

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

In the Matter of:)	
)	
Central Michigan University)	
)	CSR-5672-X
Petition for Special Relief)	
Requesting Waiver of 47 C.F.R. § 76.501(a),)	
or in the Alternative, Clarification of)	
the Definition of a "Cable System")	
)	

ORDER

Adopted: August 13, 2001

Released: August 15, 2001

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Central Michigan University ("CMU") has filed the above-captioned petition ("Petition") requesting a waiver of the cable television broadcast television station cross-ownership rule or, in the alternative, clarification of the definition of "cable system" contained in the Commission's rules.¹ The petition is unopposed. For the reasons set forth below, CMU's petition for waiver of the cross-ownership rule is granted.

II. BACKGROUND

2. CMU is a public educational institution established by the Constitution of the State of Michigan.² Its undergraduate, graduate and professional programs enroll approximately 26,300 students, and its main campus, located in Mt. Pleasant, Michigan, serves approximately 18,500 students per year.³ CMU operates a video distribution system on its Mount Pleasant campus that provides 50 channels of educational and entertainment programming to its residence halls, and academic and administrative buildings.⁴

3. CMU is also the licensee of four public television stations: WCMU-TV, Channel 14 at Mt. Pleasant; WCMV-TV, Channel 27, at Cadillac; WCMW-TV, Channel 21, at Manistee/Ludington; and WCML-TV, Channel 6 at Alpena, all in Michigan.⁵ Station WCMU-TV, a noncommercial broadcast

¹ See 47 C.F.R. § 76.501(a); 47 C.F.R. § 76.5.

² Petition at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

station, places a Grade A signal over CMU's Mt. Pleasant campus.⁶ In the instant case, the ownership of WCMU-TV presents regulatory obstacles to CMU's video distribution system. The Commission's cross-ownership rules prohibit the common ownership of a broadcast station and a cable system if they have overlapping service areas. Therefore, a Commission waiver is necessary for CMU to operate a broadcast television station while simultaneously operating the video distribution system as constituted.

4. In the alternative, CMU maintains that its video distribution system is not a "cable system" under the statutory definition because the system does not and will not have subscribers.⁷ CMU also believes that its video distribution system may not be a cable system because it may not be using any public right-of-way as required pursuant to Section 522(7)(B) of the Communications Act and Section 76.5(a)(2) of the Commission's rules.⁸

III. DISCUSSION

5. The Commission's cross-ownership rule, 47 C.F.R. § 76.501(a) 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 system

The policy goals of Section 76.501(a) are to increase competition in the economic marketplace and in the marketplace of ideas.⁹ 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.¹⁰

6. In the instant case, we believe the stated policy objectives of the cross-ownership rules would not be impaired by granting a waiver and allowing CMU to simultaneously own and operate both a broadcast station and a campus video distribution system. As a noncommercial broadcast station, WCMU-TV does not compete economically with other local broadcast stations. Thus, we believe CMU does not have the same incentives to engage in anticompetitive conduct that a commercial cable operator might because its noncommercial broadcast station at issue does not compete with the other local broadcast channels for advertising revenue. Furthermore, CMU's system is not available outside of the

⁶ *Id.*

⁷ Petition at 2. See 47 U.S.C. § 533. Pursuant to 47 C.F.R. § 76.5, a cable system is defined as a "facility ... that is designed to provide cable service and which is provided to multiple subscribers within a community. ..." Pursuant to 47 C.F.R. § 76.5(ee), subscribers are defined as members of the general public who receive broadcast programming distributed by a cable television system. In this case, CMU contends that the intended recipients of the video service, its student residents, housing staff, and academic and administrative employees, are not members of the general public. Petition at 2.

⁸ 47 U.S.C. § 522(7)(B); 47 C.F.R. § 76.5(a)(2).

⁹ *University of Arizona*, 12 FCC Rcd 11458, 11459-60 (1997); *Kilgore Cable TV Company*, 11 FCC Rcd 1184.

¹⁰ *University of Arizona* at 11459-60; *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, 821 (1970); *recon. denied*, 39 FCC 2d 377 (1973).

confines of the University. This limits substantially a waiver's potential to undermine competition in the delivery of video services.

7. In addition, we believe that operation of the facility in question would have the beneficial effect of increasing programming choices available to students residing on campus. CMU's video distribution system will enable students to receive instructional and educational programming, in addition to local and distant broadcast stations. Moreover, the facility serves as an integral part of CMU's education function with the students being the primary beneficiaries of the video distribution system. We thus find that the circumstances of this case warrant a waiver of the Commission's cross-ownership rules. Because we find that a waiver of the Commission's cross-ownership rules is appropriate under the circumstances, we need not address the issue of whether CMU's video distribution system constitutes a "cable system."

IV. ORDERING CLAUSE

8. Accordingly, **IT IS ORDERED** that the petition for special relief filed by Central Michigan University **IS GRANTED**.

9. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Cable Services Bureau

¹¹ 47 C.F.R. § 0.321.