

system does not need to be applied universally to increase efficiencies...¹³³

We agree. Consequently, while the SBAC in no way dismisses the serious issues of efficiency and efficacy that surround the set-aside option, we are compelled not to withdraw our support for further consideration of the set-aside option at this time.

By endorsing the further consideration of the set-aside option, however, the SBAC does not mean to imply that sole reliance on that option is a panacea. On the contrary, the SBAC has not concluded that use of this option in isolation from other proposed measures would achieve the least restrictive manner of implementing competitive bidding for emerging technologies. Nor would use of this option ensure sufficient technology diffusion participation by designated entities to empower low-volume users to capture the benefits of innovative, competitive, allocationally efficient, use of spectrum contemplated in the auction legislation. For this reason, the SBAC endorses efforts to achieve pareto allocational efficiencies through concurrent consideration of set-aside options, and strategic alliance arrangements such as spectrum sharing through bandwidth exchanges, and limited use of competitive bidding exemptions.

It is not inconceivable, however, that a "hard-look" evaluation of the full range of available options, including competitive bidding exemptions, may reveal ways to promote both efficient spectrum use and increased open entry opportunities in

¹³³ U.S. Spectrum Management Policy: An Agenda for the Future, 1991, p. 103.

emerging technology markets that neither the SBAC or the Commission has thoroughly considered to date. Just as pioneer's preferences - another form of set-aside - were a vehicle for exempting innovator's from comparative hearings and random selection processes, innovator's preferences could likewise offer a potential vehicle for an exemption from competitive bidding. In this regard, the SBAC is mindful that the power to use bandwidth assignments to promote economic opportunity arises in a variety of settings, including interactive video data services, local multi-point distribution service, high-definition television, and direct broadcast satellite service. Depending on the goals of the proceedings, service-specific characteristics and the characteristics of available frequencies, alternatives such as spectrum exchanges or competitive bidding exemptions, other options may need to be considered to promote sustainable diffusion of technology through licensing and business opportunities for designated entities. Accordingly, we invite comment from the public on proposals along these lines in the SBAC's draft report on emerging technology dockets.

Information Empowerment Zones

Information empowerment zones offers another potential solution to economic opportunity problems. Significantly, the legislative history of Section 307(b) of the Communications Act indicates that the authority to zone geographical areas for

regulatory purposes actually pre-dates the establishment of the FCC.

As a potential regulatory tool in the context of the Commission's competitive bidding regime, an information empowerment zone strategy could enhance certainty of designated entity participation like set-asides, while providing a dynamic and flexible framework for implementing a variety of measures to promote economic opportunity, competition, and innovation.

The assumptions underlying justifications for spectrum zoning measures closely parallel the SBAC's original set-aside proposal, and are compatible with fixed bandwidth assignments and licensee service area designations contemplated by the set-aside option. We note, for instance, that the effect of including BTAs for designated entities in an allocation scheme with larger service areas also closely resembles the use of empowerment or enterprise zones. Enterprise zones are designed to encourage economic growth in depressed rural and urban areas typically by extending tax credits to business owners and investors who agree to operate in the zones. As of 1991, for example, Arkansas created 30,174 jobs with 458 enterprise zones, while New York and New Jersey attracted \$1.5 billion in new investment and produced 8,000 new jobs in its enterprise zones. As many as 35 other states have enterprises. The allocation of spectrum for designated non-dominant entities in BTA service areas could have comparable benefits for the deployment of emerging technologies in areas designated by federal, state, and local authorities for empowerment of enterprise zone treatment.

Indeed, consistent with trends in state and local jurisdictions, NTIA is presently accepting NII grant requests for the establishment of local "information empowerment zones."

Based these social and economic considerations, the SBAC believes the Commission's decision to retain BTAs in the allocational scheme for narrowband PCS charts the course it should follow in other dockets. In that proceeding, a few commenters noted a number of circumstances that rendered BTAs economically unworkable. We believe the Commission was correct to reject these arguments. In our view, use of BTA service areas in the PCS allocation scheme would accomplish results similar to the use of enterprise zoning. The problems cited by opposing commenters give BTA licensees strong incentives to develop innovative technological and marketing solutions which could have unexpected relevance in other contexts as well. Even though there are obviously many important deployment issues yet to be resolved, we believe BTA licensees have a strong self-interest in address interference problems through voluntary associations formed to facilitate PCS deployment by BTA licensees in a manner compatible with the public interest.¹³⁴ By inducing licensees to engage in problem solving, the

¹³⁴ BTA licensees could address interference problems by investing in innovative technologies which reduce the cost of narrowband PCS base stations. For example, Echo Group, Ltd, a pioneer's preference applicant for narrowband PCS, asserts that "although the base stations of comparable equipment currently on the market sell for as much as \$250,000, the cost of Echo's two-way base stations, with redundancy, is estimated at \$5,000 each." See, Petition for Reconsideration of Echo Group Ltd in ET Docket 90-314, at p. 5.

allocational scheme produces the precisely effect that Congress intended.

The concept of information empowerment zones also has applicability outside the context of fixed bandwidth assignments and licensee service area designations. As indicated in the SBAC's PCS report, SBA guidelines condition size standard waivers up to 25% over the stipulated threshold on a firm's agreement to use SBA assistance in labor surplus areas or redevelopment areas.¹³⁵ Thus, the Commission could implement an information empowerment zone program by simply incorporating similar conditions into its own designated entity classification standards. Zoning could also be used to target vending-related performance requirements for LECs, or waiving cellular attribution rules to promote economic opportunity. Use of zoning techniques also appears to be entirely consistent with the localism rationale of Section 307(b) of the Communications Act, a factor which makes empowerment zoning especially appealing as a safeguard for geographically isolated, or economically distressed, communities in the context of both new and existing markets.

Regulatory Forbearance

The Commission has previously recognized the need for regulatory forbearance as a means to promote licensing flexibility

¹³⁵ See, 13 CFR §121.802(d).

in several ways. In Gen. Docket 90-217, the Commission provided preferences to innovators that develop new spectrum technologies and services. Similarly, in ET Docket 93-266, the Commission initiated a review of the preference rules to assess the effect of competitive bidding authority on the rationale for the rules. There are a number of efficiency enhancing devices that have not been considered in the context of measure to encourage utilization of designated non-dominant entities. For example, the Commission assigns FM broadcast allotments on a "first come, first serve" basis, if no applications for a particular channel are filed during the window. Licenses are also granted under pioneer's preference rules, which are designed to reward significant advances in telecommunications sciences by treating the application of the successful "pioneer" as the sole application acceptable for filing. There are several options the Commission can use to accomplish similar efficiencies in fostering economic opportunities, including forbearance on competitive bidding, auction costs such as up-front fees, unnecessary spectrum use restrictions, and conventional rate regulation.

Forbearance on competitive bidding would create a strong incentive for license acquisition by local non-dominant consortia. Consortia licenses could be assigned through distress sale procedures or through exemptions from competitive bidding. An increasingly popular approach to bank implementation of statutory community reinvestment guidelines, for example, is participation in a multi-investor consortia that invests in one or more community

development projects or business ventures. Multi-investor consortia or similar arrangements have been used to develop community facilities that provide health, educational, and other essential services for low- and moderate-income persons, and to develop or expand small and minority businesses in economically depressed areas. Several large holding companies, such as Citicorp, Chase Manhattan Corporation, and J.P. Morgan, have participated in these types of arrangements.

Regulatory forbearance in connection with upfront fees are also needed to promote flexibility for capital constrained bidders. One measure the Commission adopted to avoid unjust enrichment is a requirement for an up-front payment of \$.02 per MHz per population. In addition, winning bidders will be required to pay the difference if the up front payment is less than 20% of the winning bid. These up front payment terms are quite burdensome and could detract from the use of a designated allocation as an anti-competitive safeguard. For example, the opportunity to bid for broadband PCS BTA in New York would require a designated entity to make an upfront payment of over \$7 million. Assuming a winning bid in the \$100 million range, the bidder would have to make an additional payment of over \$12 million after the auction. Similarly, it could take as much as \$200,000 in up front payments for a 900 MHz mobile system in a less densely populated area such as Atlanta. A significant reduction in the up front payments would help avoid

diluting the anti-competitive benefits of designated allocations while retaining deterrents against frivolous bids.¹³⁶

Forbearance on regulatory classifications is another important tool the Commission can use to promote flexibility for FCC licensees. In light of the Commission's jurisdiction to forbear on common carrier requirements, for example, we see no legal or policy reasons why diversity principles would not be applicable where common carrier licensees or licensee affiliates propose to offer multicasting services which meet a demonstrable local need for diverse information services through the licensed facility.

¹³⁶ We note, for example, that the Minority PCS Coalition advocates upfront payments based on the lesser of \$.01 per pop per MHz or \$500,000.

SUMMARY OF MAJOR CONCLUSIONS AND RECOMMENDATIONS

Policies governing ownership and apportionment of spectrum licenses will have enormous implications for economic growth and access in the information economy. Spectrum is highly demanded by competitors in an industry characterized by a high degree of concentrated ownership, where some firms enjoy substantial competitive advantages by virtue of size and market share. The value of spectrum use, however, to the public is not entirely quantifiable in precise monetary terms. Spectrum is a vital resource used for the production of information and communications services unlike other natural resources like oil, coal, and timber. Spectrum is also different from government allocated commodities like treasury bonds because the Communications Act does not permit private ownership of airwaves. For these reasons, regulatory flexibility for non-dominant market forces will be essential if the American public is to capture the full benefits of broadcast, multichannel video, and emerging technologies.

SBAC proceedings identify four factors substantially justify the recommendations contained in this report. First, the immediate public need for expansion of service is an overriding consideration which directly supports use of an allocational designation. In this regard, the Radio Relay case teaches that competition is only one of several important criteria that the FCC must consider in reaching a public interest determination, and that the public need for expanded service is also an important criteria. As indicated earlier, there is a pressing need for diverse and

antagonistic sources of information, ranging from increased competition in the local loop to encourage universal access to development of specialized niche markets educational and health services, among others. Competition to existing cellular providers would also benefit mobile communications consumers. We consider these needs to be an implicit component of the objectives set forth in Section 309(j)(3)(a) concerning deployment of new technologies, services, and products.

Second, the expertise reposed within the non-dominant market sector which addresses the need for expanded service is also highly relevant in considering the possible use of allocational designations. Our analysis indicates that price is a major obstacle to access for basic telephone service in economically depressed areas, and is also a major obstacle to access for emerging wireless services generally. In light of these needs, the characteristic that most clearly justifies measures to include non-dominant entities is their demonstrated ability for innovation of new technologies, services and products. The establishment of ownership policies furnishes non-dominant innovators with a strong incentive to participate in innovating new services and technologies for the benefit of the public. Indeed we have strong doubt that many of the intended benefits of new communications services will not materialize without substantial participation by non-dominant market forces. Just as regulations on earth station ownership were tailored to furnish carriers with the opportunity to gain experience in satellite communications, FCC ownership policies can

be tailored to furnish non-dominant entities with opportunities to participate in the evolution of emerging technologies. U.S. global competitiveness will also be enhanced if individual designated entities are able to gain experience from them to compete for opportunities in international markets.

Third, the reasonableness and utility of safeguards for designated entities is of course a highly relevant factor in considering options for the deployment of advanced telecommunications infrastructure. Much has already been said in this regard about economies of scale and scope. Nevertheless, as we pointed out in discussing the relevance of non-dominant utilization, economies of specialization can also benefit the public by optimizing service distribution, provided that the allocational scheme is technically sound and economically viable. Consistent with this precept, we urged the Commission to promote economic opportunity for designated entities through license acquisition assistance for designated entities, strategic alliances between designated entities and other entities, and vending opportunities for minority and female businesses engaged in value-added service development and equipment manufacturing. As we have noted, similar approaches have been in use in other fields of the national economy, and in communications regulation.

Finally, the need to guard against anti-competitive practices and unjust enrichment are two additional, and very important, factors which the regulatory flexibility options we have crafted are tailored to address. Due to the enormous human service value in

national spectrum resources, employment, economic growth, global competitiveness, social justice, are to some extent a function of the fairness and efficiency of the system the Commission uses to apportion spectrum. To further these types of interests, the SBAC generally recommends expanded use of financial and regulatory safeguards for non-dominant entities in both new and existing markets. The context for considering the potential for abuse is much different here than when the Commission established paging and cellular ownership policies for wireline carriers. Unlike the ownership policies for wireline carriers, which created the underlying need for protection against anti-competitive practices, policies to encourage ownership by non-dominant entities are themselves useful safeguards against undue concentration of ownership and exclusion of minority and female business applicants. In this regard, the SBAC considers participation by non-dominant entities in spectrum enterprises a practical economic necessity.

ACKNOWLEDGEMENTS

The results of the SBAC's deliberations presented in this report reflect the efforts of many people. While reasonable minds will differ in some instances with respect to the details of the complex and controversial matters this report addresses, the collective efforts that went into the report are ultimately a tribute to the American system of free enterprise. The report also salutes all who have dedicated their efforts to liberate the benefits of true entrepreneurship for the American public. Here, the SBAC wishes to acknowledge the assistance, cooperation, and support, it has received from others that made this report possible.

First, the SBAC commends the past and present members of the Federal Communications Commission who had the foresight to establish the SBAC, and also to use its input: the FCC Chairman Reed Hundt, Former Acting FCC Chairman Jame H. Quello, and Former FCC Chairman Alfred C. Sikes, who took steps in 1992 to charter the SBAC. The SBAC is also deeply indebted to Commissioner Andrew C. Barrett, for the mentorship he has provided as the architect of the SBAC, and former Commissioner Ervin Duggan, for his dedicated efforts to promote a climate in the Commission that would foster economic opportunity for Americans of all creeds and colors. The SBAC also wishes to thank the members of the Commissioner's advisers and legal assistants, including: Blair Levin, FCC Chief of Staff; Former Chiefs of Staff Brian Fontes, whose encouragement and cooperation was greatly appreciated, and Terry Haines, former FCC Chief of Staff. In addition, the SBAC extends its gratitude Byron Marchant; John Haller; Randy Coleman; Maureen O'Connell; Robert Branson, and Kenneth Robinson.

The SBA has benefited from the assistance of numerous others whose support and cooperation we also wish to acknowledge, including: FCC Managing Director Andrew Fishel, Associate Managing Director for Policy Patti Grace Smith, and the Office of Managing Director; General Counsel William Kennard and the Office of General Counsel; Bureau Chiefs Roy Stewart and the Mass Media Bureau, Dr. Robert Pepper and the Office of Policy and Plans, Dr. Thomas Stanley and the Office of Engineering and Technology; Steve Klitzman, Office of Legislative Affairs; and the Staff of the Industry Analysis Division of the Common Carrier Bureau. Dr. Joann Anderson of the National Telecommunications and Information Administration, David Crawford of the Internal Revenue Service, and Barry Pineles of the Small Business Administration, have also contributed generously to the SBAC's efforts. Others who contributed through testimony at SBAC hearings are acknowledged in appendices to the report.

The membership of the SBAC finally wishes to express its appreciation to the SBAC Executive Committee and Staff. The Executive Committee members included Joshua Smith, SBAC Chairman,

Sandra Goeken-Martis, Chair, New Technology Subcommittee, Walter Threadgill, Chair, Policy Subcommittee, John Oxendine, Chair, Finance Committee, and Henry Riggins, Chair, Management Committee. The staff of the SBAC and FCC Office of Small Business Activities (OSBA) include: John R. Winston, Director OSBA and SBAC, Federal Designated Officer, who administered the Committees activities, directed OSBA personnel, and provided untiring and invaluable leadership at every stage of the Committee's development; Rowland Martin, SBAC Legal Adviser, who prepared the SBAC PCS Report and this Interim Report under the guidance of the Executive Committee, and provided legal support to the SBAC in connection with the numerous complex and novel issues the SBAC was chartered to assess; and Karen Beverly, Dolly Johnson, and LaVenya Williams, who coordinated use of the SBAC's computer, voice mail, and on-line data retrieval operations, while simultaneously carrying out the arduous task of assisting SBAC and OSBA constituents on a day-to-day basis with untiring dedication and enthusiasm.

Based on our experience over the past year, it is clear, that while electromagnetic spectrum and fiscally budgeted resources at the Commission's disposal are vital, it is the dedicated public servants within the FCC who comprise the valuable resource available to the Commission. It is our hope that the findings and recommendations we have presented with the help of others in this report, and in future reports, will enhance their effectiveness. Most of all, it is our hope that the advice we render to fulfill the terms of our charter will prove worthy of our Nation's profound commitment to discussion of important public issues and will receive full and open-minded consideration.

APPENDICES

The attached appendices contain draft docket reports on emerging technology, broadband video, and broadcast dockets. In some cases, changes in circumstances since the preparation of the draft reports, such as new legislative proposals, may have altered certain assumptions underlying the positions stated in the report. In other instances, there may be additional information which the committee should consider prior to the submission of the final docket report. Therefore, the SBAC encourages interested parties to submit comments on these reports for the consideration of the committee.

APPENDIX A: DRAFT BROADCAST DOCKETS REPORT

Background

The SBAC reviewed dockets concerning broadcast multiple ownership rules, comparative licensing hearings, and capital formation. Based on this assessment, the SBAC concludes that the Commission should terminate consideration of further relaxation of multiple ownership rules for both radio and television, reconsider small business definitions adopted for the broadcast industry, and retain integration criteria in comparative hearings. Regarding relaxation, the problem the Commission identified in the radio rule proceedings was "inter-and intra-industry competition [which] has produced an extremely fragmented radio marketplace." A more sound solution to this problem for non-dominant entities than relaxation multiple ownership rules would be to consider financial measures to encourage inter-industry revenue streams for competitively disadvantaged broadcasters, and SBIC-based variants on the incubator proposal, in the context of proceedings on capital formation and emerging technologies. In view of this alternative, the SBAC sees no justification for further relaxation of ownership limits for radio or television at this time. As indicated below, the record in Docket 92-51 gives the Commission the opportunity to consider numerous workable strategies for encouraging broadcast capital formation which are far less problematic in terms of non-dominant ownership than multiple ownership initiatives for radio and television.

Radio and TV Ownership Rules: MM Dockets 91-140 and 91-221

The ownership and licensing dockets consider structural issues. Mass Media Docket 91-140 was designed to strengthen the radio industry in the face of "inter and intra-industry competition [which] has produced an extremely fragmented radio marketplace in which existing and future radio broadcasters [are] subject to increasingly severe economic and financial stress."¹³⁷ In the FNPRM, the Commission sought comment on an additional proposal to permit a group owner to exceed the otherwise applicable national ownership levels if the owner establishes and implements a broadcast ownership "incubator" program to encourage investment in small and minority broadcasters.¹³⁸ Docket 91-221 was initiated to review and update the Commission's national and local television ownership rules, and related rules concerning cross-ownership and networks. The Notice in that docket proposes to relax ownership limits to enable TV broadcasters to adjust to the changing communications marketplace.

After lengthy review, the SBAC is of the opinion that the evidence in the proceeding does not and cannot resolve the "question as to how the national multiple ownership rules can best be used to provide investment incentives for small business and minority entrants into the radio industry."¹³⁹ While the record

¹³⁷ MO&O/FNPRM, at para. 2.

¹³⁸ The FNPRM defines "small business" as businesses with less than \$500,000 in revenues and under \$1 million in assets.

¹³⁹ FNPRM, at para. 21 (emphasis added).

establishes that the national radio ownership rules could probably be used to encourage formation of incubator programs, the reason for this is that the cost of establishing an incubator program is relatively marginal compared to the benefit of enhanced relaxation and consolidation for those group owners who can afford to acquire more than 18 stations. In the most favorable light, however, the benefit of national ownership rules as a means of encouraging incubator programs appears to be marginal because "very few group owners will hold the maximum number of radio stations and thereby be eligible" for relaxation based on sponsorship of an incubator program.¹⁴⁰ More importantly, there is a substantial risk that acute concentration of ownership beyond the existing balloon provisions may actually outweigh the assumed benefits of the sponsorship of large group owners, as noted in comments and petitions for reconsideration. To the extent that further opportunities for relaxation will contribute to the type of macro-economic conditions for small owners which rational investors will logically seek to avoid, the SBAC concludes that the national multiple ownership rules ultimately cannot provide effective long term investment incentives for new entrants into the radio industry.

The Commission should also reexamine the small business and joint venture provisions of the radio rules. The SBAC supports reconsideration because the impact of the rule changes were not

¹⁴⁰ Broadcap, at p. 8.

sufficiently ascertained prior to the adoption of the rules,¹⁴¹ and witnesses at SBAC hearings raised strong concerns about the possibility that the small business eligibility criteria could dilute existing minority ownership incentives contrary to the provisions of the Continuing Appropriations Acts.¹⁴² Reconsideration would allow the Commission to consider this point, and also, whether the threshold is, in any event, too underinclusive to be economically viable for meaningful relief to small stations in distress. Whether the small business provisions should be eliminated or revised to extend relief to offset the impact of duopoly rule changes could be determined through such a review.

Comparative Hearings: GC Docket 92-52

GC Docket 92-52 considers whether the comparative hearing process is out of date, and seeks to eliminate and simplify litigation involved in prosecuting a mutually exclusive application for a new broadcast facility. The SBAC advocates retention of the integration criteria based on two sound public interest purposes. First, integration criteria encourages controlling shareholders and general partners to extend equity ownership opportunities to

¹⁴¹ The Commission also has before it joint petition by the Telecommunications Research and Action Center and the Washington Area Citizens Coalition Interested in Viewers Constitutional Rights asserting that the MO&O delegated excessive programming control to non-licensees contrary to the Communications Act.

¹⁴² The Commission has received a petition of the League of United Latin American Citizens, and a joint petition by the National Association of Black Owned Broadcasters and the National Black Media Coalition, requesting reconsideration of the small business provisions.

employees of the applicant entity.¹⁴³ In this regard, the existing policy furthers employee ownership in a manner very similar to the Employee Retirement Income Security Act of 1974 (ERISA) by rewarding applicants for integrating management with ownership. Second, to the extent that integration is not cost effective for a rational speculating applicant, integration credits marginally deters such applications by increasing the chance that non-integrated applications will not succeed where bona fide integrated applicants are present.

Capital Formation for Broadcast Acquisition: MM Docket 92-51

In addition to dockets considering structural reforms, the SBA also reviewed Mass Media Docket 92-51, which sought comment on ways to reduce unnecessary regulatory restraints on investment in the broadcast industry, and proposals for changes in the Commission's rules and policies which could increase and facilitate the availability of capital for investments in the broadcast industry. Specifically, the NPRM requested comments on two issues: (a) whether changes in certain attribution standards, concerning

¹⁴³ In this regard, use of integration criteria accounts for the significant numbers of minorities and women who hold non-controlling interests in broadcast licensees. For example, while only 3.5% of all stations were minority controlled according to the 1988 CRS Nexus Study, over 13% of all broadcast stations found by the study were owned by minorities with 0 - 100% ownership interests. Since tax certificates are not available except for transfers to minority controlled firms, and few distress have ever been approved, credit for enhanced integration would appear to account for the size of the sample uncovered in the study.

shareholder and partnership interests, might foster investment by reducing regulatory impediments; and (b) whether the Commission should change its rule prohibiting security and reversionary interests in broadcast licensees. The NOI queried whether there are other actions the Commission might take to foster availability of capital in the broadcasting industry.

As explained below, the SBAC supports relaxation of attribution standards for passive investors, but not the security interest proposal due to available alternatives. Such alternatives include the following: issuance of a statement in support of reinstatement of the FCC exceptions to the Small Business Administration Opinion Molder Rule; modify the "sham application" and accommodation letter" doctrines; revise the minority tax certificate policy; support utilization of the Community Reinvestment Act to encourage bank loans for small and minority broadcasters.

Attribution Standards for Passive Investors. There is substantial support in the record demonstrating that the proposed changes to the Commission's attribution rules for passive investors are likely to increase access to capital. The Minority Business Investment Corporation (MBIC), the National Association of Black Owned Broadcasters (NABOB), and CVC Capital Corporation (CVC) support relaxation of attribution standards for passive investors from 10% to 20%. As MBIC indicated in its comments, relaxation of attribution standards for passive investors from 10% to 20% will give MESBICs and SBICs additional flexibility to participate in

broadcast acquisitions, the overall effect of this action will be to make more capital available.

Security and Reversionary Interests. The SBAC does not support authorization of security and reversionary interests in broadcast licensees. NAB expressed doubts about this proposal at SBAC hearings in May 1993. Commenters supporting retention¹⁴⁴ also raise serious questions as to whether changing existing rules in this area is a means that can and should be used to improve access to capital. Among other things, these commenters indicate that serious harm could result from a rule change such as the possibility that state courts will erroneously interfere with federal processes. They also contend that program suppliers and other lenders may terminate agreements with stations upon default. In contrast, without security interests, banks realize that stations must remain on the air in order for the lender to realize a complete or partial return on investment.

SBA Opinion Molder Rule. The SBAC supports reinstatement of the SBA direct financial assistance for information services. A communications capital fund, such as the one advocated in the SBAC Interim Report would permit the SBA to avoid entanglement with borrowers freedom of expression by serving as a debt collection agent for the federal government.

¹⁴⁴ Commenters supporting retention include the Media Access Project (MAP), Motion Picture Association of America (MPAA), National Association of Black Owned Broadcasters (NABOB), National Association of Investment Companies (NAIC), and Tak Communications, Inc.

Abuse of Process Protection for SBICs. Shielding SBICs and MESBICs from frivolous attacks under the "sham application"¹⁴⁵ and accommodation letter¹²¹ doctrines is another way the Commission can encourage financing for small entities. According to MBIC, the doctrine allows applicants to use SBIC financing as an unfair point of attack in comparative hearings. Therefore, MBIC proposes that the Commission create a safeguard for good faith applicants by considering a commitment letter issued by a SBIC as prima facie evidence of a reasonable assurance that the funds will be made available. Under this approach, a competing applicant would need other direct evidence of misrepresentation besides an applicant's reliance on a SBIC letter to challenge an applicant's reliance on MESBIC funding. According to their proponents, a "shielding" measure such as this would make it more likely that SBICs will offer financing opportunities, and that applicants will use them.

¹⁴⁵ MBIC states in its comments that this doctrine allows competitors of minority applicants to charge that a minority firm is a "sham" or "front" for non-minority investors as a way to reduce credit for integration of ownership and management in comparative hearings. MBIC Comments, pp. 3, 4; see e.g. KIST Corp., 99 FCC 2nd 173 (1984), and Royce International Broadcasting, 5 FCC Rcd 7063 (1990).

APPENDIX B: MULTICHANNEL VIDEO DOCKETS

Summary

A number of FCC proceedings and related matters have significant policy implications for both cable television and other multichannel video distribution services. MM Dockets 92-215 and 92-266 involve issues of major importance to small cable systems and operators in terms of eligibility for small system relief, regulatory flexibility to relieve paperwork and compliance burdens, and authorization of rate increase allowances. Ex parte petitions for expansion of minority ownership policies also have direct implications for development of competitive multichannel video distribution services pursuant to Congressional and FCC diversity goals. As explained below, the SBAC supports relief in both these small systems, operators and programmers.

A. Small Systems and Operators: MM Dockets 92-215 and 92-266

Background. The 1992 Cable Act responded to concentration of ownership Congress found in the dominant nationwide medium of cable television which threatened to reduce media voices and increase rates to unreasonable levels by authorizing rate regulation on systems in areas lacking effective competition. Consistent with this purpose, the Act includes provisions to establish rate regulations for systems in non-competitive markets which allow exceptions for small system relief. Although the FCC's original rate regulations implemented aspects of these provisions, many interested parties sought reconsideration based on claims that the FCC did not reduce regulatory burdens enough.

The rate regulation docket present three categories of issues: relief to reduce paperwork and compliance burdens, relief to allow reasonable rate increases, and size standards for relief eligibility. In considering these issues, the SBAC realized that most small system relief proposals would trade-off achievements in terms of rate reduction goals of the Cable Act. The SBAC also considered that excessive involuntary rate reductions would either force operators to reduce service or quality of service or exit the market; and that in this case, consumers would either have no service in those areas or services from a successor system operator at the same or higher rates.¹⁴⁶ For these reasons, the SBAC resolved the rate relief issues in favor of the goal of protecting consumer interests in receipt of cable service, and concluded that in the case of many rural areas, this interest in universal availability of service is best served by extending reasonable relief for small systems and operators.

Relief to Reduce Regulatory Burdens. The SBAC supports use of average equipment cost schedules to reduce paperwork and compliance burdens on these systems. According to some, small system operators do not have the expertise to prepare the showings under benchmark or cost of service regulation and cannot afford to hire experts.

¹⁴⁶ See, Letter of the House Small Business Subcommittee on the Development of Rural Enterprises, Exports and the Environment to FCC Chairman James Quello, August 4, 1993 (advocating relief); Letter of Hon. Ronald Brown, Secretary of Commerce to FCC Chairman James Quello, August 24, 1993 (advocating relief); Letter of Doris Freeman, Acting Chief Counsel for Advocacy, Small Business Administration, to FCC Chairman James Quello, November 4, 1993 ("Increased prices and decreased service do not benefit cable customers").