

ORIGINAL

RECEIVED

JUN 28 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In the Matter of)
)
Implementation of Cable Act Reform Provisions)
of the Telecommunications Act of 1996)

CS Docket No. 96-85

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF BELL ATLANTIC¹

In their initial comments in this matter, both cable interests and the National League of Cities ask the Commission to apply definitions of "affiliate" to telephone companies that would resurrect the cumbersome and burdensome rules of video dial tone, and would cripple the ability of telephone companies to compete in the video programming distribution market. The Commission should reject such attempts to thwart the goals Congress sought to achieve when it created the open video system (OVS) model for provision of video programming to subscribers. Instead, the Commission should adopt a definition that is consistent with the pro-competitive goals of the Telecommunications Act of 1996.

I. The Attempt To Reinstate The Carrier-User Rule Is Contrary To Congress' Intent.

The National League of Cities and the Alliance for Community Media, et al., argue that, for OVS, the Commission should define "affiliate" as any relationship between an OVS operator

¹ These comments are filed on behalf of the Bell Atlantic Telephone Companies (Bell Atlantic - Delaware, Inc., Bell Atlantic - Maryland, Inc., Bell Atlantic - New Jersey, Inc., Bell Atlantic - Pennsylvania, Inc., Bell Atlantic - Virginia, Inc., Bell Atlantic - Washington, D.C., Inc., and Bell Atlantic - West Virginia, Inc.) and Bell Atlantic Video Services Company ("Bell Atlantic").

0+11

and a programmer other than the “carrier-user” relationship.² Such a definition would fly in the face of Congress’ action terminating the video dial tone rules and eliminating the cable/telco cross-ownership restrictions.

The “carrier-user” relationship was created by the Commission to define permitted interactions between cable companies and telephone companies under the cable/telco cross-ownership restrictions codified by the 1984 Cable Act.³ In 1992, the Commission adopted video dial tone rules that relaxed the definition of affiliate somewhat to permit telephone companies to own less than five percent of a cable or programming provider.⁴ Nevertheless, Congress was emphatic that the video dial tone “rules implemented a rigid common carrier regime . . . and thereby created substantial obstacles to the actual operation of open video systems.”⁵ To remove those obstacles, the 1996 Act repealed the cable/telco cross-ownership restriction and terminated the Commission’s video dial tone rules.⁶

The National League of Cities and the Alliance for Community Media now seek to re-impose the carrier-user definition of affiliate -- regulation that is even more onerous than the terminated video dial tone rules. Such a definition is flatly contrary to the Act, which provides that operators of open video systems “shall qualify for reduced regulatory burdens,”⁷ and should be rejected.

² Comments of the National League of Cities at 11-13; Comments of the Alliance for Community Media, et al. at 3. The National League of Cities would allow telephone companies to bill for programmers without creating an affiliate relationship. NLC Comments at 12, n.18.

³ 47 U.S.C. §533(b); former 47 C.F.R. §63.54, Note 1(a).

⁴ *In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58*, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking. 7 FCC Rcd 5781 (1992).

⁵ H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess., at 179 (1996).

⁶ 1996 Act, §302(b)(1). (3).

⁷ 1996 Act, §653(a)(1).

In any event, the definition of affiliate proposed by the National League of Cities could have precisely the opposite result from the one the League claims to seek -- ensuring that there will be truly unaffiliated programming providers on open video systems.⁸ As is the case with small cable operators, small independent programmers may have limited financial resources and difficulty in obtaining access to capital.⁹ Telephone companies, which otherwise could be a source of financing, will be reluctant to do so under the broad definition of affiliate proposed by the League.

Even if a small programmer were able to obtain capital, it might need assistance with marketing its programming or might want to be part of a package of programs on an OVS. Again, such assistance would be unavailable from telephone companies operating open video systems under the League's proposed rule. Without such financing or marketing assistance, small programmers may find it impractical to use open video systems to distribute their programming. Thus, contrary to the League's professed goal, its proposed definition of affiliate is likely to drive away independent programmers.¹⁰

II. The Commission Should Adopt A Definition Of Affiliate That Comports With The Goals Of The Act.

Although not as extreme as the League's proposed definition, the cable commentators also propose broad definitions of "affiliate."¹¹ For example, NCTA argues that "[n]on-voting stock

⁸ See NLC Comments at 3.

⁹ See NCTA Comments at 32.

¹⁰ Of course, if there are not enough unaffiliated programmers to occupy the capacity on an OVS, the operator or its affiliate may provide programming on more than one-third of the channels. Thus the effect of the League's proposed definition could be to increase the number of channels on which the operator selects programming.

¹¹ Most of the cable commentators offer their views in the context of the 1996 Act's new test for effective competition. With the exception of Time Warner, however, see Time Warner Comments at 31-34, they do not limit their proposals to that context.

and insulated limited partnership interests” as well as “beneficial interests such as options, warrants, convertible debentures and interests held in trust” should be “deemed the ‘equivalent’ of equity.”¹² The Commission should reject such broad definitions of “affiliate” because they will undercut business practices in the industry and will make it more difficult for new, independent programmers to obtain capital.

An interest is “equivalent” to an equity interest if it gives the holder of the interest voting power like common stock does. The phrase “equity interest (or the equivalent thereof)” in the 1996 Act’s Title I definition of affiliate was meant to capture interests, such as general partnership interests, with affirmative voting control over the activities in question. It should not, however, be interpreted to include financial interests in an entity that do not give the holder similar voting power. For example, several commentators make much of the investments Bell Atlantic and NYNEX have made in CAI.¹³ While these commentators have strung together a long list of “interests” that Bell Atlantic and NYNEX have in CAI, those interests are contingent in nature; none of them give the telephone companies affirmative voting power regarding CAI’s activities. Thus, CAI’s presence in a market is not the equivalent of Bell Atlantic’s or NYNEX’s presence.

The broad definitions of “affiliate” suggested by the cable interests will make telephone companies reluctant to enter into pro-competitive business arrangements they might otherwise form with new, independent video programmers. As a result, sweeping up the variety of financial vehicles used in the video programming and distribution businesses will cause a significant potential source of capital for new, independent programmers to dry up. While that

¹² NCTA Comments at 15.

¹³ E.g., NCTA Comments at 16; Time Warner Comments at 6.

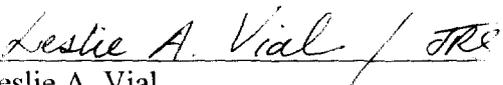
may suit the incumbent cable providers' interests, it is not consistent with Congress' desire to increase competition in the video marketplace.

Conclusion

To implement the goals of the 1996 Act, the Commission should adopt a definition of affiliate that excludes "beneficial interests" and instead focuses on voting control. The Commission's definition also should set a reasonable ownership threshold; an unduly low level such as the one percent suggested by the National League of Cities,¹⁴ or the five percent suggested by the California Cable Television Association,¹⁵ does not reflect actual control and would simply reduce the capital available to competitive video programmers and distributors.

Respectfully submitted,

Edward D. Young, III
Michael E. Glover


Leslie A. Vial
1320 North Courthouse Road
8th Floor
Arlington, Virginia 22201
(703) 974-2819

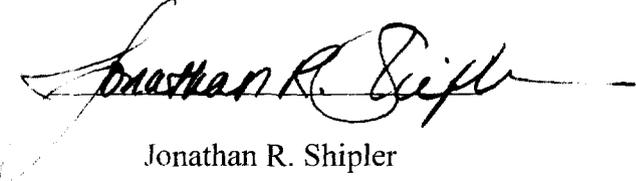
Attorney for Bell Atlantic
and Bell Atlantic Video Services Company

June 28, 1996

¹⁴ NLC Comments at 14
¹⁵ CCTA Comments at 2.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 1996 a copy of the foregoing "Reply Comments of Bell Atlantic" was sent by first class mail, postage prepaid, to the parties on the attached list.



Jonathan R. Shipler

* By Hand

Nancy Stevenson *
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W.
Room 408A
Washington, D.C. 20554

ITS, Inc.*
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554