

Capital Cities/ABC, Inc. 77 West 66 Street New York NY 10023 (212) 456 6391



Kristin Carroll Gerlach
Senior General Attorney
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FEDERAL COMMUNICATIONS COMMISSION
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August 23, 1993

HAND DELIVER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Mr. Caton:

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and five copies of its Comments in MM Docket No. 92-264.

If there are any questions in connection with the foregoing, please contact the undersigned.

Sincerely,

Kristin C. Gerlach

KCG/ak
Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 CAPITAL CITIES/ABC, INC.

Sam Antar
Vice President, Law & Regulation

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Counsel for Capital Cities/ABC, Inc.

August 23, 1993

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To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC") submits herewith its Comments in response to the Further Notice of Proposed Rule Making in the above-entitled proceeding ("Further Notice"). We limit our brief Comments to one issue -- the appropriate standard to be used to attribute ownership interests in cable systems for purposes of the national horizontal ownership limits.

The Commission's proposal to adopt the broadcast attribution criteria contained in §73.3555 of the Commission's rules for this purpose has direct support in the legislative history.¹ As the Commission notes, the broadcast attribution

¹ Further Notice at paragraph 156, citing S. Rep. No. 92, 102nd Cong. 1st Sess. 80 (1991).

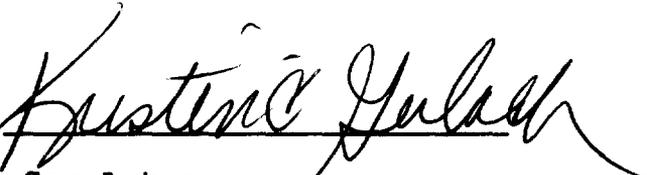
criteria establish ownership thresholds at which the owner can be expected to be in a position to influence or control management or programming decisions. These criteria are directly relevant to the purpose of the horizontal ownership limit in this case: to avoid the potential anticompetitive effects of undue influence in the programming marketplace.²

The fact that the same criteria are used to determine ownership interests in the network/cable cross-ownership context is also relevant, since the focus of the horizontal ownership limits there is the same as in this context.³ While the Commission has established a more restrictive ownership percentage limit for network cable owners than it proposes for cable operators in this proceeding, there is no reason to apply a less rigorous standard to determine the point at which an ownership interest rises to the level of meaningful influence on programming or management decisions. We take no position on whether a more rigorous attribution standard -- such as that applied in the program access or video dialtone contexts -- should be applied to non-network cable owners.

² Further Notice at paragraph 157.

³ The 10% national ownership limit for network owners of cable systems is designed to prevent potential undue influence in the programming marketplace through the control of video programming outlets. See Report and Order in MM Docket No. 82-434, 70 Rad. Reg. 2d (P&F) 1531 (rel. July 17, 1992) at paragraph 19; Memorandum Opinion and Order in MM Docket No. 82-434, 72 Rad. Reg. 2d 39 (rel. February 23, 1993) at paragraphs 5, 7.

Respectfully submitted,

By: 
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