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In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection and)
Competition Act of 1992)
)
Broadcast Signal Carriage Issues)

MM Docket No. 92-259

COMMENTS OF
CONSORTIUM OF SMALL CABLE SYSTEM OPERATORS

The Consortium of Small Cable System Operators (hereinafter, the "Consortium"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, submits its comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM").¹ The Consortium is composed of small and medium sized cable companies which provide high quality, reasonably priced multichannel video services primarily to less populated, rural areas.² By their very nature, such areas offer a limited profit potential due to sparse population and resulting higher per capita cost of service. Because of these limitations, increased regulation imposes an inordinate burden on small system operators in relation to any possible benefits to be derived therefrom. Unless specific measures are adopted to protect small systems from the burdens of re-regulation, the continued expansion of cable into less populated areas will be jeopardized, and the viability of existing cable service in such areas seriously threatened.

With the foregoing in mind, the Consortium will address

¹ Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, Notice of Proposed Rule Making, MM Docket No. 92-259, FCC 92-499, released November 19, 1992.

² Attached hereto as Exhibit 1 is a list of the Consortium's members.

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certain of the Commission's proposals that it believes deserve particular attention because of their potential impact on small system operators.

**Small and Medium Sized Operators
Should be Given Broad Discretion in
Carrying Out the Act's Carriage Requirements**

The Cable Television Consumer Protection and Competition Act of 1992 (hereinafter "Cable Act" or "Act")³ imposes reduced carriage obligations on small and medium-sized systems. Specifically, pursuant to Section 614(b)(1)(A) of the Act, systems with 12 or fewer usable activated channels serving 300 or fewer subscribers are not subject to any commercial must carry requirements, as long as they do not delete any local broadcast signals from carriage.⁴ Cable systems with 12 or fewer usable activated channels serving more than 300 subscribers are required to carry at least three local commercial broadcast signals, assuming there are that many available. Systems with more than 12 channels are required to devote up to one-third of their usable channel capacity for must carry stations.⁵ The FCC proposes that small or medium-sized systems that receive multiple requests for carriage have full discretion to select the station(s) they will carry, subject only to the provisions of the Act regarding continued carriage of existing stations and carriage of duplicating network affiliates.

The Consortium fully supports the exemptions for small and

³ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 102 Stat. (1992).

⁴ Systems with 12 or fewer channels must carry at least one non-commercial educational ("NCE") station, regardless of subscribership. Systems with 13 to 36 channels must carry up to three NCE stations, while systems with more than 36 usable activated channels must carry all qualified local NCE stations. See Section 615(b).

⁵ Section 614(b)(1)(B).

medium-sized systems, and strongly urges the FCC to afford operators the maximum discretion allowable under the Act in selecting which signals to carry when confronted with multiple requests. The exemptions were placed in the Act in order to ease the administrative and operational burdens on small and medium sized systems, which generally lack the channel capacity and resources to comply with general must carry obligations. Denying such operators discretion in selecting which signals to carry would necessitate the implementation of a complicated selection criteria -- precisely the type of regulatory burden the exemptions were designed to eliminate. If the exemptions are to achieve their desired effect, then operators must be given the broadest possible discretion to choose which local signals to carry.

**The FCC's Definition of "Technically Feasible"
Must Include Financial Considerations**

The Cable Act requires that must carry signals be carried in their entirety, except where partial carriage is required or authorized under the Commission's sports blackout, network nonduplication or syndicated exclusivity rules. All must carry signals must be carried without material degradation and program-related material in the vertical blanking interval ("VBI") must be carried, to the extent "technically feasible." Cable operators may delete signal enhancements, such as ghost-cancelling, from the broadcast signal and employ such enhancements at their headends.⁶

Small system operators are not able to take advantage of the volume discounts typically offered large systems. Therefore, the fixed cost of equipment is comparatively higher for the small system operator. Moreover, with a much smaller subscriber base over which to spread its equipment and associated labor costs, the

⁶ Sections 614(b)(3)(A), 614(b)(3)(B) and 614(b)(4)(A).

economic impact of these increased expenditures will be far greater on small systems.

In fashioning standards for technical feasibility, it is essential that the FCC take into consideration not only the technical capabilities of operators and their systems, but also the financial limitations under which all systems, and in particular smaller systems, operate. The objectives of the Cable Act would not be served if cable operators are forced to meet carriage standards that would place an unreasonable burden on them, either technical or financial.

As for the specific standards to govern carriage obligations, the Consortium believes that the comprehensive standards adopted in the FCC's recent Cable Technical Report and Order⁷ would satisfy the requirements of the Act, as they require operators to maintain the proper equipment, make reasonable efforts and use good engineering practices to guard against signal degradation, and also to work with broadcasters to resolve problems affecting signal quality.

**The FCC Must Resolve Regulatory
Anomalies That Would Preclude the
Full Utilization of Must Carry Signals**

Under Section 614(h)(1)(C) of the Cable Act, a broadcast station is deemed "local" for must carry purposes on all systems within the station's Area of Dominant Influence ("ADI"). However, commercial stations carried pursuant to either must carry or retransmission consent remain subject to network nonduplication, syndicated exclusivity and sports blackout rules, even where the station demanding such deletions is not being carried on the cable

⁷ Report and Order, MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 2021 (1992), and Memorandum Opinion and Order, MM Docket Nos. 91-169 and 85-38, FCC 92-508, adopted November 10, 1992.

system.⁸ Thus, a station entitled to must carry based on its ADI could have some portion of its programming deleted at the request of a non-ADI station pursuant to the Commission's current network nonduplication and syndicated exclusivity rules.

This scenario poses a very real and present problem for cable operators. In fact, at least one member of the Consortium now confronts this regulatory anomaly. Southwest Missouri Cable TV, Inc. ("Southwest Missouri") operates a cable system in Monett, Missouri. Monett is situated within the Springfield, Missouri ADI, but is actually located closer (only 34.5 miles) to Joplin, Missouri, although not within the Joplin ADI. Under the carriage provisions of Cable Act, all of the broadcast stations in Springfield, including the ABC affiliate, KSPR, would be entitled to must carry, while none of the Joplin stations have must carry rights because of their non-ADI status. However, because KSPR is not significantly viewed in Monett under current FCC rules, the Joplin ABC affiliate, KODE, is entitled to both syndicated exclusivity and nonduplication protection against KSPR. This places Southwest Missouri in the untenable position of having to carry a station whose programming could very well be deleted.

Southwest Missouri's subscribers are the ultimate losers in this situation, as they would be denied the network programming they desire because of a peculiar regulatory anomaly.⁹ Obviously, such a result is completely at odds with Congress' stated goal to improve and expand cable service to the public.

To ensure that this regulatory anomaly does not work to the disadvantage of consumers, the Consortium urges the FCC either to create an exception to its nonduplication and syndicated

⁸ NPRM at 13.

⁹ This situation also places Southwest Missouri at a distinct disadvantage in negotiations with non-ADI station KODE for retransmission rights to its signal.

exclusivity rules for stations subject to must carry under the Act, or afford cable operators the discretion not to carry the signal of any ADI station that is subject to partial deletion by the exercise of another station's non-duplication or syndicated exclusivity rights. Conforming the rules in this manner is essential if the FCC is to avoid the severe disruptions and resultant subscriber dissatisfaction that would follow if must carry signals can be gutted by the exercise of present FCC rules and policies.

Southwest Missouri's operation in Monett highlights another gray area in the legislation. Under Section 614(b)(5) of the Act, cable systems do not have to carry duplicating stations. However, in the case of network affiliates, systems are required to carry the station affiliate whose city of license is closest to the principal headend of the cable system.

It is unclear whether a system can, or must, carry a closer non-ADI network affiliate over a more distant ADI network affiliate. Affording cable systems the discretion to choose which station to carry in such circumstances would have significant public benefits. For example, and as noted earlier, Southwest Missouri's Monett system is located in the Springfield ADI, although actually closer to Joplin. The system's subscribers have expressed a preference for receiving certain of the Joplin stations in addition to certain Springfield stations. In a situation such as this, Southwest Missouri, and all cable operators, should have the freedom to respond to the specific demands of their subscribers. Accordingly, in situations such as that faced by Southwest Missouri, cable operators should be allowed to carry either the closer non-ADI network affiliate, the more distant ADI affiliate, or both stations, free of network nonduplication rules. Again, the overriding purposes of the Act are not served if operators are prevented from responding to the expressed needs and interests of their subscribers by a mechanistic application of the rules.

**Implementing Must Carry and
Retransmission Consent on a Staggered Basis
Would Be Contrary to the Public Interest**

The FCC indicates that it does not anticipate delaying the effective date of the must carry rules (the Act requires implementing regulations to be issued by April, 1993) until the retransmission consent provisions become operational (i.e., October 6, 1993). However, the Commission will allow operators "a limited amount of time" to come into compliance with the new must carry rules.¹⁰

The Consortium strongly urges the Commission to delay the effective date of the new must carry rules until the retransmission consent provisions become operational. A staggered approach, such as that advocated by the FCC, would require systems to juggle their program line-ups and rate structures when must carry goes into effect, and then again when retransmission consent becomes effective. The end result will be unnecessary service disruptions and heightened consumer dissatisfaction, not to mention the added costs associated with a two-step process; costs with which many small systems may not be equipped to bear. A staggered approach could also result in increased copyright fees, as compulsory license royalty regulations treat a signal as carried for a full six-month reporting requirement if it is carried for any part of the period.

A staggered approach will only complicate the election process and needlessly exacerbate the potential service disruptions and related problems attendant to the implementation of must carry/retransmission consent. Delaying the implementation of must carry until the new retransmission consent rules are in place offers both cable operators and broadcasters a reasoned approach to

¹⁰ NRPM at 25-26.

must carry/retransmission consent elections, and thus constitutes the least disruptive, most consumer friendly and logical method for dealing with this issue.

**Cable Operators Must Be Given Sufficient
Advance Notice of a Broadcaster's Election**

In order to ensure a smooth transition to must carry/retransmission consent, the Consortium urges the Commission to require that broadcasters make their election at least 60 days prior to implementation of the new carriage requirements. Broadcasters' subsequent triennial elections should likewise be subject to at least 60 days prior notice. Such prior notice will enable cable operators to provide advance warning of carriage and rate changes to subscribers, and allow any necessary changes to be effectuated in an orderly manner.

The Consortium fully supports the FCC's proposal to require broadcast stations to place a notarized copy of their election statements in their public files, and to send a copy to every cable system within the station's market. The Consortium would suggest the further refinement that such notices be sent registered mail, for receipt no later than 60 days prior to the effective date of the election. In the event a station fails to notify one or more cable systems or fails to make timely notifications, the status quo between that station and all cable systems in its market will remain unchanged until 60 days after proper notice has been made to all relevant cable systems.

Conclusion

The imposition of costly regulation on small system operators will likely stifle the growth of cable into less populated areas, and could undermine existing service in such areas, unless specific

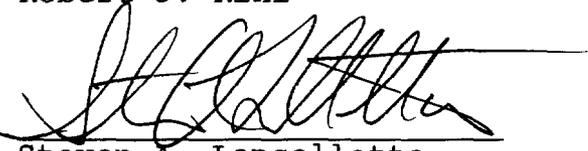
measures are adopted to ease the small operator's burden. With this objective in mind, the Consortium urges the Commission to afford small system operators the broadest possible discretion in carrying out the Cable Act's carriage requirements. Any technical standards adopted by the Commission must take into account the financial limitations under which small systems operate, and minimize the economic burdens on small system operators. Current FCC rules must be conformed to the Act's carriage requirements so that all operators can make full use of must carry signals. Finally, must carry/retransmission consent should be implemented in a uniform fashion with sufficient advance notice to the cable subscriber. This is necessary to ensure a smooth transition to the new regulatory regime with minimal service disruptions and consumer dissatisfaction.

Respectfully submitted,

**CONSORTIUM OF SMALL CABLE
SYSTEM OPERATORS**

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January 4, 1993

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EXHIBIT 1

Belhaven Cable TV, Inc.

Clear Vu Cable

Rural Missouri Cable TV, Inc.

Southwest Missouri Cable TV, Inc.

CERTIFICATE OF SERVICE

I, Elizabeth Sobo, a secretary in the law office of Rini & Coran, P.C., hereby certify that I have on this 4th day of January, 1993, sent via hand delivery, a copy of the foregoing Comments to the following:

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