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

In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	CS Docket No. 98-82
And Competition Act of 1992	)	
	)	
Review of the Commission's	)	
Cable Attribution Rules	)	

COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION

Daniel L. Brenner
Diane B. Burstein
1724 Massachusetts Avenue, NW
Washington, DC 20036
(202) 775-3664

Counsel for the National Cable Television Association

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The National Cable Television Association ("NCTA"), by its attorneys, hereby submits its comments in the above-captioned proceeding.[1] NCTA is the principal trade association of the cable television industry in the United States. Its members include owners and operators of cable television systems serving more than 90 percent of the nation's cable customers, more than 100 cable program networks, and others affiliated with or interested in the cable television industry.

INTRODUCTION AND SUMMARY

This Notice seeks comments on whether the Commission should modify its attribution rules that determine what is a "cognizable interest" that triggers application of several cable rules. These rules are based on attribution standards that, for the most part, mirror the Commission's action in the broadcast arena.

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1 Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Review of the Commission's Cable Attribution Rules, CS Docket No. 98-82 (rel. June 26, 1998) (hereinafter "Notice").

The Commission should use this opportunity to tailor its attribution rules to better reflect the cable marketplace. The Commission should revise its cable attribution standards to more accurately take into account the policies for imposing regulation in the first instance and the differences between the cable and broadcast industries.

In particular, the FCC should:

- Modify its attribution standard for purposes of its horizontal ownership limits to focus on the ability to direct programming choices;
- Generally relax its cable attribution rules to allow additional investments;
- Retain its single majority shareholder exception to the attribution rules;
- Generally avoid adopting a single rule governing "affiliation."

ARGUMENT

I. THE COMMISSION SHOULD RELAX ITS CABLE ATTRIBUTION RULES

The FCC in 1984 adopted revised attribution rules for the broadcast industry that form the backbone of the cable attribution rules.[2] These rules for the most part were designed to promote the FCC's concerns about diversity and competition in the market for local and national broadcast programming. The Commission did not perform a separate analysis of their application to the cable industry at the time it adopted these broadcast rules,[3] and instead imported them wholesale into the cable arena.

2 Attribution of Ownership Interests, 97 FCC 2d 997 (1984).

3 Id. at 1033 n. 85 (acknowledging that separate analysis of cable had not been performed: "we are reasonably certain that it is not sufficiently different from [stockholding distribution] in broadcasting to justify adoption of a distinct benchmark.")

In implementing the 1992 Cable Act, the Commission continued to rely on the broadcast attribution standards – or slightly modified, even stricter variations of them – to determine what constitutes an attributable interest triggering application of numerous cable-specific rules. Thus, for example, the FCC in implementing the program access rules and "carriage agreement" provisions employed the same voting stock benchmarks as its broadcast rules but did not incorporate the single majority shareholder exception or allow insulated limited partnerships.[4]

The Notice asks whether "the assumptions underlying our cable attribution rules are still valid."[5] In particular, the Notice questions "whether any relevant differences exist between the cable and broadcasting industries that would support a distinct cable attribution standard even for those rules designed, like our broadcasting ownership rules, to ensure competition and diversity."[6] The time has come for separate cable attribution rules that reflect the unique structure of the cable industry and the differences between the multichannel and broadcasting environment, and ones that reflects the greater program choices available to consumers in today's multichannel environment versus a world of 4 broadcast outlets.

Many Commission rules in both the broadcast and cable area seek to serve the abstract interests of competition and diversity. Regardless of what the FCC ultimately decides in the context of evaluating whether to adopt more stringent broadcast attribution

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4 First Report and Order (Program Access), 8 FCC Rcd 3359, 3370 –71 (1993); Second Report and Order, 9 FCC Rcd. 2642, 2650 (1993) (relying on program access attribution criteria for defining programmer that is "affiliated" for purposes of program carriage rules.)

5 Notice at ¶13.

6 Id.

criteria, it should avoid reflexively superimposing those rules on the cable industry. This is particularly true because doing so may well interfere with numerous pro-competitive arrangements in the cable industry that do not affect, or pose only a minimal risk to, these Commission goals.

The Commission has recognized the need to tailor its attribution rules to provide a more accurate fit between Congress' concern and the interest identified: "[v]arious attribution rules have been used by the Commission and by other regulatory agencies depending on the specific policy or rule in question, e.g., whether control, influence or some other aspect of the relationship is involved, and on an evaluation of the costs and risks associated with various levels of ownership or influence."[7] The agency should reevaluate its attribution rules applied to cable to ensure that they are sufficiently matched with the motivating reasons behind certain restrictions and do not unduly interfere with pro-competitive investments. In particular, the FCC should modify its standard used to determine an attributable interest for purposes of its horizontal ownership rules. Antitrust laws remain to deal with levels of concentration deemed to exceed competitive levels.

A. The Commission Should Modify its Attribution Rules For Purposes of the Horizontal Subscriber Limits

In comments being filed today, NCTA explains in detail why the Commission should reevaluate its rules governing horizontal ownership in order to significantly relax its subscriber limits.[8] The competitive landscape has changed dramatically since the

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[7] First Report and Order (Program Access), 8 FCC Rcd. at 3370.

[8] Comments of the National Cable Television Association, Docket No. 92-264 (filed August 14, 1998).

FCC established its original rules in 1993. Program networks have continued to grow and prosper. Competitive multichannel distributors are increasing their subscribership at record rates. Viewer choice among program sources is increasing, not declining.

In the face of this new and rapidly changing business environment, the Commission should take a revised approach to judging an attributable interest for purposes of the cable horizontal ownership limits. The FCC can safely adopt more lenient attribution standards for use in connection with its horizontal ownership rules without threatening Congress' underlying concern in adopting the horizontal limits in the first place – ensuring a cable operator could not impede the flow of programming to consumers.

1. The Commission Has Authority to Adopt a Different Attribution Standard For Cable Horizontal Rules

The 1992 Act directed the FCC to establish limits on the number of subscribers that "a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest."[9] In 1993, the Commission considered how to define a person's attributable interest for these purposes, and concluded that it should apply the broadcast attribution criteria found in the notes to Section 73.3555 of its broadcast ownership rules.[10] Under the rules, an operator has an attributable interest in another system if it has as little as 5 percent or more of the outstanding voting stock (absent a single majority shareholder) or if it has a limited partnership interest that is not

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9 47 U.S.C. §533(f)(1)(A).

10 Second Report and Order (Horizontal and Vertical Ownership Limits), 8 FCC Rcd 8565, 8580-81 (1993).

"insulated". Officers and directors of a cable system also are deemed to have an attributable interest.

The Commission's decision includes little detailed discussion of its reasons for applying the broadcast standard. Rather, it merely states that

> the objectives of the broadcast attribution model are consistent with our goals in establishing ownership standards for subscriber limits. In this regard, the broadcast attribution rules focus on ownership thresholds that enable a broadcast licensee to influence or control management or programming decisions. We believe these same issues are also relevant to addressing the concerns at issue in this proceeding relating to the ability of cable operators to unduly influence the programming marketplace.[11]

While the Commission may have the same broad goals in the cable and broadcast area, the means of achieving those goals, and the business arrangements that may implicate these goals, are not identical – and these differences warrant applying different attribution rules.

Cable systems provide customers with dozens of programming choices, rather than act as the exclusive outlet for a single network's fare. The risk that a minority, non-controlling investment in a cable system will significantly influence the range of diverse viewing options available in a local community cannot be equated with the level of concern that might be present in the single channel broadcast area. Nor can the spectre of threats to program diversity by cross interests in a small broadcast market be raised here, either. Moreover, competition from DBS and other multichannel providers ensures that viewers can obtain the programming that they desire.

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11 Id. at 8581.

In addition, the Commission has other specific rules designed to ensure opportunities for a diversity of non-affiliated programmers on cable – ranging from leased access and must carry to channel occupancy limits. These rules, applicable only in the cable environment, are intended to address the Commission's concerns about diversity and competition in programming.

In short, the incentives of cable operators and broadcasters that influence their program offerings differ; the regulations governing each industry are not the same; and the potential impact on viewers caused by minority investments cannot be equated. These differences argue for different attribution standards for cable for purposes of the horizontal subscriber rules.

The Commission's decision to apply the broadcast attribution standards for the purposes of cable horizontal ownership rule also was based in part on "the legislative history of the 1992 Cable Act [which] supports the use of the broadcast attribution criteria."[12] However, in adopting subscriber limits, Congress granted the Commission discretion to adopt attribution rules that differ from those applied in the broadcast area. While the Senate Report referred to the broadcast attribution rules contained in the Section 73.3555 notes, it did *not* require the FCC to impose identical attribution rules on cable. Rather, the Senate Report shows that Congress gave the Commission latitude to adopt "*other* criteria the FCC may deem appropriate."[13] The Commission should take this opportunity to tailor its attribution rules to more appropriately match the policy concerns in this area.

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[12] 8 FCC Rcd. at 8581.

[13] S. Rep. No. 102-92, 102d Cong., 1st Sess. 80 (emphasis supplied).

2. Congress' Policy Concerns in Adopting Horizontal Ownership Limits Warrant A Revised Attribution Standard

Congress' principal reason for adopting Section 613(f)(1)(A) was to ensure that a cable operator could not use its size to restrict the flow of programming to consumers.[14] Unless an investor in a company has control over that cable system's operation, it is hard to see how Congress' concerns about diversity are implicated. For this reason, NCTA has consistently argued that a non-controlling equity interest should be insufficient to warrant attribution for horizontal ownership purposes.[15] The real issue on which attribution should turn for these purposes is whether a company, by virtue of its investment in another company, can make programming decisions. Absent such authority, one person's minority investment in another carries little, if any, risk of restricting the latter company's exercise of its editorial discretion over which program services to carry – and it makes little sense to bar investments on this theoretical basis.

The theory behind attribution, of course, does not rest solely on control but also seeks to identify "influence" over these matters. But the Commission has historically endeavored to "*permit* arrangements in which a particular ownership or positional interest involves *minimal risk of influence*, in order to avoid unduly restricting the means

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14 See 8 FCC Rcd. at 8570 ("Congress was concerned in particular with preventing large vertically integrated cable systems from creating barriers to entry for new video programmers, and from causing a reduction in the number of media voices available to consumers."); 47 U.S.C. §533(f)(2)(A) (directing FCC, among other objectives, to "ensure no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming to the customer. . . .")

15 See, e.g., Comments of the National Cable Television Association, MM Docket No. 92-264 at 20 (filed Feb. 9, 1993) at 19-21.

by which investment capital may be made available...."[16] In the area of its subscriber limit rules, the Commission should allow arrangements that carry little risk of influence over those matters with which Congress expressed concern in adopting the provision in the first place.

This is particularly true because at the same time Congress adopted Section 11, it acknowledged that concentration could bring benefits to consumers that should be weighed in the balance in implementing this provision.[17] Cooperative arrangements between systems have naturally evolved to better serve consumers. These arrangements should not be impeded by artificially attributing one company's interest in another.

For example, cable systems increasingly are entering into joint ventures and other arrangements that permit local management of a larger, integrated system. This enables systems to operate more efficiently by improving customer service and responsiveness at the local level. It also eliminates duplicative functions that would increase the costs that each system otherwise would bear. As the Commission's 1997 Competition Report stated:

> Clustering systems provides mechanisms to reduce costs and to improve operating and management efficiencies, to eliminate system redundancies and to attract more advertising. The importance of advertising revenues for cable systems has emerged as a major factor promoting regional consolidation. By consolidating systems in major markets, MSOs can serve entire regions comprised of numerous local franchise areas. This assures advertisers that they will get extensive regional market coverage. Finally, regional clustering may also enhance MSOs' ability to compete successfully with LECs and major electric

[16] Review of the Commission's Regulations Governing Attribution of Broadcast Interests, MM Docket No. 94-150, 10 FCC Rcd. 3606, 3610 (1995) (emphasis added).

[17] 47 U.S.C. §533(f)(2)(D) (directing Commission to "account for any efficiencies and other benefits that might be gained through increased ownership or control").

utilities as providers of data transmission and local telephone services.[18]

These investments bring other pro-competitive benefits as well. They enable increased investment in new and improved technology. And they provide scale economies that reduce costs to customers.

In short, these arrangements provide multiple benefits. The Commission should encourage, rather than stifle, this trend by relaxing its attribution standards to remove the artificial barriers to pro-competitive investments and refocusing attribution to more closely match Congress' concerns.

B. The Commission Should Permit A Company to Certify That It Does Not Dictate Programming Choices

Rather than maintaining its rule based on theoretical concerns about influence, the Commission should adopt a pragmatic test for cable horizontal investments that targets Congress' primary concern: the impact on program networks caused by horizontal concentration. The FCC should confine its attributable interests to those that directly implicate programming choices, and exclude those interests that do not. Under this test, if an entity owns 50% or more of the outstanding voting stock, that entity would have a controlling – and an attributable -- interest. Otherwise, so long as an operator that lacks de jure control certifies to the FCC that it cannot dictate programming decisions for the cable system in which it has a minority investment, its interest should be exempt from attribution.

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18 Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming, 13 FCC Rcd. 1034, 1115 (1998).

Permitting certification in this instance is entirely consistent with the approach the FCC has taken in the ownership area. For example, Commission rules allow limited partners to be free from attribution in certain cases where the limited partner certifies that it has "no material involvement" in certain functions.[19] Similarly, the Commission allows certain officers and directors to certify that they are not directly or indirectly involved in the media activities of a licensee,[20] and thereby frees them from an otherwise attributable interest.

Adopting a certification requirement will ease administration of this provision while ensuring compliance by the cable system. It also will more directly address Congress' concerns without unduly denying cable systems the efficiencies that they can otherwise achieve through minority investments in their companies.

II. ANY ADDITIONAL RESTRICTIONS THAT MAY APPLY TO BROADCASTERS SHOULD NOT BE IMPOSED ON CABLE

The Notice references the Commission on-going review of its broadcast attribution rules, and asks whether similar concerns arise in the cable area.[21] Many of the issues raised in the broadcast area are not relevant to the cable environment. Whatever action the Commission ultimately takes in its broadcast rulemaking does not justify imposing further restrictions on investments in the multichannel cable universe.

For example, the Notice asks whether to apply the proposed "equity or debt plus" revision currently being considered in the broadcast context to its cable rules. The Commission does not identify whether there are any practices in the cable area that

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19 See, e.g., 47 C.F.R. §76.501 NOTE (g)(1).

20 See, e.g., id., NOTE (h).

21 Notice at ¶12.

implicate any of the concerns that have led to this proposal in the broadcast area, and it is difficult to see how they would arise.

The "equity or debt plus" proposal being considered for the broadcast rules would apply "where the interest holder is a program supplier or same market broadcaster or media entity subject to the broadcast cross-ownership rules."[22] In such a case, the FCC proposes to "attribute its otherwise non-attributable equity and/or debt interest in a licensee or other media entity subject to the cross-ownership rules if the equity and/or debt holding is greater than a specified benchmark."[23] The proposal is based on the concern that there are situations where an investor that currently is not attributable under its rules "exerts as much or more influence or control over some corporate decisions as voting equity holders whose interests are attributable."[24]

This type of concern simply does not translate into the cable context. A cable system operator typically does not compete with another operator in which it may have an investment in the same local market. And a cable program supplier is not likely to have an investment that grants it the ability to influence a cable system operator that in any way approaches the broadcast network/television station relationship. There is no pattern of suppliers seeking ownership of cable systems. If anything the reverse may have occurred, and Congress already regulates undue influence by operators over programmers.[25]

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[22] Further Notice of Proposed Rulemaking, 11 FCC Rcd. 19895, 19899 (1996).

[23] Id. The Commission has suggested a cut-off of 33 percent. Id. at 19901.

[24] Id. at 19905.

[25] 47 C.F.R. §76.1301.

In any event, adopting the attribution test described above ensures that programming choices would remain independent.[26] This approach appears to more directly address the Commission's concerns raised in its equity or debt plus proposal.

There is similarly no apparent reason to import to the multichannel environment the equally broadcast-specific concerns regarding Joint Sales Agreements or Local Marketing Agreements. The Commission has explained that these issues run to its concerns regarding competitiveness in the local marketplace. For example, LMAs generally involve the sale of discrete blocks of time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support that programming.[27] JSAs deal with same market broadcasters potentially exercising market power in the sale of advertising.[28] While these arrangements might implicate the Commission's broadcast duopoly rule[29], the Notice does not identify how any current practices in the cable area raise any similar concerns.

The Notice asks whether cable affiliations that allow different cable entities to purchase technology or equipment on common terms may be analogous to these broadcast arrangements. There are several relevant differences. Most importantly, the Notice contains no evidence that these business relationships cause any harm in the marketplace. And, in fact, one of the accomplishments of the cable industry has been to employ the OpenCable™ process to ensure that no one company has control of the

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26 In any event, the Commission has heretofore not considered debt to be an attributable interest. Absent any problem in the cable area, we urge the Commission not to modify its approach.

27 Id. at 19908.

28 See id. at 19912.

technology used to provide services to cable customers. In any event, the Commission should not use attribution standards as a way to govern the marketplace in an area far afield from the purpose of this proceeding – to ensure continued diversity and competition in the provision of programming.

III. THE COMMISSION SHOULD INCREASE ITS STOCK OWNERSHIP BENCHMARK AND RETAIN ITS SINGLE MAJORITY SHAREHOLDER RULE

A. The Commission Should Adopt its Proposal to Increase the Stock Ownership Benchmarks

Cable systems operate in an increasingly competitive environment. The Commission's attribution rules should not stand as an unnecessary roadblock to obtaining the capital necessary to provide the new and improved services that customers desire. These services -- such as Internet access, telephony, and introduction of digital technology -- are all capital intensive. Obtaining sufficient funding to upgrade systems will be critical to the cable industry's ability to provide additional and better services in the years to come. Liberalizing the equity ownership benchmarks will help ensure an appropriate flow of financing to the industry without threatening the FCC's interests in competition and diversity.[30]

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29 See id. at 19910.

30 The Commission has not applied its attribution standards uniformly across all cable rules. In some areas, it has adopted a stricter test -- such as for program access and in the areas of cable/MMDS and cable/SMATV cross-ownership. We have consistently maintained that the case has not been made for stricter attribution standard in these cases. And with respect to the MMDS and SMATV cross-ownership rule, we do not believe that such a prohibition is warranted in the first place or serves the public interest. See Reply Comments of the National Cable Television Association, MM Docket No. 94-150 (filed Mar. 21, 1997). Therefore, relaxing the attribution restrictions, while not providing the rule elimination that we believe is warranted, at least would provide some breathing room for efficient investments.

1. The Commission Should Increase Its Ownership Benchmark

Currently, the Commission employs voting stock benchmarks that capture interests that are likely to be insignificant. There is no showing that an investor with as little as 5 percent of a cable system's outstanding voting stock by definition will have the ability to direct that system's core functions in the areas of budget, personnel, or programming identified in the Notice.[31]

And, in fact, as the FCC's Notice in its Broadcast Attribution Rulemaking recognized, the 5 percent voting stock benchmark is significantly lower than that permitted by many other government agencies. For example, a 10 percent threshold is used by the Department of Interior to implement certain acreage limitations;[32] the Securities and Exchange Commission uses a 10 percent equity benchmark for its insider trading rules[33]; and the Department of Transportation employs a similar cut-off for certain reporting requirements.[34] Other agencies use standards even higher than 10 percent to trigger certain regulatory requirements.[35] While admittedly not based on the same specific concerns as the FCC's rules, all of these higher standards show that the ability to influence a company to take certain positions that affect competition and diversity is unlikely below a certain stock ownership threshold.

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31 Notice at ¶13.

32 Notice of Proposed Rulemaking, 10 FCC Rcd. 3606, 3624 (1995).

33 Id.

34 Id. at 3625.

35 Id. at 3625-3626.

2. The Commission Should Relax Its Passive Ownership Benchmark

With respect to passive investments, there are many reasons for the Commission to increase its equity benchmark above the existing 10 percent level. Most significantly, a passive investor by definition will not be involved in the management and operation of a cable system.

Under these circumstances, the Commission can safely relax its passive ownership benchmarks without significantly threatening its competition and diversity concerns. At the same time, it will prove beneficial by enabling cable companies to obtain increased access to capital at a crucial time when significant system investments are being undertaken.

B. The Commission Should Maintain its Single Majority Shareholder Provision

At the same time that it proposes to increase its attribution ownership thresholds, the Notice seeks comment on whether to retain, modify, or eliminate the single majority shareholder provision.[36] The single majority shareholder exception has been part of the FCC's attribution rules since 1984, and is firmly part of the regulatory framework. At the time of its adoption, the Commission recognized that where a corporate entity has a single majority shareholder, it is "neither necessary nor appropriate to attribute an interest to any other stockholder" because "the minority interest holders, even acting collaboratively, would be unable to direct the affairs or activities of the licensee on the

[36] Notice at ¶12.

basis of their shareholdings."[37] This conclusion still remains valid, and the exemption from attribution for minority shareholders in this case should be maintained.

First, the Notice provides no evidence in the cable context that the single majority shareholder provision has adversely affected diversity or competition. To the contrary, the 14 years that this provision has been in place have been a period of unprecedented growth in the communications industry. During this time, cable programming has grown exponentially. Cable systems have been able to expand their operations to provide a substantially greater diversity of services. These facts alone bear out the wisdom of maintaining a policy that has not been shown to have adversely affected the Commission's primary goals in this area.

Second, single majority shareholder arrangements may be found in smaller cable companies.[38] The ability of non-majority investors to provide financing to these smaller businesses is a positive development -- and one that is critical for their continuing financial well-being.

C. Grandfathering

The Notice also inquires whether, if it adopts more restrictive attribution rules, to provide a transition or to grandfather existing investments. While, as described above, we do not believe that a case has been made for adopting more restrictive attribution rules, should the Commission nonetheless decide to change its rules in midstream, grandfathering existing interests would be the minimum action necessary. A transition

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37 Attribution Order, 97 FCC 2d at 1008-09.

38 Small cable companies generally are privately-held businesses that may be structured as sole proprietorships, corporations or partnerships. See Comments of the National Cable Television Association, GEN Docket No. 96-113 at 4.

period to come into compliance would punish those investors who relied on existing rules and would unfairly disrupt investments.

Long-term investments in the communications area have already been made based on the current rules of the road. These investments may not have been made, or may have been structured differently, if the investors had reason to believe that they would be considered to be "attributable". It would be grossly unfair to retroactively change the basis for these investments. This not only would disrupt existing financial arrangements, but could potentially affect strategies for future acquisitions.

Stability and predictability are critically important in this area. Accordingly, should the Commission alter its rules and further restrict investment opportunities, it must grandfather existing investments.

IV. DEFINITIONS OF "AFFILIATION" SHOULD REFLECT THE REASONS FOR THE RULE

The Commission has several different rules in which it has defined what constitutes an "affiliate." The Notice asks what effect changes to the attribution rules should have on its definitions of an "affiliate" for these purposes.[39]

Whether or not the FCC should consider one company to be an affiliate of another should be evaluated by reference to the purpose of the rule. The differing rationales for adopting the provisions governing "affiliation" show that there should not be a single definition of affiliate for all purposes – just as there should not be a single definition of attributable interest that would apply across the board.

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[39] Notice at ¶15.

For example, in the 1996 Telecommunications Act, Congress exempted "small cable operators" from certain rate regulation strictures in franchise areas where the operator serves 50,000 or fewer customers. Whether an entity qualifies for this treatment depends on whether it falls within the definition of a small system operator: "a cable operator that, directly or through an *affiliate*, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is *not affiliated with* any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[40] In its interim rules, the Commission adopted an "affiliation" definition based on its Title VI affiliation definition – an entity is deemed affiliated with a small cable operator if that entity has a 20 percent or greater equity interest (active or passive) in the operator or holds de jure or de facto control over the operator.[41]

In adopting the small system exemption from the rate regulation provisions in the 1996 Act, Congress intended to promote, rather than restrict, investment in small cable companies. Therefore, in addition to authorizing a higher voting stock threshold than its attribution rules would generally, we have consistently advocated that the Commission should exclude purely passive investments from its calculus of what constitutes an "affiliate."[42] Doing so will promote Congress' interest in providing small cable operators with the opportunities they need to obtain capital from institutional and other investors to compete, to rebuild their networks, and to offer customers new services.

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40 47 U.S.C. Sec. 623(m)(emphasis supplied).

41 Notice at ¶9.

42 Comments of the National Cable Television Association, CS Docket No. 96-85 (filed June 4, 1996).

Congress in the 1996 Act also adopted an "affiliation" test for effective competition purposes. Congress freed cable operators from rate regulation where they face competition in the provision of video programming from local exchange carriers or their affiliates.[43] In so doing, Congress recognized that telephone companies are unique competitors to traditional cable operators. Their presence – either directly or through an affiliate – warrants releasing cable operators from the constraints caused by rate regulation.

For this reason, NCTA has urged the Commission to adopt a different definition of "affiliate" for LEC affiliation that more closely reflects Congress' reasons for this provision. We have proposed that the Commission use the Title I definition of "affiliate," which looks to whether an entity "own[s] an equity interest (or the equivalent thereof) of more than 10 percent."[44]

As these above examples demonstrate, the Commission need not adopt a uniform definition of what constitutes an "affiliate" for purposes of the cable rules.

Finally, the Notice asks what impact changes to the "cable ownership attribution or affiliation standards will have on market entry barriers for small businesses."[45] As described above, defining "affiliate" for purposes of the small system rules in a manner that removes passive investments from the ambit of attributable interests would have a positive impact on small cable operators by increasing the pool of potential non-controlling investors. Such action would reduce market entry barriers, consistent with

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[43] 47 U.S.C.§543(l)(1)(D).

[44] Id., Section 153(l). See Comments of National Cable Television Association, CS Docket No. 96-85 at 13 –20.

[45] Notice at ¶17.

Congressional intent,[46] and expand the opportunities for small cable systems to survive and compete in the years to come.[47]

CONCLUSION

For the foregoing reasons, the Commission should adopt relaxed attribution rules consistent with our Comments.

Respectfully submitted,

Daniel L. Brenner
Diane B. Burstein
1724 Massachusetts Avenue, NW
Washington, DC 20036
(202) 775-3664

Counsel for the National Cable Television Association

August 14, 1998

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46 47 U.S.C. §257.

47 Comments of the National Cable Television Association, GEN Docket No. 96-133 at 7 (filed Sept. 27, 1996).