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FEDERAL COMMUNICATIONS COMMISSION
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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	)	MM Docket No. 92-264
	)	
Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions	)	

OPPOSITION OF AFFILIATED REGIONAL
COMMUNICATIONS, LTD. TO PETITION FOR RECONSIDERATION

Affiliated Regional Communications, Ltd. ("ARC") hereby opposes the Petition for Reconsideration ("Petition") filed on December 15, 1993 by the Center for Media Education and the Consumer Federation of America ("CME/CFA") in this proceeding. CME/CFA's belated effort to extend the Commission's channel occupancy limits to local and regional programming services is inconsistent with fundamental objectives of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

Preliminary Statement

As the owner and operator of several regional sports programming services, ARC actively participated in the Commission's rulemaking proceeding to establish channel occupancy limits. See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits, ____ FCC Rcd. ____, 73 R.R.2d. 1401 (1993) ("Second Report and Order"), at Appen-

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dices A and B. In its initial comments in that proceeding, filed February 9, 1993, ARC demonstrated that relevant precedent and public policy, as expressly identified in the 1992 Cable Act, justified exclusion of local and regional programming services from the channel occupancy limits. Virtually all other commenters supported such exclusion.[1]

In three subsequent rounds of comments, only the Motion Picture Association of America ("MPAA") and the National Association of Telecommunications Officers and Advisors/National League of Cities ("NATOA/NLC") opposed the proposal to exclude local and regional programming services.[2] In its final Reply Comments, ARC addressed the objections raised by MPAA and NATOA/NLC, and those commenters did not seek reconsideration of the Commission's Second Report and Order, which exempted local and regional services from the channel occupancy limits.

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[1] See Comments of Liberty Media Corporation, filed Aug. 23, 1993, at 14-15; Comments of National Cable Television Association, Inc., filed Aug. 23, 1993, at 21-22; Comments of Rainbow Programming Holdings, Inc., filed Aug. 23, at 9-10; Comments of Tele-Communications, Inc., filed Aug. 23, at 33-34; Comments of Time Warner Entertainment Company, L.P., filed Aug. 23, at 33-34; Comments of Turner Broadcasting System, Inc., filed Aug. 23, at 7; and Comments of Viacom International Inc., filed Aug. 23, at 8-9.

[2] Even MPAA and NATOA/NLC raised only half-hearted objections to the exemption proposed by the Commission. MPAA simply claimed that the must-carry provisions "ensur[ed] the availability of local programming on cable networks." MPAA Comments, filed Aug. 23, 1993, at 10. NATOA/NLC argued that the exemption should be limited to "noncommercial, not-for-profit local or regional programming." NATOA/NLC Comments, filed Aug. 23, 1993, at 9-10.

However, the Consumer Federation of America -- which had not opposed the exemption proposed for local and regional services in any of its comments in this proceeding -- now seeks reconsideration of the Commission's decision and claims for the first time that the Commission should "count affiliated local and regional networks toward the limit." Petition at 14. CME/CFA not only fails to provide any reasonable basis for its Petition, but also ignores the record evidence that its proposal would undermine fundamental policy objectives of the 1992 Cable Act.

I. The Record Clearly Establishes That Local And Regional Programming Services Promote Diversity And Localism.

The CME/CFA Petition makes no effort to address the overwhelming evidence provided by programmers and other commenters of the public interest benefits afforded by local and regional programming services. These services promote fundamental policy objectives identified by Congress and provide additional tangible benefits to local communities, schools and civic organizations.

A. Diversity and Localism

The promotion of a "diversity of views and information" available to the public is one of the Congressional policies underlying the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). See 1992 Cable Act, §2(b)(1). The development of regional sports programming services clearly has contributed substantially to

the overall increase in the diversity of programming services available to consumers. See, e.g., Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, 5 FCC Rcd. 4962, 4966 n.8 (1990) (number of cable programming services doubled between 1984 and 1990, with regional sports services being a "primary growth area").

Moreover, the Commission has found that regional sports networks have provided coverage of new and different sports which traditionally have not received coverage from broadcast stations and national cable networks, thereby adding to the variety of programming available to viewers. See Interim Report, 8 FCC Rcd. 4875 (1993) ("Interim Report"), at ¶67 (citing record evidence that "regional cable sports networks provide coverage of a wide variety of previously untelevised professional and amateur sporting events"). Regional networks also increase programming diversity by providing coverage of events involving smaller collegiate athletic conferences, high school teams and other amateur athletic conferences which otherwise receive little or no television exposure. Id. at ¶13.

In enacting the 1992 Cable Act, Congress also stated that there is "a substantial government interest" in ensuring continued "local origination of programming." 1992 Cable Act, §2(a)(10). Program origination by cable operators serves the public interest "by increasing the number of outlets for community self-expression and augmenting the public's choice of

programs and types of services." United States v. Midwest Video Corp., 406 U.S. 649, 667-68 (1972). The Supreme Court has recognized that live coverage of "outstanding local events [such] as community concerts, civic meetings, local sports events, and other programs of local consumer and social interest" serves the public interest. Id. at 668-69 (1972), quoting National Broadcasting Co. v. United States, 319 U.S. 190, 203 (1943) (emphasis added).

Thus, the record in this proceeding provides overwhelming and indisputable evidence that local and regional programming services, including regional sports networks, further the goals of localism and diversity upon which the 1992 Cable Act is founded. Consequently, the Commission properly recognized that exempting such services from the channel occupancy limits is "an important means of encouraging continued MSO investment in the development of local cable programming, which is responsive to the needs and tastes of local audiences and serves Congress' objectives of promoting localism." Second Report and Order at ¶78.[3]

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[3] The Commission also recognized that the exemption "may be necessary to encourage MSOs to continue investing in such local programming" and that such investment is critical because "local and regional programming services are usually costly to produce and appeal only to a limited population of subscribers." Second Report and Order at ¶78. Of course, regional sports programming is particularly costly because there is no "residual" market for live sports programming. See ARC Comments, filed Feb. 9, 1993, at 6.

B. Other Benefits to Local Communities

In addition to providing programming responsive to local needs and interests and increasing programming diversity, ARC's regional sports programming services have provided substantial tangible benefits to the communities and regions they serve. For example, regional sports networks have "been particularly beneficial to collegiate athletics and other amateur sports" within their regions "by telecasting events that would not otherwise be shown." Interim Report at ¶13. The Interim Report also cites comments submitted by the Texas Special Olympics which describe the benefits of television coverage provided by Home Sports Entertainment ("HSE"), one of ARC's regional sports networks:

> HSE's coverage has brought the Special Olympics to an entirely different audience (i.e. sports viewers) than that reached by traditional broadcast news coverage, increasing public awareness of the Special Olympics and recognition of the athletic achievements of the participants in the Summer Games. In addition, HSE's coverage has improved our recruitment of corporate sponsors for the Games. Finally, HSE's coverage of the Summer Games has allowed participants to see themselves in competition, rewarding their efforts and motivating them to continue to improve their athletic skills.

Comments of Texas Special Olympics, PP Docket No. 93-21, filed Mar. 29, 1993, at 2.

II. CME/CFA Offers No Reasonable Basis For Eliminating The Local And Regional Exclusion.

Balanced against the overwhelming record evidence of the public interest benefits provided by local and regional cable programming services, CME/CFA offers only one purported

reason to discourage their growth and development by subjecting them to the channel occupancy limits:

> [M]ost local and regional networks are owned by large MSO's, and as such are part of the trend of vertical integration Congress meant to address with the Cable Act.

Petition at 18 n.10.

However, Congress clearly did not intend that the Commission discourage all vertical integration by cable operators regardless of the public interest benefits. Rather, Congress specifically directed the Commission to "account for any efficiencies and other benefits" which result from vertical integration in formulating its channel occupancy regulations, and to avoid "limitations which would impair the development of diverse and high quality video programming." See 1992 Cable Act, §11(c), 47 U.S.C. §533(f)(2)(D) and (G). Consequently, rather than blindly including local and regional programming services in the channel occupancy limits because of their affiliation with cable operators, the Commission properly considered the benefits of such services and exempted them from the limits.

Finally, there is no basis for CME/CFA's inference that a particular local or regional programming service owned in whole or in part by an MSO does not provide the same public interest benefits, in terms of localism and diversity, as an unaffiliated local or regional programming service. The Commission never has suggested that local programming produced by a broadcast station owned by, or affiliated with, a national

network or large group owner somehow makes a less valuable contribution to localism and diversity than similar programming produced by an independent station. It is ludicrous for CME/CFA to suggest that result for locally produced cable programming.

Conclusion

Having failed to address the issue in its comments during the eight month pendency of this proceeding, CME/CFA now requests without any logical or empirical basis that the Commission reverse course and reconsider its decision to exempt affiliated local and regional networks from the channel occupancy limits. The record is absolutely devoid of support for its proposal which runs counter to the public policy objectives of diversity and localism. Accordingly, the Commission should summarily dismiss the CME/CFA Petition.

February 11, 1994

Respectfully submitted,

AFFILIATED REGIONAL
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Opposition of Affiliated Regional Communications, Ltd. to Petition for Reconsideration" was served this 14th day of February, 1994 by first-class mail, postage prepaid, upon the following:

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