

[US] Revision of Cable Horizontal Ownership And Attribution Rules

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*Carl Wolf Billek
Communications Media Center at the New York Law School*

On 20 October, 1999, the Federal Communications Commission ("FCC") released two Report and Orders revising the number of cable subscribers an entity may serve and the method for determining an "attributable interest" in a cable system. In 1993, the FCC promulgated horizontal ownership rules which limited ownership by an individual person or entity of cable systems to no more than 30% of all homes passed nationwide where an individual person or entity owns an attributable interest. In addition, the rule permitted a individual person or entity's cable systems to reach up to 35% of all homes passed nationwide provided the additional cable systems beyond the 30% mark were minority-controlled. The rules were successfully challenged in the United States District Court for the District of Columbia by cable operators on the grounds that their First Amendment rights were violated by the ownership cap. As a result of the court's decision, the FCC stayed the implementation of its horizontal ownership rule.

The new horizontal ownership rule maintains the 30% ownership limit, however, it provides a different test to calculate the homes passed nationwide. Previously, the rule limited horizontal ownership to the nationwide number of homes receiving cable television. The new rule calculates the ownership limit based on the nationwide number of subscribers of cable, direct broadcast satellite ("DBS") and other multichannel video program distributors ("MVPD"). The FCC has stated that 30% of cable, DBS and MVPD subscribers is effectively equal to 36.7% of current cable subscribers. Therefore, while the cap was not actually altered, the calculation method in the new rule effectively permits cable operators to serve more homes than the previous rule. However, the new rule eliminates the "minority-controlled" exemption, as the FCC concluded that it has never been utilized and that its retention would not be beneficial.

The new rule also revises aspects of the term "attributable interest," for purposes of determining whether the horizontal ownership rule is triggered. The revised definition of attributable interest retains the 5% or more active voting stock benchmark, raises the passive, institutional investor benchmark from 10% to 20% and permits limited liability companies to insulate their interests from attribution by using insulated partner criteria. Additionally, the new rule adopts a equity/debt principle, which requires that where an investor holds over 33% of the total assets of an entity, that investor will be deemed to have an attributable interest. The most immediate beneficiary of the new horizontal ownership rule is AT&T. Upon

the consummation of its pending acquisition of MediaOne, AT&T was poised to become the United State's largest cable television operator. Yet under the old, stayed horizontal ownership rule, AT&T would have exceeded the limits on national cable television ownership. However, because the new rule expands the number of homes a cable operator may reach and modifies the definition of an attributable interest, it is believed that AT&T, upon acquisition of MediaOne, will not violate the new national cable horizontal ownership and attribution rule.

Third Report and Order, In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits, FCC 99-264; MM Docket No. 92-264 (Released: 20 October 1999).

Report and Order, In the Matter of the Cable Television Consumer Protection and Competition Act of 1992, FCC 99-288; CS Docket No. 98-82; Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996: Review of the Commission's Cable Attribution Rules, FCC 99-288; CS Docket No. 96-85 (Released: 20 October 1999).

