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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEB 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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)

MM Docket No. 92-264

OPPOSITION

U S WEST Communications, Inc., through counsel and pursuant to Section 1.429(f) of the Federal Communications Commission's ("Commission") Rules,¹ hereby files its Opposition to the Petition for Reconsideration filed by the Center for Media Education and the Consumer Federation of America ("CME")² which requested that the Commission reconsider its Second Report and Order in the above-captioned proceeding.³

In its Order implementing the ownership restrictions of the 1992 Cable Act,⁴ the Commission adopted "a horizontal ownership limit prohibiting any one entity from having an attributable interest in cable systems that in the aggregate reach more than

¹47 CFR § 1.429(f).

²Petition for Reconsideration of Center for Media Education and Consumer Federation of America filed herein Dec. 15, 1993 ("Petition").

³In 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, Second Report and Order, 73 Rad. Reg. (P&F) 2d 1401 (1993) ("Order").

⁴47 USC § 533(f).

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30% of cable homes passed nationwide . . ."⁵ CME argues that both telephone and cable subscribers should be counted in calculating the horizontal limit.⁶ "CME asks the Commission to clarify that customers served by a telephone company that is affiliated with a cable company should be included in the horizontal limits."⁷ CME's request is misdirected. The Commission is not at liberty to include affiliated telephone company subscribership in calculating the 30% horizontal ownership limit. Under the 1992 Act, the Commission was directed to conduct a proceeding within one year of adoption of the Act:

to prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or⁸ in which such person has an attributable interest[.]

This statutory mandate refers to "cable systems" and "cable subscribers," not to telephone common carriers or telephone subscribers. In fact, the Cable Act's definition of "cable system" specifically excludes common carrier facilities which are subject to Title II of the Communications Act.⁹ The Commission

⁵Order, 73 Rad. Reg. (P&F) 2d at 1407 ¶ 25. Also, see id. Appendix D, § 76.503.

⁶CME at 13.

⁷Id. at 12.

⁸47 USC 533(f)(1)(A).

⁹See 47 USC § 522(7) ("[T]he term 'cable system' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment
(continued...)

has no authority to accommodate CME's request, even if it wanted to, at least not in the context of this proceeding. As such, the Commission should deny those portions of CME's Petition which request that cable horizontal ownership limits be extended to include customers served by telephone companies which are affiliated with cable companies.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By:

James T. Hannon

James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2860

Its Attorney

Of Counsel,
Laurie J. Bennett

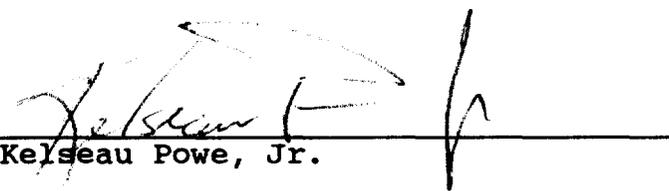
February 11, 1994

⁹(...continued)

that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of Section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility system[.]").

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 14th day of February, 1994, I have caused a copy of the foregoing **OPPOSITION** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

***Via Hand-Delivery**

(MM92-264/JH/lh)

*Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*William H. Johnson
Federal Communications Commission
Room 314
1919 M Street, N.W.
Washington, DC 20554

*Andrew C. Barrett
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

*James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

Angela J. Campbell CFME/CFOA
Lisa Stevens
Jim Black
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001

*Kathleen B. Levitz
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

Michael E. Glover
Edward D. Young, III
Bell Atlantic Telephone Companies
1710 H Street, N.W.
Washington, DC 20006

*Jacqueline E. Chorney
Federal Communications Commission
Room 8002
2025 M Street, N.W.
Washington, DC 20554

Martin T. McCue
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005-2136

Daniel L. Brenner
Loretta P. Polk
National Cable Television
Association, Inc.
1724 Massachusetts Avenue, N.W.
Washington, DC 20036

Howard J. Symons
Lisa W. Schoenthaler
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Frank W. Lloyd
Keith A. Barritt
Mintz, Levin, Cohn, Ferris,
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Suite 900
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
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Hank J. Ratner
Rainbow Programming Holdings,
Inc.
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Woodbury, NY 11797

Robert J. Sachs
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Continental Cablevision, Inc.
Pilot House, Lewis Wharf
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Robert S. Lemle
Cablevision Systems Corporation
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Christopher B. Fager
E! Entertainment Television,
Inc.
5670 Wilshire Boulevard
Los Angeles, CA 90036

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820 First Street, N.E.
Washington, DC 20004

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NCTAI

MCTVC/PJC
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VIACOM
DCI

David Waterman
University of Southern California
3502 South Hoover Street
Los Angeles, CA 90089-0281

R. Clark Wadlow
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20554

TRPI

Gene Kimmelman
Bradley Stillman
Consumer Federation of America
Suite 604
1424 16th Street, N.W.
Washington, DC 20036

William J. Andrie, Jr.
James E. Cushing
Tribune Regional Programming, Inc.
435 North Michigan Avenue
Chicago, IL 60611

Deborah C. Costlow
Thomas C. Power
Winston & Strawn
Suite 700
1400 L Street, N.W.
Washington, DC 20005

JOINT/MULT

David L. Donovan
Association of Independent
Television Stations, Inc.
Suite 502
1200 18th Street, N.W.
Washington, DC 20036

David Cosson
L. Marie Guillory
National Telephone Cooperative
Association
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

Brenda Fox
Peter H. Feinberg
Michael Pierce
Dow, Lohnes & Albertson
Suite 500
1255 23rd Street, N.W.
Washington, DC 20037
(2 copies)

CP
CSM

John L. Grow
New York State Commission
on Cable Television
Corning Tower Building
Empire State Plaza
Albany, NY 12223

Jud Colley
Community Broadcasters
Association
P.O. Box 191229
Dallas, TX 75219

Jud Colley
Community Broadcasters
Association
P.O. Box 9556
Panama City Beach, FL 32407

James R. Hobson
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser
Suite 850
1275 K Street, N.W.
Washington, DC 20005-4078

GTE

Paul Glist
James F. Ireland, III
Robert G. Scott, Jr.
David M. Siverman
Cole, Raywid & Braverman
Suite 200
1919 Pennsylvania Avenue, N.W.
Washington, DC 20006
(2 copies)

BETI
MULT

Stephen R. Ross
Kathryn A. Hutton
Ross & Hardies
Suite 300
888 16th Street, N.W.
Washington, DC 20006

Garret G. Rasmussen
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, DC 20037

DCI

Henry M. Rivera
Ann Bravender
Ginsburg, Feldman and Bress,
Chartered
Suite 700
1250 Connecticut Avenue, N.W.
Washington, DC 20036

LCCI

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

W. James MacNaughton
Liberty Cable Company, Inc.
Suite 610
Woodbridge Center Drive
Woodbridge, NJ 07095

Robert McKenna
Ward W. Wueste, Jr.
Marceil F. Morrell
GTE Service Corporation
HQE03J36
P.O. Box 152092
Irving, TX 75015-2092

Edward W. Hummers, Jr.
Paul J. Feldman
Fletcher, Heald & Hildreth
11th Floor
1300 North 17th Street
Rosslyn, VA 22209

NCI

Fritze E. Attaway
Frances Seghers
Motion Picture Association
of America, Inc.
1600 Eye Street, N.W.
Washington, DC 20006

David B. Gluck
Mark R. Boyes
Affiliated Regional
Communications, Inc.
Suite 2200
600 Las Colinas Boulevard
Irving, TX 75039

Stephen S. Madsen
Cravath, Swaine & Moore
825 Eighth Avenue
Worldwide Plaza
New York, NY 10019

TWEC

Mark J. Palchick
James A. Koerner
James E. Meyers
Baraff, Koerner, Olender
& Hockberg, L.P.
Suite 300
5335 Wisconsin Avenue, N.W.
Washington, DC 20015
(2 copies)

COT-III
EMC

Michael H. Hammer
Philip L. Verveer
Theodore C. Whitehouse
Daniel R. Hunter
Willkie, Farr & Gallagher
Suite 600
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20036

TCI

Celeste M. Fasone
Office of Cable Television
Board of Regulatory
Commissioners
101 Commerce Street
Newark, NJ 07102

Al Szablak
4793 Creaser Road
Westmoreland, NY 13490

Gardner F. Gillespie
Jacqueline P. Cleary
Hogan & Harston
555 13th Street, N.W.
Washington, DC 20006-1109

COCOSSO

David J. Kaufman
Rhonda L. Neil
Brown Nietert & Kaufman,
Chartered
Suite 660
1920 N Street, N.W.
Washington, DC 20036

TTI

William J. Catto
Haag & Deutschman, P.A.
452 Pleasant Grove Road
Inverness, FL 34452

JOINT/MULT

David A. Irwin
Michael G. Jones
Irwin Campbell & Crowe
Suite 400
1320 18th Street, N.W.
Washington, DC 20036

JOINT/RT-CC

Dennis Courtland Hayes
Everald Thompson
NAACP
4805 Mt. Hope Drive
Baltimore, MA 21215

Robert L. Hoegle
Timothy J. Fitzgibbon
Carter, Ledyard & Milburn
Suite 870
1350 I Street, N.W.
Washington, DC 20005

LIBERTY

David Honig
NAACP
1800 Northwest 187th Street
Miami, FL 33056

Gigi B. Sohn
Andrew Jay Schwartzman
Consumer Federation of America
2000 M Street, N.W.
Washington, DC 20036

Sam Antar
Kristin C. Gerlach
Capital Cities/ABC, Inc.
77 West 66th Street
New York, NY 10023

Benjamin J. Griffin
Matthew J. Harthun
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, DC 20036

PPVNI

Bruce D. Collins
National Cable Satellite
Corporation
400 North Capitol Street, N.W.
Washington, DC 20001

William E. Kennard
Michael S. Wroblewski
Albert Halprin
Verner, Liipfert, Bernhard
McPherson and Hand
Suite 700
901 15th Street, N.W.
Washington, DC 20005

STI

Paul J. Sinderbrand
Dawn G. Alexander
Sinderbrand & Alexander
Suite 610
888 16th Street, N.W.
Washington, DC 20006-4103

WCAI

Neal M. Goldberg
Elizabeth A. Marshall
Hopkins & Sutter
888 16th Street, N.W.
Washington, DC 20006

OWTC

Andrew R. Paul
Satellite Broadcasting and
Communications Association
Suite 600
225 Reinekers Lane
Alexandria, VA 22314

Susan E. Wefald
Leo M. Reinbold
Bruce Hagen
North Dakota Public
Service Commission
State Capitol
Bismark, ND 58505