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October 13, 1999

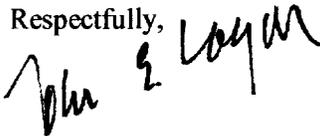
Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Presentation
North American Numbering Administrator
CC Docket 92-237 /
NSD File No. 98-151

Dear Ms. Salas:

On October 12, 1999, Dr. H.G. Miller, Vice President, Mitretek Systems, and I met with Ms. Sarah Whitesell, Legal Advisor to Commissioner Tristani, to discuss the above matter. In the meeting we conveyed the position Mitretek that the present proposal of the incumbent North American Numbering Administrator (NANPA) violates the neutrality standard required of the NANPA. The enclosed documents were discussed at the meeting.

The necessary copies are enclosed.

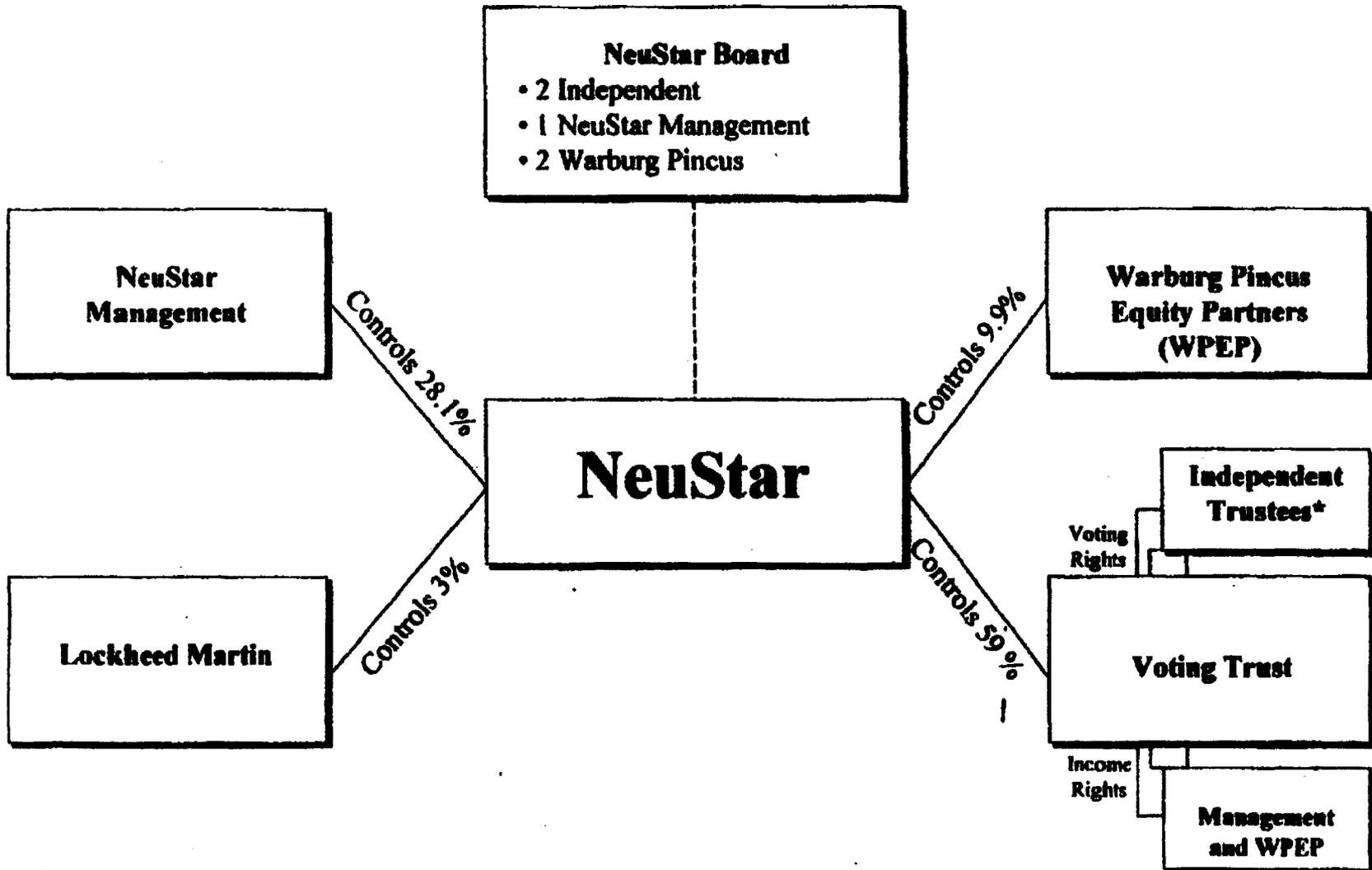
Respectfully,

John E. Logan

Enclosures

Copy to: Ms. Sarah Whitesell, Legal Advisor to Commissioner Tristani

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Control and Ownership of NeuStar



* The Trustees of the Trust will be independent of Warburg Pincus and will have fiduciary responsibility to WPEP and others (e.g., management). They will control the vote of all NeuStar shares held in the Trust, except in limited circumstances relating to mergers, asset sales and distribution of shares to WPEP's limited partners.

October 8, 1999

**STATEMENT OF COMMISSIONER GLORIA TRISTANI,
DISSENTING IN PART**

In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996, and Review of the Commission's Cable Attribution Rules, CS Docket Nos. 98-82 and 96-85

I dissent from the majority's decision to modify the insulation criteria for limited partnerships and to narrow the attribution standard for officers and directors. These changes are ill-conceived, arbitrary and will prove unworkable in practice.

First, the majority departs from established precedent without adequate explanation. In adopting the broadcast attribution standard for purposes of Section 613, the Commission found:

[T]he 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.¹

Just last year, the Commission reiterated these views on reconsideration.²

Thus, the Commission has repeatedly recognized that it is one entity's ability to influence or control the management or programming decisions of another entity that implicate the concerns of Section 613. The majority, however, acts as if it is writing on a blank slate by ignoring the ability to influence or control a partnership's management and focusing only on programming-related decisions. The majority does not claim that the broadcast criteria, affirmed by the Commission only two months ago, are wrong.³ But nor does the majority attempt to explain why our prior precedent is wrong – i.e., why the broadcast attribution criteria really do not address the same issues regarding influence and control over management and programming decisions at issue here. Indeed, the majority would find any such attempt difficult, since, in enacting Section 613, Congress

¹ See *Second Report and Order*, 8 FCC Rcd 8565, 8581 (1993) (emphasis added). The Commission made a similar finding with respect to the channel occupancy limits. *Id.* at 8592.

² See *Memorandum Opinion and Order on Reconsideration and Further Notice of Proposed Rulemaking, Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits*, 13 FCC Rcd 14462 (1998).

³ See *Review of the Commission Regulations Governing Attribution of Broadcast and Cable/MMDS Interests*, FCC No. 99-207 (rel. Aug. 6, 1999).

expressed many of the same competition and diversity concerns that underlie our broadcast ownership rules.⁴

The arbitrariness of the majority's decision is further evidenced by its failure to apply its new rules across-the-board. As noted above, the majority does not argue for a change in the broadcast attribution rules. Nor does the majority change the attribution criteria that apply to our other cable rules -- including the cable/SMATV cross-ownership ban, the cable-telco buy-out prohibition, and the competing provider prong of the effective competition test -- that apply the broadcast attribution standard. Nor does the majority explain, if programming decisions are the only concern under Section 613, why it restricts its decision to limited partnerships rather than applying it to all corporate structures. For instance, the majority does not explain why we should continue to attribute the interests of passive institutional investors, if those investors remove themselves from programming-related activities. If the attribution rules are changed for purposes of limited partnerships under Section 613, logically either the same revisions should apply to these other rules, or a good reason must be advanced why they should not. The majority does neither.

Finally, I fear that the majority's belief that "programming activities" can be neatly cordoned off from other management functions is illusory. In the real world, the ability to influence a partnership's core business activities inevitably involves the ability to at least indirectly affect the various activities, such as programming, in which the partnership is involved. Until today, the Commission has always recognized this common sense proposition. In particular, the Commission has always recognized that the potential influence of officers and directors is significant, and should be attributable to a broadcaster or cable operator whenever these individuals' duties relate to the media activities of the company.⁵ Now, however, we are putting officers and directors in the untenable position of determining, on the fly, whether a particular budgetary or marketing decision improperly involves them in "programming-related activities." Worse, the public's right to the competition and diversity benefits of Section 613 depends on them making the right decision. The public interest should not hang by so thin a reed.

For these reasons, I dissent from today's decision to the extent it amends our attribution rules governing limited partnerships, officers and directors.

⁴ For instance, Congress believed that unfair practices by large cable companies "could discourage entry of new programming services, restrict competition, impact adversely on diversity, and have other undesirable effects on program quality and viewer satisfaction." H.R. Rep. No. 102-628 at 43 (1992). Similarly, in express legislative findings, Congress determined that the cable industry's concentration posed potential "barriers to entry for new programmers and a reduction in the number of media voices available to consumers." 1992 Act, Sec. 2(a)(4), 106 Stat. 1460.

⁵ See, e.g., *Report and Order*, 97 FCC2d 997 (1984).