

# FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 76

[MM Docket No. 92-264; FCC 99-289]

### Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the method by which the cable horizontal ownership limit is calculated in order to further implements Congress' directive that a cable horizontal cap be established and to reflect dynamic changes in the marketplace.

**DATES:** Effective February 9, 2000, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. Written comments by the public on the new and/or modified information collections are due January 31, 2000.

**ADDRESSES:** In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Darryl Cooper at (202) 418-7200 or via Internet at [dacooper@fcc.gov](mailto:dacooper@fcc.gov). For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Third Report and Order*, FCC 99-289, adopted on October 8, 1999 and released October 20, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at <http://www.fcc.gov/Bureaus/Cable/WWW/csb.html>. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

This Third Report & Order contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public

Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

### Paperwork Reduction Act

This *Third Report and Order* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due January 31, 2000. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Control Number:* 3060-0581.

*Title:* Section 76.503 National Subscriber Limits.

*Form No.:* Not applicable.

*Type of Review:* Revision of an existing collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 10.

*Estimated Time per Response:* 1 hour.

*Total Annual Burden:* 20 hours.

*Cost to Respondents:* \$400.00.

*Needs and Uses:* The certification filings will be used by the Commission to: (1) Ensure that cable operators do not violate the 30 percent share rule in their acquisitions of additional multi-channel programming providers; (2) verify that limited partners who so certify are not involved in management or operations of the media-related activities of the partnership. The waiver allowance filings will be used to verify that certain directors and officers are not involved in the video programming activities of partnership.

### Synopsis of Report and Order

1. The Commission's *Third Report and Order* amends the method by which the cable 30% horizontal ownership cap is calculated. The amendments recognize dynamic changes in the video distribution marketplace and will

encourage further competition that will benefit consumers.

#### 2. Key Decisions:

- The old horizontal ownership rule directed that no person or entity should be permitted to reach more than 30% of all homes passed nationwide through cable systems. The old rule measured the 30% limit in terms of the number of homes a cable operator is capable of serving in its franchise areas against the total number of homes in the nation that all cable systems are capable of serving. This standard is known as cable homes passed. The *Third Report and Order* changed the standard to the actual number of subscribers that a cable operator serves. This decision recognized that subscriber numbers more accurately represent a cable operator's programming market power.

- The *Third Report and Order* recognized the impact that competition from satellite and other video providers has had on a cable operator's market power. In 1994, cable operators served approximately 93% of the multichannel marketplace. In 1999, the market share of cable operators fell to 82% due to increased competition from non-cable video providers. To recognize competition from satellite providers and others, the *Third Report and Order* decided to calculate a cable operator's 30% horizontal limit as a percentage of the total multichannel video programming market, including all cable and non-cable multichannel video programming subscribers. This new method of calculation creates a sliding horizontal scale that will grow as competition to cable grows and diminish as competition diminishes. Under market conditions at the time the *Third Report and Order* was adopted, a 30% limit on all multichannel video programming subscribers was effectively equal to a 36.7% limit on cable subscribers alone, thereby effectively raising the horizontal limit to 36.7%.

- The *Third Report and Order* decided to encourage competition between cable operators by not including in their limit subscribers that the cable operators serve through overbuilding other cable systems.

- Because the changes in the method of calculating the limit reflected the changes in the cable marketplace since the limit was initially established, the *Third Report and Order* found that it was unnecessary to raise or lower the 30% limit. The *Third Report and Order* found that the 30% limit strikes a balance between the dangers that a cable operator's size pose to programmers and the benefits to cable operators of economies of scale.

• The *Third Report and Order* eliminated the minority control allowance. This allowance was designed to permit a cable operator to have ownership interests in up to 35% of the market if 5% of its systems were controlled by minorities. However, given that no parties have used this allowance or have argued that they will use the allowance, the allowance was eliminated.

• The *Third Report and Order* denied a motion to lift the Commission's stay of the horizontal ownership rule pending consideration by the United States Court of Appeals for the District of Columbia Circuit on challenges to Section 613(f)(1)(A) of the Communications Act, as amended, and the horizontal ownership rule. The Commission had decided that affected parties must comply with the horizontal rule within 60 days of the court's issuance of a mandate upholding Section 613(f)(1)(A) and the rules. In the *Third Report and Order*, the Commission found that 60 days was an unduly burdensome time frame for affected parties to dispose of property to comply with the newly effective rules. The Commission decided that the horizontal ownership rules would become effective immediately upon the court's issuance of a mandate upholding the statute and the rules and that parties in violation of the rules on that date would have 180 days to comply with the rules.

#### Ordering Clauses

3. Accordingly, pursuant to Sections 4(i), 303 and 613 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 533, the amendments to 47 CFR 76.503 discussed in this Third Report and Order *Are adopted*. These amendments shall become effective 70 days after publication in the **Federal Register**, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

4. The August 17, 1999 Consumers Union, Consumer Federation of America, and Media Access Project's Motion to Vacate Stay of Enforcement of Horizontal Ownership Limits and other requested relief *Is denied* in its entirety.

5. 47 CFR 503(a) through (f) *is Stayed* until the United States Court of Appeals for the District of Columbia Circuit issues a decision upholding Section 613(f)(1)(A) of the Communications Act, as amended, 47 U.S.C. 533(f)(1)(A), and 47 CFR 76.503, and affected parties in violation of 47 CFR 503(a) through (f) will come into compliance within one hundred and eighty (180) days after the court issues its mandate.

6. Parties shall continue to comply with the reporting requirements of Section 503 of our rules, as modified by 47 CFR 76.503(g) and as discussed in note 10 of the *Third Report and Order*.

7. The Commission's Office of Public Affairs, Reference Operations Division, *Shall Send* a copy of this Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1164, 5 U.S.C.A. 601 *et seq.*

#### List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas**,  
Secretary.

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.503 is revised to read as follows:

#### § 76.503 National subscriber limits.

(a) Subject to paragraph (b) of this section, no cable operator shall serve more than 30% of all multichannel-video programming subscribers nationwide through multichannel video programming distributors owned by such operator or in which such cable operator holds an attributable interest.

(b) Cable subscribers that a cable operator does not serve through incumbent cable franchises shall be excluded from the cable operator's limit.

(c) For purposes of this section, "incumbent cable franchise" means a cable franchise in existence as of October 20, 1999 and all successors in interest to these franchises.

(d) Subscribers that a cable operator serves through incumbent cable franchises shall include all subscribers served by those incumbent cable franchises, regardless of when the

subscribers were added to the incumbent cable franchise system.

(e) "Multichannel video-programming subscribers" means subscribers who receive multichannel video-programming from cable systems, direct broadcast satellite services, direct-to-home satellite services, multichannel multipoint distribution services, local multipoint distribution services, satellite master antenna television services (as defined in § 76.5(a)(2)), and open video systems.

(f) "Cable operator" means any person or entity that owns or has an attributable interest in an incumbent cable franchise.

(g) Prior to acquiring additional multichannel video-programming providers, any cable operator that serves 20% or more of multichannel video-programming subscribers nationwide shall certify to the Commission, concurrent with its applications to the Commission for transfer of licenses at issue in the acquisition, that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.

**Note 1 to Section 76.503:** Certifications made under this section shall be sent to the attention of the Cable Services Bureau, Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554.

[FR Doc. 99-31024 Filed 11-30-99; 8:45 am]

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#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 90

[FCC 99-138—PR Docket No. 92-235]

#### Private Land Mobile Radio Services; Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Radio Services; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Preamble correction and correcting amendment.

**SUMMARY:** This document contains corrections to the final rule published in the **Federal Register** on September 16, 1999 (64 FR 50257). The rules relate to trunking of radio channels in the shared Private Land Mobile Radio bands below 512 MHz.

**DATES:** Effective December 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Wilhelm, 202-418-0870 (not a toll-free call) or mwilhelm@fcc.gov.