

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

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**U S WEST, INC.'S OPPOSITION TO CALIFORNIA CABLE
TELEVISION ASSOCIATION PETITION FOR RECONSIDERATION**

U S WEST, Inc. ("U S WEST"), pursuant to Section 1.429(f) of the Federal Communications Commission's ("Commission") Rules,¹ hereby submits its Opposition to the California Cable Television Association's (or "CCTA") Petition for Reconsideration² of the Commission's Order in the above-captioned proceeding.³ In its Order, the Commission amended its broadcast and cable cross-ownership rules in conformance with the provisions of the Telecommunications Act of 1996.⁴ The

¹ 47 CFR § 1.429(f).

² California Cable Television Association's Petition for Reconsideration, filed herein Apr. 17, 1996 (or "Petition").

³ 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, FCC 96-112, rel. Mar. 18, 1996 ("Order").

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

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Commission undertook this action without public comment or the establishment of a detailed record as it acknowledged that it was implementing the express provisions of the 1996 Act which did not require discretionary action by the Commission.⁵

The CCTA has petitioned the Commission for reconsideration of its Order based upon the premise that cable operators are negatively impacted by the Commission's implementation of the cable/multichannel multipoint distribution service ("MMDS") cross-ownership provisions of the Communications Act of 1934, as amended by the 1996 Act. Specifically, the CCTA alleges that the Order "precludes cable operators from acquiring in-region [MMDS] licenses until the cable operator is 'subject to effective competition' while telephone companies may, without restriction, purchase and operate immediately MMDS stations in the areas where they provide telephone and video services."⁶ The CCTA claims that this is disparate treatment and as such it "subverts the objective of maintaining a level playing field established in the Telecommunications Act of 1996."⁷ It recommends on reconsideration that the Commission establish similar cross-ownership provisions for telephone companies. In support of this premise, the CCTA cites to a completely unrelated provision of the 1996 Act which pertains to the requirements for Bell Op-

⁵ Order ¶ 3.

⁶ Petition at 1.

⁷ Id. at 2.

erating Companies to maintain separate affiliates for providing interLATA telecommunications, manufacturing, and information services.⁸

The Petition of the CCTA suffers from multiple infirmities, any one of which is fatal. First, the Commission was simply amending its rules to conform to the provisions of the 1996 Act as enacted into law. The 1996 Act did not create the cable/MMDS cross-ownership prohibitions; it simply modified them.⁹ It is interesting to note that the modifications made by the 1996 Act actually expand the opportunity for cable operators to own MMDS licenses in-region where little or none previously existed. The express provisions of the 1996 Act as they relate to cable/MMDS cross-ownership are very clear and explicit. Incumbent cable operators are allowed to own MMDS licenses in areas where they are subject to effective competition. There are no provisions in the 1996 Act, express or implied, which prohibit telephone company ownership of MMDS licenses. The notable absence of such a prohibition clearly indicates that Congress did not intend to create any such restriction on telephone companies. The Commission prudently did not seek comment on the implementation of the cross-ownership provisions in the 1996 Act as no further interpretation or clarification was necessary. There is no need to reconsider an Order which simply amends existing rules to conform with unambiguous legislative language.

⁸ Id. at 2 n.8 citing 1996 Act, 110 Stat at 94 § 151(a), to be codified at 47 USC § 272(f)(3).

⁹ The cable/MMDS prohibitions were originally created by the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984).

Second, for the Commission to reconsider its decision -- made without public comment -- in the manner requested by the CCTA would be a violation of the Administrative Procedure Act ("APA").¹⁰ The CCTA's Petition requests that the Commission fashion a completely new rule restricting the rights of telephone companies to own MMDS licenses. As there has been no statutory mandate compelling such action, the Commission is required under the APA to initiate a new rulemaking proceeding -- with a complete record -- to lawfully prescribe such a rule. The Commission did not choose to do so in this proceeding. Nor should it have. The Commission's actions are completely consistent with the express language of the 1996 Act and the clear intent of Congress in this area.

Third, the CCTA's arguments are senseless. The CCTA claims that the Order allows telephone companies to purchase and operate MMDS stations in areas "where they provide telephone and video service."¹¹ They claim that cable operators are precluded from MMDS ownership in these same areas. Their argument is simply wrong. The 1996 Act is clear on this subject. As noted previously, cable operators are free to purchase MMDS licenses in in-region areas where they are subject to effective competition. Effective competition is provided when a telephone company offers comparable video service in the area. If a telephone company is providing an area with both "telephone and video service," then that area would be subject

¹⁰ 5 USC § 553.

¹¹ Petition at 1.

to effective competition. Contrary to the arguments of the CCTA, the cable operator would be free to purchase or otherwise own the in-region MMDS license.

Finally, it appears that the CCTA wants the Commission to take action to prevent competition from occurring by imposing regulatory barriers on its potential competitors. And moreover, requesting that the Commission do so in the public interest. If nothing else, a bold request. If the CCTA or its members seriously believe that MMDS will provide a competitive advantage over wireline cable service, they currently have two options available to them. They can 1) sell or otherwise relinquish their existing wireline franchise and purchase the MMDS provider or license for their area, or 2) they can purchase MMDS licenses outside of their current franchise areas and provide competitive video service against the wireline incumbent. Either of these two options provides the CCTA membership with sufficient relief for any alleged competitive disadvantage.

No sufficient reason has been provided by the CCTA for reconsideration of the Commission's Order in this proceeding. Furthermore, the Commission cannot lawfully modify its existing rules as the CCTA has proposed in its Petition. Based upon

these considerations, and it being in the public interest, the Petition for Reconsideration filed by the CCTA must be denied.

Respectfully submitted,

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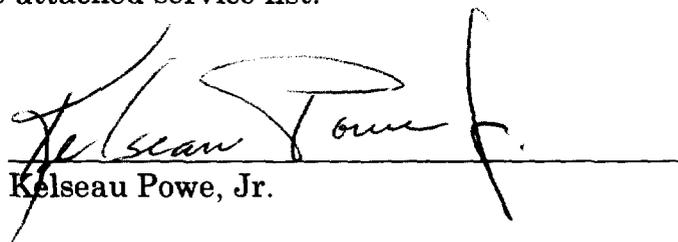
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May 29, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 29th day of May, 1996, I have caused a copy of the foregoing **U S WEST, INC.'S OPPOSITION TO CALIFORNIA CABLE TELEVISION ASSOCIATION PETITION FOR RECONSIDERATION** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

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