

3. Part 76 is amended by adding Section 76.504 to read as follows:

**§ 76.504 Limits on Carriage of Vertically Integrated Programming**

(a) Except as otherwise provided in this section no cable operator shall devote more than 40% of its activated channels to the carriage of national video programming services owned by the cable operator or in which the cable operator has an attributable interest.

(b) The channel occupancy limits set forth in paragraph (a) shall apply only to channel capacity up to 75 channels.

(c) A cable operator may devote two additional channels or up to 45% of its channel capacity, whichever is greater, to the carriage of video programming services owned by the cable operator or in which the cable operator has an attributable interest provided such video programming services are minority-controlled.

(d) Cable operators carrying video programming services owned by the cable operator or in which the cable operator holds an attributable interest in excess of limits set forth in paragraph (a) as of December 4, 1992 shall not be precluded by the restrictions in this section.

(e) Cable operators are required to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest. These records must be made available to local franchise authorities, the Commission, or members of the public on reasonable notice and during regular business hours.

Note 1: For purposes of this Section:

(a) "Minority-Controlled" means more than 50% owned by one or more members of a minority group.

(b) "Minority" means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

(c) "Attributable Interest" shall be defined by reference to the criteria set forth in the Notes to § 76.501.

\* \* \* \* \*

**SEPARATE STATEMENT**

**OF**

**COMMISSIONER ANDREW C. BARRETT**

**RE: Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Cable Ownership**

This Second Report and Order adopts regulations regarding horizontal ownership and channel occupancy limits. In particular, the Commission establishes (1) a horizontal limit at 30% of homes passed nationally by cable systems owned by any single entity, with an allowance for ownership of systems totalling an additional 5% beyond the horizontal limit provided that such systems are minority controlled; and (2) a 40%-limit for channels occupied by programming services that are vertically integrated with a particular cable operator, applicable up to 75 channels. Regarding the channel occupancy limit, the rules allow for an additional two channels, or 5% of the cable system's total channels, whichever is greater, provided that the services are minority controlled.

I write separately to emphasize the importance of the horizontal and vertical ownership limits as structural measures addressing the aspects of concentration and vertical integration in the multichannel marketplace. In particular, I am concerned that these measures must be viewed the context of the Commission's prior decisions on rate regulation and program access, as well as the rules adopted today concerning program carriage agreements.<sup>1</sup> Given the existing behavioral regulations imposed on vertically integrated cable operators and programming vendors, these cable ownership provisions will become the structural component that will govern the cable industry's transition from a regulated environment to effective competition. In this regard, I believe that greater availability of programming services to all distributors will play a critical role in determining whether the future broadband network will ultimately belong to all multichannel competitors, including cable operators, to the extent that they remain able to invest and exercise creativity. Therefore, I am concerned that the channel occupancy rules must incorporate sufficient flexibility to permit future opportunities for investment leading to the development of new ventures and programming.

I am also interested in the higher thresholds established to allow for ownership and channel occupancy where cable systems and

---

<sup>1</sup> See Rate Order and Further Notice of Proposed Rule Making, MM Docket No. 92-266, FCC 93-177, released May 3, 1993; 58 Fed. Reg. 29736. See also First Report and Order, MM Docket No. 92-265, 8 FCC Rcd 3359 (1993); Second Report and Order, MM Docket No. 92-265, adopted September 23, 1993.

programming services are minority controlled. I support these provisions that will promote opportunities for greater participation by minority enterprises in the multichannel marketplace as program vendors and distributors.

Finally, the horizontal ownership provisions are affected by the decision by the United States District court for the District of Columbia regarding the constitutionality of this portion of Section 11 of the 1992 Cable Act.<sup>2</sup> Although the Court has found the statute's numerical limit on subscribers unconstitutional, the decision includes a provision to stay the results pending completion of any proceedings on appeal. Therefore, I am concerned that the Commission will need to monitor the development of this litigation and the ramifications of any further events concerning the effectiveness of the cable ownership rules, especially to the extent that any developments regarding the vertical limits could affect the availability of programming services.

---

<sup>2</sup> See Daniels Cablevision v. United States of America, No. 92-2292 [D.D.C., released September 16, 1993].