in Sections 4, 303, 613 and 617 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, 533.

7. Reporting, Record keeping, and Other Compliance Requirements Inherent in the Proposed Rule: This Further Notice proposes to adopt new reporting requirements applicable to cable systems, in order to ensure compliance with the proposed rules.

8. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule: None.

9. Description, Potential Impact and Number of Small Entities Involved: Approximately 11,000 existing cable systems of all sizes may be affected by the proposals contained in this Further Notice. In addition, an unknown number of video programming sources may be affected.

10. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The purpose of this Further Notice is to seek comment on issues including alternatives that would minimize the impact on small entities.

Appendix D
Rule Changes

Parts 21 and 76 of Title 47 of the Code of Federal Regulations are amended to read as follows:

PART 21 -- DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Section 21.912 is amended by revising paragraphs (a), (b) and (c), and the Note following paragraph (c), by removing paragraph (d), redesignating paragraph (e) through (g) as (d) through (f), and by revising the first sentence of newly designated paragraph (f) to read as follows:

Section 21.912 Cable television company eligibility requirements.

(a) Notwithstanding the provisions of § 21.900 of this part, initial or modified authorizations for stations in the 2150-2162 MHz and 2596-2680 MHz frequency bands may not be granted to a cable operator if a portion of the Multipoint Distribution Service (MDS) station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system. No cable operator may acquire such authorization either directly, or indirectly through an affiliate owned, operated, or controlled by, or under common control with a cable operator.

(b) No licensee of a station in this service may lease transmission time or capacity to a cable operator either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with a cable operator, if a portion of the Multipoint Distribution Service (MDS) station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system.

(c) Applications for new stations, station modifications, assignments or transfers of control by cable operators for stations in the 2150-2162 MHz and 2596-2680 MHz frequency bands shall include a showing that no portion of the protected service area of the MDS station is within the portion of the franchise area actually served by the cable operator's cable system, or of any entity indirectly affiliated, owned, operated, controlled by, or under common control with the cable operator.

NOTE 1: (A) In applying the provisions of this section control and an attributable ownership interest shall be defined by reference to the definitions contained in the Notes to § 76.501, provided however, that:

(i) The single majority shareholder provisions of Note 2(b) to § 76.501 and the limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply; and

(ii) The provisions of Note 2(a) to § 76.501 regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(B) The term "area served by a cable system" means any area actually passed by the cable operator's cable system and which can be connected for a standard connection fee.

(C) As used in this section "cable operator" shall have the same definition as in § 76.5.

NOTE 2: The Commission will entertain requests to waive the restrictions in paragraphs (a) through (c) of this section where 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.

* * * * *

(f) Interested persons may file a petition to deny an application filed pursuant to paragraph (d) of this section within 30 days after the Commission gives public notice that the application or petition has been filed. * * *

* * * * *

PART 76 -- CABLE TELEVISION SERVICE

3. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended 106 Stat. 1460.

4. The Title of Subpart J is revised to read as follows:

Subpart J -- Ownership of Cable Systems

5. Section 76.501 is amended by adding paragraphs (d) and (e) and revising the first sentence of Note 2 to read as follows:

§ 76.501 Cross-Ownership.

* * * * *

(d) No cable operator shall offer satellite master antenna television service ("SMATV") 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 offer SMATV service within the portion of the franchise area served by the cable operator's cable system only if the

cable operator's SMATV system was owned, operated, controlled by or under common control with the cable operator as of December 4, 1992, or was constructed by the cable operator, and provided that such SMATV service is offered in accordance with the terms and conditions of the cable franchise agreement.

(2) A cable operator may either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with the cable operator offer SMATV service in the unserved portions of the franchise area, regardless of whether the cable operator acquires or constructs the SMATV system provided such SMATV service is offered in accordance with the terms and conditions of the cable franchise agreement.

(i) In applying the provisions of paragraphs (d) and (e), control and an attributable ownership interest shall be defined by reference to the definitions contained in the Notes below 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.

(ii) The term "area served by a cable system" shall mean any area actually passed by a cable system and which can be connected for a standard connection fee.

(iii) The Commission will entertain requests to waive the restrictions in paragraphs (d) and (e) of this section where 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 2: In applying the provisions of this section, ownership and other interests will be attributed to their holders and deemed cognizable pursuant to the following criteria: * * *

* * * * *

6. Section 76.502 is added to Subpart J to read as follows:

§ 76.502 Three-year holding requirement.

(a) Except as otherwise provided in this section no cable operator may sell, assign, or otherwise transfer controlling ownership of a cable system within a three-year period following either the acquisition or initial construction of such cable system by such cable operator.

(b) A transfer of ownership in a cable system that does not affect the identity of the cable franchisee or the holder of a controlling interest in the cable system shall not be subject to the three-year holding requirement.