RECEIVED
MAR 2 1 1997
DOCKET FILE COPY ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

REPLY COMMENTS OF TELE-COMMUNICATIONS, INC.

Sue D. Blumenfeld
Michael G. Jones

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036

March 21, 1997

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

REPLY COMMENTS OF TELE-COMMUNICATIONS, INC.

Tele-Communications, Inc. ("TCI"), hereby submits its Reply Comments in the above-captioned proceeding.[1]

I. INTRODUCTION

TCI supports reform of the attribution rules. The Notice's proposed "equity and/or debt plus" attribution proposal, however, is overinclusive, does not enhance administrative efficiency and would reduce the availability of capital to regulated entities. The record of the proceeding generally does not support adoption

---

[1] Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; Reexamination of the Commission's Cross-Interest Policy, Further Notice of Proposed Rule Making in MM Docket Nos. 94-150, 92-51 and 87-154 (released Nov. 7, 1996).

of the proposed rule for these and other reasons.[2] Thus, the Commission should forego adopting the "equity and/or debt plus" attribution proposal.

TCI will not repeat herein the substance of the arguments made in its comments. However, TCI does believe it is necessary to correct the record as to the facts and findings underlying the Commission's decision approving the transfer of control of Silver King Communications, Inc (now HSN, Inc. ("HSN")). Upon an accurate record, the development of HSN presents a paradigm of a programming innovator gaining access to necessary capital without violating FCC rules and indeed, with the salutary effect of promoting the Commission's goal of fostering diversity.

II. THE COMMENTS OF MEDIA ACCESS PROJECT DISTORT THE NATURE AND EXTENT OF TCI'S INTEREST IN HSN, INC.

In an attempt to manufacture a basis for modification of the Commission's attribution rules, Media Access Project asserts that the combination of "loopholes and ambiguities" in the Commission's attribution rules along with an "overly permissive" Commission staff has resulted in "cases which shock the conscience for their laxity in allowing parties to circumvent multiple and cross ownership rules."[3] As one example of a case

---

[2] See, e.g., BET Holdings, Inc. Comments at 2-3 (adoption of the proposal would chill new entry into the broadcasting market); CBS Comments at 4 (adoption of the proposal would destroy the single majority shareholder and nonvoting stock exceptions to the attribution rules); and Pappas Stations Partnership Comments at 1-5 (adoption of the proposal would inhibit the flow of capital to the broadcast industry).

[3] Media Access Project Comments at 3.

which "shock[s] the conscience"[4] and "offend[s] the very nature of the ownership limits and their underlying goal of promoting viewpoint diversity,"[5] Media Access Project cites the Commission's decision in Roy M. Speer, 11 FCC Rcd 14147 (1996). However, Media Access Project's characterization of the Commission's decision in that case serves only to distort the record and provides no basis for modification of the attribution rules.[6]

Specifically, Media Access Project states that:

> In Roy M. Speer, a large cable MSO held over $3 million in nonvoting preferred stock in an investment company, compared to only $100 total value of all issued voting stock. It provided 21% of the capital for this investment company to purchase a broadcast group owner, which, had it been purchased directly, would have violated the broadcast-cable cross-interest rule in all 11 of the group owners' markets. The MSO also held an option to convert its nonvoting holding into voting stock at such time as it could exercise full control over the stations without

---

4 Id.

5 Id. at 4.

6 TCI was frankly surprised by Media Access Project's vehement opposition to the ownership structure of Silver King reflected in its comments in this proceeding, considering that, in its capacity as counsel for the Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights ("WACCI-VCR"), et al, Media Access Project submitted comments in response to the Commission's decision in Roy M. Speer supporting the Silver King transfer. See Comments of WACCI-VCR, Jeffrey Becknell and Kofi Ofori, March 24, 1996 ("[t]here is little genuine overlap between the outrageous misconduct Citizens have alleged and matters at issue with respect to the transfer of Silver King to more responsible trustees who intend to initiate programming which consists of more than mere sales presentations . . . [t]he Commission can and should permit the Silver King transfer to proceed. . . ." Id. at 5-6.

> violating the Communications Act or Commission rules.[7]

Media Access Project has substantially mischaracterized the facts and findings underlying the Commission's decision in Roy M. Speer. In particular, Media Access Project's description of the transaction creates the misimpression that the person holding voting control made only a $100 investment in the venture, presumably giving rise to an inference that de facto control in fact vested in the nonvoting stockholder.

The Silver King transaction emphatically did not circumvent or evade the Commission's rules. The Silver King transaction approved in Roy M. Speer did transfer voting control of Silver King to Silver Management, but control over Silver King was found to reside demonstrably and unambiguously with Mr. Barry Diller, the controlling shareholder of Silver Management. After extensive review of the ownership arrangements, the Commission found that:

> TCI will possess no participatory rights in Silver Management, Silver King, or its twelve television stations. Indeed, TCI will have no ability to elect or designate officers, directors or employees of Silver Management or Silver King or to become involved in the overarching policymaking activities of the licensee or the day-to-day operations of the stations.[8]

Moreover, contrary to the implication of Media Access Project's comments, Mr. Diller's stake in the enterprise was not

---

7 Media Access Project Comments at 4.

8 Roy M. Speer at ¶ 25.

and is not limited to his $100 investment in Silver Management. As noted and relied upon by the Commission in Roy M. Speer, Barry Diller also has invested $10 million in Silver King stock, and has "extensive management experience in the motion picture and broadcast industries."[9] Based on these facts, the Commission found "that so long as he continues to hold top management roles at Silver King and maintains a specified level of separate ownership of Silver King stock, Diller will wield absolute control and influence over Silver King and TCI will hold none . . . ."[10]

Thus, the Commission's decision in Roy M. Speer does not provide evidence of abuse and evasion of the Commission's rules such as would support the adoption of the "equity and/or debt plus" rule proposed by the Commission. Rather, the Roy M. Speer case is an excellent example of why the proposed rule should be abandoned. The "equity and/or debt plus" rule could result in attribution of TCI's interest where, as expressly found by the Commission, no valid concern as to control or competition existed, and would, thereby, deprive the viewing public of an innovative, new source of diverse programming.[11] The proposed rule is therefore overinclusive, would restrict the availability of capital, and would harm both diversity and competition.

---

9 Id. at ¶ 26.

10 Id. at ¶ 25.

11 Barry Diller's contributions to broadcast innovation and diversity are a matter of public record. By inhibiting access to capital, the proposed attribution rule could squander future opportunities for greater diversity benefits.

III. CONCLUSION

TCI respectfully requests the Commission to accept the corrections to the record as stated above, and to decline to adopt the proposed "equity and/or debt plus" attribution rule.

Respectfully submitted,

TELE-COMMUNICATIONS, INC.

By: Michael G. Jones

Sue D. Blumenfeld
Michael G. Jones

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036

ITS ATTORNEYS

March 21, 1997