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

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In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	CS Docket No. 98-82
	)	
Review of the Commission's Cable Attribution Rules	)	
	)	
and	)	
	)	
Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-264
	)	
Horizontal Ownership Limits	)	

COMMENTS OF
BRESNAN COMMUNICATIONS COMPANY, L.P.
AND TCA CABLE TV, INC.

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SUMMARY

In these Comments, Bresnan Communications Company, L.P. ("Bresnan") and TCA Cable TV, Inc. ("TCA") show the benefits that have been achieved from partnering with a multiple system operator (MSO) such as Tele-Communications, Inc. ("TCI"). TCI has facilitated the access to capital and technological expertise that have allowed Bresnan and TCA to substantially upgrade their cable systems.

Any required divestiture due to the Commission's artificially low horizontal ownership cap would clearly disserve the public interest. Accordingly, Bresnan and TCA request the Commission to revise cable attribution standards for the purpose of the horizontal ownership cap to attribute their cable systems only to the companies that are in managerial control, namely Bresnan and TCA. At the very least, the Commission should pro rate subscribers according to the percentage of equity ownership of each company, while continuing to recognize insulated limited partnerships and the single majority shareholder exemption. Alternatively, the Commission should increase the horizontal ownership cap beyond the 35% national audience reach permitted under the Commission's rules for television station ownership to reflect the fact that TV stations are allowed to reach up to 70% of the national market through the UHF discount, or at least in recognition of antitrust guidelines permitting 50% of the market as a threshold for concern. Grant of the requested action would further the Commission's goals of promoting diversity and developing competitive local broadband facilities.

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JOINT COMMENTS OF
BRESNAN COMMUNICATIONS COMPANY, L.P.
AND TCA CABLE TV, INC.

Bresnan Communications Company, L.P. ("Bresnan") and TCA Cable TV, Inc. ("TCA"), hereby submit these Comments in response to the Commission's *Notice of Proposed Rulemaking* in CS Docket No. 98-82 ("*Cable Attribution Notice*") and its *Further Notice of Proposed Rulemaking* in MM Docket No. 92-264 ("*Horizontal Further Notice*").

In these Comments, Bresnan and TCA hereby request the Commission to relax its cable attribution rules as applied to the horizontal ownership cap and/or raise the horizontal ownership cap to reflect the realities of the communications marketplace today. Indeed, both prongs of the Commission's asserted goal in these proceedings (promoting diversity and deterring anticompetitive practices) would be served by taking one or both of

the requested actions in view of the highly competitive marketplace that has developed and the need for both capital and technology resources to provide broadband services. Specifically, Bresnan and TCA request that the Commission:

1) Ensure the cable attribution rules as applied to the horizontal cap attribute cable systems only to those entities that are in managerial control of the systems.[1] Additionally, if subscribers are attributed to entities holding a minority interest (stock or partnership equity) in another company, those subscribers should be attributed on a *pro rata* equity basis.[2]

2) Significantly increase the current 30% horizontal ownership cap.

BACKGROUND

A. Bresnan Communications Company, L.P.

Bresnan was formed by Bill Bresnan in 1984, who had previously served as President of Teleprompter Corporation, then the nation's largest cable company, and as Chairman and CEO of Teleprompter's successor, Group W Cable, Inc. Bresnan began by serving systems in the upper peninsula of Michigan, and later added systems in Wisconsin

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[1] This could be done by maintaining insulation for limited partners regardless of ownership percentage and by treating other partnership equity like corporate voting stock.

[2] In other words, if a company owns a 20% interest in another cable operator, no more than 20% of those cable subscribers should be considered attributable to the owner of the minority interest.

and Minnesota, including Bill Bresnan's home town, Mankato, Minnesota. Bresnan now serves approximately 215,000 cable subscribers clustered in four states (Michigan, Minnesota, Wisconsin and Georgia), and is the 34th largest multiple system operator ("MSO") in the country.[3]

Bresnan operates pursuant to a partnership with Tele-Communications, Inc. ("TCI") called Bresnan Communications Company, L.P. ("BCCLP"), in which TCI owns a 78.4% general partnership interest. In June of this year, Bresnan and TCI signed a definitive agreement to form a new company, Bresnan Communications Group, L.P. ("BCG"). Under the agreement, Bresnan will contribute *all* of its current systems to BCG and TCI will contribute systems serving approximately 400,000 subscribers, all of which will be geographically clustered in Michigan, Minnesota, Wisconsin and Nebraska. As a result, BCG will serve a total of approximately 615,000 subscribers in these four states.

Under the terms of the agreement, Bresnan will be the sole general partner and the managing general partner of BCG, and will hold 10% of the equity. TCI will become a limited partner of BCG with 50% of the equity, and an unaffiliated entity, Blackstone Capital Partners III Merchant Banking Fund, L.P. ("Blackstone"), a venture capital and real estate group, will also be a limited partner with 40% of the equity in BCG.

B. TCA

TCA was formed in 1981 by the late Bob Rogers, and currently provides cable television service to more than 860,000 subscribers. It is the 16th largest cable television

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[3] Bresnan has entered into a letter of intent to sell its Georgia cable systems.

MSO in the United States, serving geographically clustered systems located primarily in Arkansas, Louisiana and Texas. TCA is a publicly traded company on the NASDAQ market. The Chairman, Chief Executive Officer ("CEO") and President of TCA is Fred Nichols, a long time partner of Bob Rogers in the management and operation of TCA.

TCA recently entered into a partnership with TCI Communications, Inc. ("TCI") called TCA Cable Partners II ("TCA II"), in which TCA holds an 80% general partnership interest and TCI owns a 20% general partnership interest. This partnership was formed for the purpose of clustering cable systems in Texas, Louisiana and New Mexico. TCA and TCI each contributed systems serving approximately 150,000 subscribers to TCA II, which is managed and operated by TCA.[4] TCA II is governed by a partnership committee consisting of three members from TCA and two from TCI. Management and operation decisions require a majority vote of the partnership committee, with only major matters requiring unanimous approval.[5]

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[4] A list of the systems contributed by each partner is contained in Exhibit 1.

[5] Major matters include those matters traditionally permitted to be acted on by insulated limited partners, *e.g.*, fundamental change in the business of the partnership; any significant purchase or sale of assets; consolidation or merger; dissolution or bankruptcy; amendments to the partnership agreement; etc. *See Memorandum Opinion and Order* in MM Docket No. 83-46, 58 R.R. 2d 604, 619-620 (1985).

I. THE PARTNERSHIPS WITH TCI HAVE BENEFITTED SUBSCRIBERS THROUGH CLUSTERING AND LOCAL MANAGEMENT

A. The Benefits of Clustering

Clustering of systems under a regional MSO's management allows cable operators to upgrade networks for the provision of digital video, high speed data services and telephony by allowing the cable operator to focus more effectively on the needs and interests of local subscribers. TCI, for example, has divested systems by creating joint ventures where its systems are located near a cable operator that has a long-standing presence in the market with the local MSO managing the combined systems. Bresnan and TCA are two of those joint ventures. The result is a large number of systems now benefiting from independent regional-local management, in recognition of the fact that cable is essentially a local business that is better run on the local level.

Clustering partnerships address the local needs of subscribers while taking advantage of economies of scale, thus allowing Bresnan and TCA to 1) expand and improve the quality of their existing video product; 2) enhance the offering of interactive video and information services; and 3) facilitate the provision of competitive telephony services, especially with the impending AT&T partnership.

Among the efficiencies experienced from clustering are the development of regional programming services, such as news and sports, which are difficult to do on a single system basis. The ability to spread programming costs over a greater number of subscribers increases the prospects of success and, therefore, the likelihood that the operator will develop local and regional programming. Similarly, clustering permits cable operators to improve customer service, since customer service and maintenance functions can be centralized, the

number of call centers can be reduced and trucks can be positioned to offer quicker and superior service.

Clustering partnerships facilitate the offering of new interactive services by reducing the per-subscriber cost of expensive file servers, switches and high capacity storage devices necessary to provide those services. A smaller system would be forced to either bear the cost of unused file server capacity or use a smaller, less efficient server. The same benefits cannot be achieved by linking widely separated systems because of the high cost of transmitting channels from a remote file server, whether by satellite or long distance land lines. TCI's high-speed cable modem @Home Internet service, which is being made available to TCI's partners and affiliates, takes advantage of clustering by providing localized content, such as community calendars, business listings, arts and entertainment reviews and movie schedules. It becomes a much more efficient advertising vehicle for local and regional merchants. Clustering also increases the technical and economic efficiency of the @Home network, thus lowering costs to subscribers.

Finally, clustering will allow Bresnan and TCA to compete aggressively in the local telephone market following the merger of AT&T with TCI. The ability to serve customers in dispersed cable systems from common routers, switches and network computers is limited. Because voice conversations and telephone signaling can tolerate only small time delays, this equipment must be located within a relatively short distance of a subscriber. Clustering allows cable operators to capture these types of economic efficiencies that will be critical to competing successfully with established local telephone companies.

The Commission has noted that "regional concentration may result in significant efficiencies."[6] Similarly, NTIA has noted that the potential harms of clustering are "largely conjectural, speculative, or de minimis."[7]

B. Bresnan and TCA Provide Invaluable Services to Their Subscribers Through Their Partnerships with TCI

1. Bresnan

Bresnan has recently begun an aggressive rebuild of its cable systems to provide state-of-the-art hybrid fiber coaxial ("HFC") architecture. Because of the extensive capital costs involved in a physical plant upgrade of this nature, such a buildout would be considerably more difficult without the benefits of clustering and the financial, technical and programming support offered by TCI. Bresnan's HFC cable system design allows its cable subscribers to receive advanced television services, including multiplexed networks, advanced pay-per-view programming, on-screen programming guides and high speed Internet service. Through that same technology, Bresnan has been able to provide high speed Internet access to schools and provides the capability for distance learning to more than 100 educational sites in Michigan and Minnesota. Bresnan also has a strategic alliance with @Home Network to provide high speed Internet access and broadband content to its subscribers.

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[6] *Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* First Annual Report, 9 FCC Rcd. 7442 ¶ 151 (1994).

[7] Letter from Larry Irving, Ass't Sec'y of Commerce, to Hon. Janet Steiger, Chairman, Federal Trade Commission at 2 (Jan. 12, 1995).

Bresnan has upgraded 87% of its systems to incorporate HFC architecture. See Exhibit 2. Of those customers, 75% have a 750 MHz network, with an analog channel capacity of 110. Most of Bresnan's customers receive a minimum of 50 channels of programming and 66% of its customers have the capability to receive advanced analog services, including multiplexed premium networks, premium tiers containing movies, sports and children's programming, pay-per-view, and an on-screen program guide with parental control features. It is anticipated that 92% of Bresnan's customers will have advanced analog or digital services available by the end of this year.

Two way high speed cable modem Internet service was available to 14% of Bresnan's customers as of December 1997. By the end of this year, 58% of Bresnan's subscribers are expected to have these services available. Additionally, more than 100 schools, businesses and government facilities are linked via Bresnan's broadband network for high-speed data, voice and/or interactive video services, with new sites being connected on a continuing basis.

Bresnan also has linked local businesses and institutions via wide area networks ("WANs") and other high speed data networks in markets where many businesses otherwise would have had no choice but to use the local exchange carrier at a higher cost. Bresnan is planning to package telephone and data services for business customers. These services would initially be private network, competitive access and long distance resale and, eventually, competitive local telephone service as well. Examples of some of Bresnan's more significant telecommunications projects, including schools connected with a fiber interconnect, are described in Exhibit 3.

As a result of planned rebuilds and interconnections, 43 out of 79 former TCI headends will be eliminated by Bresnan. Ten new clusters will be created which will encompass a total of 390,000 subscribers. This clustering improves operational efficiency and enables implementation of new technology, products and services. Four clusters will be linked by fiber, including St. Cloud, Minnesota (47,000 subs); Rochester, Minnesota (100,000 subs); Madison, Wisconsin (93,000 subs) and Saginaw-Midland-Bay City, Michigan (100,000 subs). Six additional clusters, which encompass 50,000 subscribers, will be linked by AML microwave interconnections. See Exhibit 4. This linking of clusters allows advanced analog and/or digital services to be made available more quickly, including deployment of high speed Internet and data services in the major clusters.

One example of a current fiber interconnect is in the Upper Peninsula of Michigan. This fiber optic interconnection has linked five geographically dispersed communities to create one market with 52,000 subscribers.[8] By having one headend instead of five, it becomes economically feasible to provide multiplexed premium networks, new programming packages, pay-per-view and advanced analog terminals. The interconnect has linked nearly 40 schools, businesses and municipal sites for high speed data and/or interactive video services and allows for distance learning networks as well.

When BCG is formed, TCI will be contributing 29 more systems with more opportunities for clustering. Four of these clusters will be interconnected through fiber networks and six other clusters will be created through AML microwave technology. See

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[8] The five communities benefiting from this fiber interconnect are Houghton/Hancock, Marquette, Iron Mountain, Escanaba and Ironwood. See Exhibit 5.

Exhibit 6. These upgrades will ensure that 83% of Bresnan's customers will be served by networks of at least 550 MHz (80 analog channels) within three years and many of them will be served by 750 MHz systems. Also within three years, digital services are expected to be available to most subscribers and, significantly, Bresnan intends to continue its strong community relations programs and to focus on customer and technical service. Thus, Bresnan's relationship with TCI can only be seen as a positive development for cable subscribers and the communities served.

Attached to these Comments are letters from the City of Marquette, Michigan (Exhibit 7), Duluth, Minnesota (Exhibit 8), Brainerd, Minnesota (Exhibit 9), Baxter, Minnesota (Exhibit 10) and Mackinac Island, Michigan (Exhibit 11) commending the service and local involvement of Bresnan in those communities. Specifically, Mr. Cameron Howes, a city commissioner and former mayor of Marquette, Michigan, commends Bresnan for the conversion to fiber optics and for Bresnan's coverage of local commission and town meetings. *See* Exhibit 7. Gary Doty, the Mayor of Duluth, Minnesota states that, "Bresnan ranks with the best when it comes to supporting local activities, especially assisting the nonprofit agencies that do such great work in our community but depend on help from companies like Bresnan. . . . Bresnan is a business that does not just take from the community, but works to be a part of it and give back to our residents." Exhibit 8. Similarly, the Mayor of Brainerd, Minnesota notes that Bresnan "listen[s] to our needs and concerns, and they try very hard to deal with those needs and concerns. They do so in a very positive manner." Exhibit 9. The Mayor of Baxter, Minnesota notes that Bresnan employees "make it their business to serve the public, whether it be in the billing department or out in the field. They make every effort

to give back to the community in volunteers and donations." Exhibit 10. It is abundantly clear both that Bresnan's regional MSO presence is deeply appreciated on the local level and that the various communities served by Bresnan have significantly benefited from Bresnan's partnership with TCI over the past 14 years.

2. TCA

TCA's recent partnership with TCI has also facilitated bringing affected subscribers the latest in technology, including high speed Internet access and data services.[9] Like Bresnan, TCA is upgrading systems with HFC technology to deliver high-speed interactive services to its subscribers, including video, voice and data, in addition to traditional video entertainment. TCA has committed itself to accelerated capital spending to upgrade its facilities to deliver all the new services as they become available. The company is aggressively deploying high speed Internet access and digital cable services to its subscribers.

The former TCI systems contributed to the TCA partnership have seen the benefits of local management and the commitment to increasing channel capacity and quality of service through system upgrades. For example, shortly after entering into that partnership, TCA began a major state-of-the-art rebuild of the Abilene, Texas cable system.[10] TCA also has over 500 cable modem subscribers in Bryan/College Station, Texas receiving high-speed

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[9] *See, e.g.*, attached Press Release dated August 3, 1998: *TCA Cable Orders 10,000 Cable Modems from Terayon*, Exhibit 12.

[10] *See* Letter from Roy L. McDaniel, City Manager of Abilene, Texas to Jeff Brown, General Counsel of TCA (Aug. 6, 1998), Exhibit 13.

Internet service. Indeed, TCA has recently completed the acquisition of an Internet service provider ("ISP") inTyler, Texas, known as Internet Tyler. This purchase gives TCA the ability to integrate dial-up Internet service throughout its subscriber base. The high-speed data products will also facilitate TCA's entry into the commercial sector.

In short, the TCA/TCI partnership has brought the best of both worlds to cable subscribers--TCA's long-term interest in, relationship with, and commitment to the communities in its region, combined with TCI's technology research, access to capital and purchasing power.

C. Bresnan and TCA Control the Partnership Cable Systems

In the *Cable Attribution Notice*, the Commission noted that its broadcast attribution rules have traditionally focused on "those relationships which confer on their holders influence or control over a broadcaster's key business decisions in the areas of budget, personnel and programming." *Id.*, ¶ 13. While there may well be reasons to consider other factors in the cable context, TCA and Bresnan have exercised control and made the key business decisions in all of those critical areas, despite the equity involvement of TCI. As explained in more detail below, subscribers in the Bresnan and TCA cable communities view Bresnan and TCA as their local cable operators. Even though TCI has had a majority general partnership interest in Bresnan for the past 14 years, local franchise authorities and subscribers are convinced of Bresnan's control and operation of these systems.[11]

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[11] It should be emphasized that TCI's interest in Bresnan will soon become a 50% limited partnership interest.

The Mayor of Tyler, Texas, a community formerly served by TCI, but now served by the TCA II partnership, notes:

> It has been our experience that whatever issue the community has raised with TCA regarding its cable system--whether it is system technology, the provision of programming services or customer service issues, TCA has the immediate and full authority to make all decisions locally. TCA is clearly the company making the decisions that affect our cable community.[12]

He further notes that the combination of a local company like TCA with the resources of an MSO like TCI "is a very positive relationsip for our cable community."[13]

With regard to programming, the experience of both TCA and Bresnan to date has been that each company has made programming decisions for their cable subscribers without TCI mandating any particular carriage. Although the ability to utilize TCI's purchasing power to obtain programming at a discount has been of benefit to both entities, neither TCA nor Bresnan are required by their partnership agreements with TCI to enter into any programming acquisition relationship with TCI.

In the area of personnel, TCA and Bresnan have made all hiring decisions without TCI influence or interference. Indeed, because the management of both TCA and Bresnan are local to the geographic areas where their cable systems are clustered, both entities are better able to interview and hire system managers and other personnel for those systems.

Despite TCI's financial interests, TCA and Bresnan control their own budgets. The management of both companies have years of experience in owning and operating cable

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[12] Letter from Kevin P. Eltife, Mayor, Tyler, Texas (Aug. 7, 1998), Exhibit 14.

[13] *Id.*

systems, and their ability to do so is what makes these companies attractive investments for TCI. TCI has the same bottom line goal as TCA and Bresnan, which is to operate cable systems efficiently and effectively. These partnerships recognize that the best management is local management and that geographic clustering is a practical necessity with the huge capital investment necessary to upgrade systems to provide the latest technology.

II. THE COMMISSION SHOULD RELAX ATTRIBUTION STANDARDS FOR THE CABLE HORIZONTAL CAP

In the *Cable Attribution Notice*, the Commission notes that it has different attribution rules for different purposes and that there is an outstanding broadcast attribution rule making proceeding (MM Docket No. 94-150). The Commission seeks comment on the various cable attribution standards and on the proposals set forth in the broadcast attribution proceeding, and further seeks comment on "whether any relevant differences exist between the cable and broadcasting industries that would support a distinct cable attribution standard . . . ." *Cable Attribution Notice*, ¶ 13. In the broadcast attribution proceeding, the Commission seeks comment on numerous issues, including the following:

> 1) Whether to restrict or eliminate the single majority shareholder exemption;
>
> 2) Whether a minority or nonvoting shareholder with "a significant portion of the equity or debt financing" should be considered attributable (*Cable Attribution Notice*, ¶ 10);
>
> 3) Whether to revise insulation criteria for limited partnership interests and whether to adopt an equity benchmark for noninsulated limited partners;
>
> 4) Whether to treat limited liability companies ("LLCs") and similar new business entities as limited partnerships; and

> 5) Whether the Commission should adopt an "equity or debt plus" ("EDP") attribution rule, whereby a combination of otherwise nonattributable debt and/or equity interests exceed a certain threshold, tentatively set at 33%.

For the reasons explained below, Bresnan and TCA urge the Commission, at least for the purpose of the horizontal cable cap, to maintain the single majority shareholder exemption and the insulated limited partnership rule, regardless of equity percentage; treat LLCs and other new business forms as limited partnerships; and not to adopt any EDP threshold. Additionally, Bresnan and TCA urge the Commission to apply the single majority shareholder rule and attribution benchmarks to general partnership interests, where it can be demonstrated that the equity percentage of the general partner is equivalent to the degree of voting control held by that partner and/or that the majority partner has managerial control.

A. A Relaxed Attribution Standard is Required For The Horizontal Cable Cap Given the High Cost of System Upgrades to Provide True Broadband Service

In a speech to the National Association of Regulatory Commissioners delivered just over two weeks ago, FCC Chairman William Kennard made the following statement:

> I don't care who wins the race to bring high capacity broadband services to America's homes. Whether it is ILECs, or CLECs broadcasters, cablecasters, or satellite providers, my goals are simple: Get this capacity into America's homes, get it there as quickly as possible, and make sure that every competitor has an opportunity to compete on a level field in getting it there . . . . I believe we have a narrow window of opportunity here to create a truly competitive marketplace for these new services. If we do not act with dispatch, that window will close.

As indicated above, Bresnan and TCA have begun to provide their subscribers with the type of broadband services envisioned by the Chairman. Specifically, Bresnan offers high speed

Internet service to subscribers in four communities in Michigan and one in Minnesota and provides interactive television services to more than 100 educational sites in Michigan and Minnesota, giving those schools the capability for distance learning. Bresnan also provides its so-called "Quantum Service" to subscribers via its HFC technology, which services include multiplexed premium networks, advanced pay-per-view programming and other television services, as well as an on-screen programming guide.

Like Bresnan, TCA is also deploying HFC cable, permitting it to deliver high speed interactive services, including video, voice and data, in addition to traditional video entertainment. Both companies are beginning to deploy high speed Internet access and digital cable services, thus providing a vast array of broadband services to their subscribers.

The HFC technology being deployed by Bresnan and TCA uses a combination of fiber optic and coaxial cables. The HFC network offers greater reliability and picture quality as well as the interactive and Internet services described above. However, the deployment of new cable, whether HFC or pure fiber optic cable, is very labor and capital intensive and is best accomplished with the aid of a partner who has both the finances to support such a buildout and a broad-based understanding of the technology involved. TCI's ability to fulfill this role is perhaps unique in the industry and its role in helping Bresnan and TCA to provide broadband services to their subscribers should not be discounted.

The recently announced merger of AT&T and TCI is likely to provide substantial benefits to Bresnan and TCA (and their subscribers) in their efforts to enhance and upgrade their networks. As described in more detail below, the company to be formed after the merger, AT&T Consumer Services, plans to offer an integrated package of services over

the rebuilt broadband network infrastructure of TCI and its partners. In recent testimony before Congress, TCI President Leo Hindery described how this partnership will accelerate the ongoing process of upgrading cable plant:

> The level of technological sophistication required to implement two-way capability and integrate digital customer terminals into our network is substantial. A web of computer servers, routers, switches, nodes, fiber-optic and coaxial cable and gateways to other services, such as the Internet, must be linked in order to provide interactive digital services for consumers. These sophisticated networks are costly to build and require a high level of planning, design and coordination to deploy.
>
> This is one of the key reasons why the merger with AT&T makes sense. AT&T brings to the table unparalleled technical expertise in the areas of network design and implementation. Moreover, AT&T provides a very strong financial base to our rebuild efforts. The merger will significantly accelerate the process of upgrading our networks and hasten the time in which we can deliver to consumers the types of advanced services Congress had in mind when it passed the Telecommunications Act of 1996.[14]

B. Cable Subscribers Benefit from System Upgrades Accomplished With The Assistance of a Major Player Such As TCI

Unlike television broadcasters who have one channel to fill with programming,[15] cable operators provide 36 or more channels of programming. Indeed, with HFC and fiber optic upgrades, cable operators can offer subscribers hundreds of channels of

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[14] Testimony of Leo J. Hindery, Jr., President of Tele-Communications, Inc. before the Senate Committee on Commerce, Science and Transportation, July 28, 1998.

[15] Although television broadcasters will for some period of time have two channels with the acquisition of a digital television ("DTV") channel, there is nothing to prevent broadcasters from running the same programming on both channels.

programming. Additionally, educational services are generally provided without cost to schools or students, and the technology to provide interactive services, including educational networks and Internet access are expensive as well.

Local franchise authorities are aware of the technological advances and vast amounts of programming services available in the marketplace and expect these services and programming be provided to subscribers at the lowest cost possible. The cost efficiencies of the Bresnan and TCA partnerships with TCI benefit all of the participants in the transaction: the cable operator, the local franchise authority and, most of all, the cable subscribers who benefit from receipt of the latest technology.

Examples of these benefits abound. As part of Bresnan's provision of interactive television networks to schools, participating schools that are miles apart are linked with fiber optic technology as well as video cameras, television monitors, VCRs and fax machines. Through use of this technology, capable only through a fiber network, educators can teach a "virtual classroom" of students in multiple schools at a time. Using this same technology, Bresnan will eventually provide similar interactive networks to government and private companies.

The distance learning program provided by Bresnan is especially significant in rural communities, where geography, logistics and cost have been long-standing barriers to education. Interactive television overcomes these barriers and enables educators in such school districts to pool resources, create larger and better learning programs and, ultimately, offer pupils the same educational opportunities enjoyed by students in larger towns and cities.

C. The Commission Should Maintain Insulated Limited Partnerships for Cable and Permit General Partners to be Treated Like Voting Shareholders

As indicated above, cable systems owned by Bresnan and TCA are truly managed and operated on the local level by those entities. The vast majority of subscribers to those systems are likely unaware of any affiliation by those companies with TCI. In the case of Bresnan, TCI currently owns a 78.4% general partnership interest, but that interest will shrink to a 50% limited partnership interest under BCG, when that transaction closes later this year. TCI owns a 20% general partnership interest in TCA II, which serves 300,000 subscribers clustered in Texas, Louisiana and New Mexico. Because these systems are also locally managed and operated, attribution to TCI paints an unfair picture of TCI's involvement in the ownership and management of these systems.

Under the Commission's current attribution criteria, a limited partner may be insulated and therefore considered nonattributable by meeting certain insulation criteria spelled out by the Commission in its earlier attribution rule making proceedings.[16] There is no reason to deviate from those principles, since to do so would frustrate Bresnan's and TCA's ability to upgrade their systems and provide the broadband services desired by their subscribers and recognized as desirable by the Commission. If TCI were forced to reduce or eliminate its interest in these companies in order to comply with an arbitrary cap on horizontal ownership, cable subscribers and the public interest would be harmed.

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[16] *Report and Order* in MM Docket No. 83-46, 97 F.C.C. 2d 997 (1984); *recon.* in part, 58 R.R. 2d 604 (1985); *further recon.* granted in part, 1 F.C.C. Rcd. 802 (1986).

The Commission currently has a "single majority shareholder" exemption for stock ownership of a corporation, whereby no other shareholders are considered to be attributable when one shareholder owns more than 50% of the voting stock of the company. This exemption should not only be maintained for the cable horizontal cap, but should be extended to general partnerships as well. The reality of partnerships in today's world is that equity often equates to voting power, and thus, equity in a general partnership is equivalent to the percentage of voting stock one holds in a corporate entity.[17] Indeed, TCI's 20% general partnership interest in TCA II does not give it control of that entity. That partnership is governed by a partnership committee consisting of five members, three of which are from TCA and two of which are from TCI. Additionally, TCA explicitly has the right to manage the day-to-day operations of the partnership. Furthermore, the agreement allows TCA the right to purchase TCI's partnership interest, but the reverse is not true.

Both TCA and Bresnan have shown that they have full day-to-day control over the critical areas of programming, personnel and finances and all other aspects of management as well. These are not "sham" relationships in any sense. Should the Commission choose not to expand the single majority shareholder exemption to partnerships,

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[17] Partnerships are often used for tax purposes but created in such a way as to replicate a corporate structure. The Commission has implicitly recognized that equity in a partnership could be equivalent to percentage of voting stock in a corporation in the early case of *Mize & Rowland Radio*, 86 F.C.C. 2d 282 (1981) (Commission allowed a *pro forma* application to be used for transferring control of a 33% general partnership interest, thereby implicitly treating equity as equivalent to voting control).

it should at the very least permit cable operators to show that application of such a principle would be justified on a case-by-case basis.[18]

D. The EDP Approach Suggested by the Commission Would Undercut the Commission's Local Broadband Goals

In the *Cable Attribution Notice*, the Commission asked whether the EDP attribution rule being proposed in the broadcast context should be applied to cable as well. Under this approach, any combination of debt or equity exceeding a specified benchmark, currently proposed at 33%, would be considered attributable regardless of any other factor. Such an approach may work in the broadcast context to keep one broadcaster from dominating or monopolizing a single market. However, for purposes of the cable horizontal ownership cap, it makes no sense. As indicated above, Bresnan and TCA partnerships are providing a multitude of services to their subscribers with TCI's assistance. Any rule that would attribute these systems to TCI could impact on the ability of Bresnan and TCA to provide these services. TCI's assistance has greatly contributed to the ability of Bresnan and TCA to build out these systems with the latest technology by facilitating the access to capital, technical expertise and programming.

At least one court has noted the usefulness of joint ventures like those utilized by Bresnan and TCA:

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[18] This concept is not novel. The Commission uses the case-by-case approach in analyzing requests for waiver of the one-to-a-market multiple ownership rule. FCC Rule §73.3555(c), Note 7. *See Second Report and Order* in MM Docket 87-7, 4 FCC Rcd 1741 (1989), *recon. granted in part and denied in part*, 4 FCC Rcd 6489 (1989).