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UNITED STATES DEPARTMENT OF COMMERCE
FEDERAL COMMUNICATIONS COMMISSION

In Re: Implementation of the Cable Television Consumer Protection and Competition Act of 1992

Rate Regulation

MM Docket No. 92-266
FCC 92-544

COMMENTS OF THE CITY OF MUSKEGON, MICHIGAN PURSUANT TO 47 CFR PART 76, AS REQUESTED IN THE FEDERAL REGISTER, VOL. 58, NO. 1, 01/04/93

The City of Muskegon, Michigan, is a municipality of approximately 40,000 persons, located on the shores of Lake Michigan, on the western side of Michigan's lower peninsula. Muskegon is located approximately 150 miles from Detroit, and 150 miles from Chicago.

The Muskegon area is a very representative sample of America both in its strengths and weaknesses. Muskegon rose to prominence as a major manufacturing center, first of lumber, and later of heavy industrial products such as automotive components, piston rings, and even military hardware. The City of Muskegon is the core of a metropolitan area of approximately 160,000 people. The City's population, according to the 1990 census, is 70% non-Hispanic white, 27% Black, and 3% consisting of other minority groups, the largest of which is Hispanic. Throughout this brief, the reference to "Muskegon" refers to the City of Muskegon, not the metropolitan area, or the County. The comments offered here are believed to be consistent with those felt by neighboring municipalities.

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Muskegon currently has a contract with WestMarc Communications, a wholly-owned subsidiary of Telecommunications, Inc. ("TCI"). The City of Muskegon desires proposed regulations which are fair, flexible and simple. The City offers these specific comments about these general areas:

The comments correctly note the average monthly rates have risen 29% since 1984, and that the average monthly cable rate has grown almost three times as fast as the Consumer Price Index (CPI). 58 Fed. Reg. 49 (1992).

Muskegon offers these comments, solicited by the Commission, starting from the general, then to the more specific.

First, Muskegon is troubled by the Commission's reference, at 58 Fed. Reg. 49 (1992), to its uncertainty about Congressional intent, whether it was to lower existing rates, or simply to slow the rate of increase.

It should be absolutely clear, from the 1992 Act, that Congress meant to reduce existing rates. A Commission inquiry which focuses upon lowering the proposed rate of increase, in our view, misses the mark, and misconstrues Congressional intent.

Muskegon offers comments in three specific areas--rate regulations, regulation of services, and miscellaneous items.

I -- PROPOSED RATE REGULATIONS

The Commission proposes two general types of rate regulations, "benchmarking", and "cost-of-service". Of these two, the Commission's tentative conclusion is to opt for the "benchmark" system.

Muskegon sees several defects in use of the benchmarking system. First, it seems to accept the current rates, which are already too high. Second, the "benchmarking" date would probably be one to be fixed in the future, which would simply encourage the cable operators to increase their rate, in anticipation of that date. Third, Muskegon believes smaller communities will be penalized by a "benchmarking system", which will probably be weighted more toward rates set in larger cities or, perhaps, on the coasts, where all costs tend to be higher. (Should the benchmarking system take into account these regional and demographic factors, the objection might likely be withdrawn.)

Fourth, benchmarking seems to set a "floor", but not a "ceiling". While rates above the benchmark are considered to be unreasonable, the rules appear to contemplate no sanction. What, exactly, is the enforcement mechanism?

It is naive to think that operators operating <u>under</u> the benchmark system would not quickly raise their rates to the proposed benchmark system. This could particularly affect smaller communities--"slower" media markets.

In fact, the primary recommendation for the "benchmark" system is that it appears to be more convenient for the FCC and communities. However, it seems like the communities should be the final arbiter of what is most convenient for them.

Based upon all these factors, Muskegon would tend to recommend a cost-of-service approach.

There do appear to be some middle grounds between the two approaches, which could address some of the concerns that we have about the benchmarking system. For example, periodic review of the benchmarks, with an examination of actual costs, and enforceable rules requiring financial disclosures, could resolve some of our concerns about the benchmark system. Second, a regional approach towards examination of costs of service could make this approach less burdensome for smaller communities. (To this end, Muskegon suggests that the Commission encourage joint action, such as we already have in our community, but not require it. Forced marriages rarely work.)

II -- SERVICE STANDARDS

The Commission has also solicited comment about service standards. Muskegon generally favors a simplified, enforceable service regulation format, rather than to have a Byzantine regulatory formula which defies quick understanding. For example, Muskegon is not offended by the National Cable Television's Association ("NCTA") customer service standards, which are "only" four pages long. However, the simpler, and less specific the guidelines, the more they should be enforced.

For example, the NCTA standards should not be waivable.

Muskegon is not troubled by the sometimes vague, but also flexible language in the NCTA standards, such as those which require "clear, concise, and understandable" billings. These standards should allow local communities flexibility to adopt a stricter standard.

The Commission has questioned whether it should set minimum national standards, or to send them to communities as suggestions for their consideration. Muskegon would recommend a national, required standard which set "floor" for regulations, but allows communities to be more strict, should they desire.

III -- MISCELLANEOUS COMMENTS

Muskegon is greatly troubled by the proposed "basic tier" structure. On its surface it seems like a good idea, allowing persons the option of six channels and approximately one-half of the basic monthly rate local residents currently pay.

Beneath the surface, there are some very troubling issues. First, we must consider the proposed basic channels offered in Muskegon. All six are relatively accessible through antenna transmission. The first question, then, is what cable is offering its customers for the service. Muskegon will admit that there is probably a generally higher quality and more consistent delivery of signals, but the cable connection seems to offer no new viewing opportunities to Muskegon viewers.

Second, the proposed six channels include the three principal networks, plus a local PBS station, a very low powered, infrequently watched, channel. Thus, the "expanded basic" package really adds very little to a normal antenna-generated television menu.

The six channels are a workable number, if they were the right six channels. However, it would appear these six are not workable.

Our suspicion is, that the industry, by moving the more-watched services from the basic tier but regulated portion, to the more sophisticated, but less regulated portion, seeks to avoid the type of regulation Congress intended in the 1992 Act.

Muskegon supports the method of alternate dispute resolution, for leased access petitions, 50 Fed. Reg 67 (1992), so long as they are proven to be quicker and less cumbersome. Unfortunately, promises of the benefits of arbitration are frequently exaggerated.

Muskegon takes no position about how the regulations should be tailored towards smaller communities, leaving it to the smaller communities to make those decisions.

Finally, Muskegon urges the Commission to make its decisions with Congressional intent firmly in mind. Muskegon is concerned that the Commission is straying from what Muskegon perceives as the clear Congressional intent to reduce these rates by introducing more government intervention. Muskegon is troubled by the Commission's questioning whether Congress really meant to reduce rates, or simply to slow the increase. Muskegon is also concerned by the Commission's questioning whether Congress really meant to allow municipalities to unilaterally adopt customer service ordinances which protected their citizens. Again, this seems, quite clearly, to be Congress's intent.

Muskegon is not unmindful of the necessity of allowing the free enterprise system to work, and to allow companies to make reasonable

profits, but it would remind the Commission that the industry has been the beneficiary of a fairly small amount of regulation, which resulted in the excesses which prompted the 1992 Act. It should make its final rules with that in mind.

Respectfully submitted,

PARMENTER O'TOOLE

Dated: January 22, 1993

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