

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Michael I. Sovern)	
)	CSR-5410-X
Petition for Special Relief Requesting)	
Waiver of 47 C.F.R. § 76.501(a))	

MEMORANDUM OPINION AND ORDER

Adopted: January 12, 2001

Released: January 17, 2001

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. In this proceeding, Michael I. Sovern is seeking a waiver of Section 76.501(a), the Commission's broadcast/cable television station cross-ownership rules.¹ The petition is unopposed.

2. On November 2, 2000, the Cable Services Bureau released a *Memorandum Opinion and Order* ("Order") granting Mr. Sovern's petition for a waiver.² The *Order* did not address a Supplement to Petition for Special Relief that had been filed with the Commission. To ensure the reflection of the complete record, we adopt this *Memorandum Opinion and Order*, which supersedes the previous *Order*.

II. BACKGROUND

3. Mr. Sovern has been a member of the Board of Directors of AT&T Corp. ("AT&T") since 1984, and a trustee of Educational Broadcasting Corporation ("EBC"), the licensee of non-commercial educational station WNET (Channel 13) Newark, New Jersey ("WNET"), since 1993.³ AT&T merged with Tele-Communications, Inc. on March 9, 1999.⁴ AT&T has a 33% non-controlling stock interest, with an 8.9% voting interest, in Cablevision Systems Corp. ("Cablevision").⁵ WNET's predicted Grade B contour overlaps with the service area of Cablevision's cable systems serving the New York City metropolitan area.⁶ As a result, Mr. Sovern requests a waiver of the cross-ownership rules because of his attributable interest in both WNET and Cablevision. Mr. Sovern's petition asserts that AT&T has no

¹ 47 C.F.R. § 76.501(a).

² *In the Matter of Michael I. Sovern*, Memorandum Opinion and Order (DA 00-2471) rel. Nov. 2, 2000.

³ Petition for Special Relief Requesting Waiver of 47 C.F.R. § 76.501(a) at 2 (filed June 2, 1999) ("Petition").

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

authority to direct the programming decisions of Cablevision.⁷ Mr. Sovern, for his part, has no authority or control over Cablevision's programming decisions.⁸

4. In a supplemental filing submitted on August 10, 2000, Mr. Sovern states that when AT&T merged with MediaOne Group, Inc. ("MediaOne") on June 15, 2000, it acquired a 25.5% non-controlling interest in Time Warner Entertainment ("TWE"). Because of AT&T's attributable interest in TWE, which owns cable systems in and around the greater New York City metropolitan area that also overlap WNET's predicted Grade B contour, Mr. Sovern's requests that the waiver be extended to include the TWE cable systems.⁹

5. Mr. Sovern states that a waiver of the cross-ownership rules is appropriate because the objectives of the rules – to promote competition and maintain a marketplace for diverse ideas – would not be served by the application of the rules in this case. Mr. Sovern maintains that because WNET is non-commercial, it would not compete with the other broadcast stations carried on Cablevision's or TWE's cable systems.¹⁰

III. DISCUSSION

6. The Commission's cross-ownership rule reads in relevant part:

No cable television system ... shall carry the signal of any television broadcast station if such a system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted grade B contour ... overlaps in whole or in part the service area of such system¹¹

The policy goals of Section 76.501(a) are to increase competition in the economic marketplace and in the marketplace of ideas.¹² In cases where enforcement of the ban on cross-ownership does not promote these goals, a waiver of these rules will be entertained by the Commission.¹³ The Commission may waive any rule in whole or in part, for good cause.¹⁴

⁷ *Id.*

⁸ *Id.* at 3.

⁹ Supplement to Petition for Special Relief at 2.

¹⁰ In support, Sovern cites *University of Arizona Petition for Special Relief Requesting Waiver of 47 C.F.R. Section 76.501(a), or in the Alternative, Clarification of Definition of "Cable System,"* ("University of Arizona"), 12 FCC Rcd 11458, where the Bureau, citing *All Clear Cable TV*, 50 F.C.C. 2d, 693, 694 (1975), determined that "waiver of the television cable cross-ownership rule is particularly appropriate where the television stations involved are non-commercial, because they are not engaged in economic compensation *via-a-vis* other media in the area the cable system will serve."

¹¹ 47 C.F.R. § 76.501(a). See Section 613 of the Communications Policy Act of 1984 (47 U.S.C. § 533).

¹² *University of Arizona*, 12 FCC Rcd 11458, 11459-11460 (1977); *Kilgore Cable*, 11 FCC Rcd 1684 (1996).

¹³ *University of Arizona*, 12 FCC Rcd at 11459-11460; *Cablevision of Augusta, Inc.*, 62 FCC 2d 184 (1977), citing *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry Into the Development of Communications Technology and Services To Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals* ("Second Report and Order"), 23 FCC 2d 816, 820-821 (1970), *recon. denied*, 39 FCC 2d 377 (1973).

¹⁴ 47 C.F.R. § 1.3; see also 47 C.F.R. § 76.7(a)(1) (On petition by a cable television system operator ... or by
(continued...))

7. In the instant case, the stated policy objectives of the cross-ownership rules would not be impaired by granting a waiver and allowing Mr. Sovern to simultaneously serve on AT&T's board of directors and sit on EBC's board of trustees. EBC's television station is non-commercial. AT&T has a 33% non-controlling stock interest, with no more than an 8.9% voting interest in Cablevision, and a 25.5% non-controlling stock interest in TWE. Therefore, neither Mr. Sovern nor AT&T has direct authority over Cablevision's or TWE's programming decisions. Thus, we believe that Mr. Sovern does not have the same incentives to engage in anticompetitive conduct that the rules are designated to address. The Commission has determined that waiver of the television cable cross-ownership rule is particularly appropriate where the television stations involved are non-commercial, because "they are not engaged in economic competition *vis-à-vis* other media' in the area the cable systems will serve."¹⁵

IV. ORDERING CLAUSE

8. Accordingly, **IT IS ORDERED** that the Petition for Special Relief Requesting Waiver Petition of 47 C.F.R. § 76.501(a), and Supplement to Petition for Special Relief filed by Michael I. Sovern are **GRANTED**.

9. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Deborah A. Lathen
Chief, Cable Services Bureau

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any other interested person, the Commission may waive any provision of the rules relating to cable television systems...").

¹⁵ *University of Arizona*, 12 FCC Rcd at 11460 (quoting *All Clear Cable TV* ("All Clear"), 50 FCC 2d 693, 694 (1975)).

¹⁶ 47 C.F.R. § 0.321.