

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of the)
)
Implementation of Sections 202(f), 202(i) and) **CS Docket No. 96-56**
301(i) of the Telecommunications Act of 1996)
)
Cable Television Antitrafficking, Network) **DOCKET FILE COPY ORIGINAL**
Television and MMDS/SMATV)
Cross-ownership Rules)

PETITION FOR RECONSIDERATION

The California Cable Television Association ("CCTA"),^{1/} pursuant to Section 1.106 of the Federal Communications Commission's ("Commission"), 47 C.F.R. § 1.106, hereby respectfully requests reconsideration of the FCC's Order, FCC 96-112, released March 18, 1996, ("Order"), in the above-captioned proceeding.^{2/}

The Order precludes cable operators from acquiring in-region multichannel multipoint distribution service ("MMDS") licenses until the cable operator is "subject to effective competition"^{3/} while telephone companies may, without restriction, purchase and operate immediately MMDS stations in the areas where they provide telephone and video services.

^{1/} CCTA is a trade association representing cable television operators with over 400 cable television systems in California, including both small, rural systems and national multiple system operators. Local telephone companies are competitors of CCTA's members in the provision of video services to the public in California.

^{2/} See In the Matter of Implementation of Sections 202(f), 202(i) and 301(i) of the Telecommunications Act of 1996; Cable Television Antitrafficking, Network Television, and MMDS/SMATV Cross-ownership Rules, CS Docket No. 96-56, Order (rel. March 18, 1996).

^{3/} Order at ¶ 5.

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CCTA believes this disparate treatment harms cable operators and subverts the objective of maintaining a level playing field established in the Telecommunications Act of 1996.^{4/}

Through enactment of the 1996 Act, Congress sought to open "all telecommunications markets to competition"^{5/} under conditions that would ensure equal and nondiscriminatory access^{6/} to all such services. In accordance with this congressional intent, the 1996 Act provides multiple instances where it has predicated the entry into certain markets upon compliance with explicit safeguards in order to facilitate full and fair competition in the marketplace.^{7/} Such safeguards represent a pragmatic approach to minimize the risk that any single company, or group of companies, would be provided the opportunity to gain unilateral entry and access into a marketplace ahead of competitors.

While Section 202(i) provides no such explicit safeguards, the other provisions of the 1996 Act permit the Commission to require additional safeguards consistent with the public interest, convenience, and necessity.^{8/} Accordingly, CCTA respectfully petitions the Commission to promulgate regulations that would preclude in-region local exchange carriers

^{4/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996) ("1996 Act").

^{5/} See Telecommunications Act of 1996 Conference Report, H. Rep. 104-458 at 113 ("Conference Report").

^{6/} See, e.g., Conference Report at 122-123 (interconnection).

^{7/} See, e.g., 1996 Act, § 151(a), to be codified at 47 U.S.C. § 271(c)(2)(B) (in-region interLATA service); see also 1996 Act § 302(a), to be codified at 47 U.S.C. § 573(a), (b) (open video systems).

^{8/} See, e.g., 1996 Act, § 151(a), to be codified at 47 U.S.C. § 272(f)(3) ("Nothing in this subsection shall be construed to limit the Authority of Commission under any other section of [the Communications Act of 1934, as amended] to prescribe safeguards consistent with the public interest, convenience, and necessity.").

("LECs") from acquiring and operating MMDS facilities in a particular geographic area until that area is subject to effective competition. Such a safeguard comports fully with the 1996 Act's dual goals of competition and nondiscrimination and with the Commission's broad discretion under all segments of the Communications Act to modify its regulatory approach in response to changing circumstances.^{9/} Not only is such a result logical and consistent with past Commission policy, it is the most fair.

Indeed, without appropriate Commission regulation, cable operators will have no opportunity to compete with LECs in the MMDS marketplace. As noted above, Section 202(i) of the 1996 Act, as implemented by the Commission, precludes cable operators from acquiring in-region MMDS licenses until the cable operator is "subject to effective competition."^{10/} At the same time, local exchange carriers, such as Pacific Telesis Group ("Pacific"), may, without restriction, purchase and operate immediately MMDS stations in the areas where they provide telephone and video services. Given the scarcity of available MMDS frequencies, unless CCTA's members are granted the same opportunity afforded Pacific, they will be denied the ability to respond fully to the competition posed by Pacific's extensive wireless cable television investments and interests.

Pacific has pursued an aggressive wireless cable strategy in California. In July 1995, Pacific acquired Cross Country Wireless, Inc. ("Cross Country"), which has over 40,000

^{9/} See, e.g., In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Freeway Band, 8 FCC Rcd 3950, 3958 (1993)("The Commission's broad discretion to change its regulatory approach in response to changing circumstances is well settled."); Telocator Network v. FCC, 691 F.2d 525, 540 (D.C. Cir. 1982).

^{10/} Order at ¶ 5.

wireless cable subscribers in Riverside, California, and holds MDS licenses for Los Angeles, San Diego, and Orange Counties.^{11/} In November 1995, Pacific reached an agreement to acquire Wireless Holdings, Inc., and Videotron Bay Area, Inc., which hold MDS rights and licenses in San Francisco, San Diego, and Victorville, California.^{12/} In March 1996, Pacific won additional MDS licenses in Los Angeles, San Diego and San Francisco.^{13/} Thus, the Commission has afforded Pacific the opportunity to amass a comprehensive wireless cable network throughout the most lucrative and densely populated areas of California^{14/} while it simultaneously denied CCTA's members the same opportunity. Indeed, even after Pacific is

^{11/} See Pacific Telesis Group, Proxy Statement at 41 (filed with the Securities and Exchange Commission, March 5, 1996) ("Proxy Statement"); see also In the Matter of Application for Authority to Transfer All Authorizations for Station Call Signs WNTL542 and WPW94 Located at Riverside, California from CC Wireless, Inc. Shareholders to Pacific Telesis Enterprises, File No. 51052-CM-TC(2)-95. This transfer application is currently pending before the Commission.

^{12/} See Proxy Statement at 41, 105.

^{13/} See FCC Public Notice, Wiring Bidders in the Auction of Authorizations to Provide Multipoint Distribution Service in 493 Basic Trading Areas, Attachment A at 3, 5 (rel. March 29, 1996). Most recently, American Communication Services, Inc. sought to assign the license of MMDS station WBB785, La Habra, California, to Cross Country. Application of American Communications Services, Inc. on FCC Form 702 Seeking FCC Consent to the Assignment of the MDS Authorization (filed January 17, 1996). That application is currently pending before the Commission.

^{14/} See In the Matter of Application for Authority to Transfer All Authorizations for Station Call Signs WNTL542 and WPW94 Located at Riverside, California from CC Wireless, Inc. Shareholders to Pacific Telesis Enterprises, File No. 51052-CM-TC(2)-95, CCTA Petition to Deny, Affidavit of Jeffrey Sinsheimer at ¶¶ 21-22 (citing "Interview with Lee Camp [President and Chief Executive Officer of Video and Information]" Inside Line News Bulletin at 1 (Sept. 27, 1995)). Mr. Camp announced that Pacific intends to compete "head-to-head almost immediately with cable TV companies in Southern California by offering service to five million homes" through its wireless cable operations. Id. CCTA respectfully requests that the Affidavit of Jeffrey Sinsheimer submitted in File No. 51052-CM-TC(2)-95 be incorporated herein by reference.

nearing completion of its strategy to accumulate almost all of the available MDS licenses in the most lucrative and densely populated areas of California, CCTA's members still are precluded from purchasing and operating in-region wireless cable service licenses because Pacific has not yet offered its services to end-user customers.

Although the 1996 Act provides that cable operators will have the opportunity to acquire in-region MMDS licenses once the cable operator is "subject to effective competition," this provision provides CCTA's members with no real relief. Unlike cable service, where competitors may overbuild in any given franchise area, MMDS providers generally are protected from competitors operating within a 35-mile radius around their authorized service areas.^{15/} Moreover, in-region cable operators were excluded from purchasing the few available MMDS licenses available at auction, which were themselves heavily encumbered with previously authorized and proposed MDS and ITFS facilities.^{16/} Thus, by the time Section 202(i) affords cable operators the opportunity to acquire wireless cable licenses, the supply of such licenses will have evaporated.

Accordingly, in the interests of competitive equity and the articulated goals of the Commission's rules and the 1996 Act, CCTA respectfully requests that the Commission promulgate regulations that would preclude in-region LECs, as well as in-region cable operators, from acquiring and operating MMDS facilities until that area is subject to effective competition. If cable operators are to adapt successfully to the competitive landscape, as

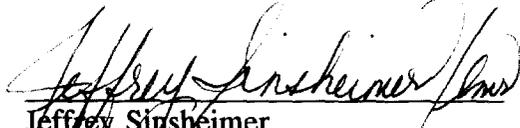
^{15/} See 47 C.F.R. § 21.902.

^{16/} See FCC Auction Multipoint and/or Multichannel Distribution Service Authorizations for Basic Trading Areas, Bidder Information Package, at 21 (Nov. 13, 1995).

influenced by wireless cable, the Commission must cable operators and LECs must ensure that cable operators and telephone companies are able to compete fairly in the wireless cable business.

For the foregoing reasons, the Commission should grant CCTA's Petition for Reconsideration in the above-captioned proceeding.

Respectfully Submitted,


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April 17, 1996
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CERTIFICATE OF SERVICE

I, LeShawn M. Riley, hereby certify that on this 17th day of April, 1996, I caused a copy of the foregoing "Petition for Reconsideration" to be served on the persons specified below by first-class mail, postage prepaid, or by hand delivery:

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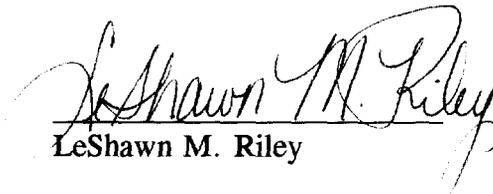
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