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Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202/418-2555
Internet: http://www.fcc.gov
ftp.fcc.gov

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NEWS MEDIA CONTACT:
Michelle Russo (202) 418-2358

FCC BEGINS REVIEWING CABLE OWNERSHIP LIMITS

Agency Seeking Evidence That Will Withstand Further Judicial Scrutiny

Washington, D.C. – The Federal Communications Commission (FCC) today launched a proceeding to review its horizontal and vertical limits for cable companies. Today's action is in response to the *Time Warner* decision issued on March 2, 2001 by the U.S. Court of Appeals for the District of Columbia Circuit. The court determined that the FCC's prior limits had not been adequately supported and that the FCC had not sufficiently considered changes that have occurred in the multichannel video programming distribution (MVPD) market.

The 1992 Cable Act directed the FCC to establish limits on the number of subscribers a cable operator may serve and on the number of channels a cable operator may devote to affiliated programming. Although the FCC rules were reversed, the statute was upheld in a separate court decision. The FCC said today that it intends to implement rules that will foster competition and diversity in the video programming market in a way that is consistent with the court's ruling.

Today's *Further Notice of Proposed Rulemaking* (FNPRM) seeks to develop a complete record that will help the FCC produce and support appropriate horizontal and vertical limits. The FCC said it would examine the requirements of the law and review the relevant markets and their evolution since 1992. The FNPRM does not propose any specific numerical caps, but rather suggests several regulatory approaches and solicits empirical evidence and theoretical justification supporting or contradicting each of the suggested approaches. As directed by the *Time Warner* decision, the FNPRM also seeks comment on certain provisions of the FCC's attribution rules: specifically, the ban on an insulated limited partner's sale of video programming to a cable system partnership and the elimination of the single majority shareholder exemption in the cable and broadcast contexts.

The FCC is seeking information and evidence on a number of issues including:

- The potential harms and benefits of concentration and vertical integration in the MVPD market;
- Whether a cap on the number of subscribers that a cable operator may reach can be established and justified;
- Whether the FCC should adopt a "safe harbor" regulatory approach, whereby the FCC would examine the state of competition in the MVPD market and forebear from imposing ownership caps if a certain level of competition has been achieved without regulation;
- What, if any, channel occupancy limits the FCC should adopt in light of changed market conditions; and
- Whether the FCC should reinstate the two vacated portions of the attribution rules and, if so, on what basis.

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Timeline:

- The 1992 Cable Act directed the FCC to establish limits on the number of subscribers a cable operator may serve and on the number of channels a cable operator may devote to affiliated programming. The FCC implemented such rules in 1993.
- October 1999: The FCC revised its cable ownership and attribution rules to reflect a changing MVPD marketplace.
- May 19, 2000: The U.S. Court of Appeals for the District of Columbia Circuit upheld the constitutionality of the statute (Section 613(f) of the Communications Act).
- March 2, 2001: The U.S. Court of Appeals for the District of Columbia Circuit remanded the FCC's horizontal and vertical limits for cable companies as well as two provisions of its ownership attribution rules.
- September 13, 2001: The FCC launches a proceeding to review cable ownership rules and aspects of its attribution rules.

Background Information on Cable Ownership Limits:

- The FCC's remanded horizontal ownership limit allowed cable operators to have a 30 percent share of nationwide cable, DBS and other MVPD subscribers.

- The FCC's remanded vertical limit prohibited a cable operator from carrying affiliated programming on more than 40 percent of its channels, for systems with a channel capacity up to 75 channels (for systems with a capacity of more than 75 channels, 45 channels were to be reserved for non-affiliated programming).

- FCC ownership attribution rules seek to identify those corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders should be subject to the FCC's regulation.

Action by the Commission September 13, 2001, by Further Notice of Proposed Rulemaking (FCC 01-263). Chairman Powell, Commissioners Abernathy, Copps and Martin with Commissioner Copps issuing a separate statement.

Comments due: 75 days after publication in the Federal Register
Replies due: 30 days after initial comment deadline

CS Docket Nos. 98-82, 96-85
MM Docket No. 92-264

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Cable Services Bureau Contacts: Holly Berland, Andrew Wise at (202) 418-7200