RECEIVED
JAN 28 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

CITY OF Oxnard

OFFICE OF THE MAYOR • 300 WEST THIRD STREET • OXNARD, CA 93030 • (805) 385-7428
(805) 385-7430
DR. MANUEL M. LOPEZ, MAYOR FAX • (805) 486-9462

January 26, 1993

The Honorable Donna R. Searcy
Secretary of the Federal Communications Commission
Washington, D.C., 20554

Dear Secretary Searcy:

As Mayor of the City of Oxnard, California I welcome this opportunity to submit comments in response to the Commission's Notice of Proposed Rulemaking (MM Docket 92-266).

1. INTRODUCTION

The City of Oxnard is located in western Ventura County, facing the Pacific Ocean. It is approximately 65 miles northwest of the City of Los Angeles, 35 miles south of the City of Santa Barbara, and 6 miles south of the county seat of Ventura. Over-the-air reception for Oxnard is poor due to the natural barrier created by the Santa Monica Mountains separating Oxnard from the Los Angeles basin. As a result, the city's 146,432 population is essentially cable-dependent with penetration in local homes at approximately 73%.

The City currently has a franchise agreement with only one provider, Jones Intercable, Inc. Since no other companies have applied to the City for new franchises, no effective competition currently exists.

2. COMMENTS

A. Section II, A, 3(b) **Regulation of the Basic Service Tier by Local Franchising Authorities and the Commission**

1. Does the FCC have independent authority to initiate regulation of basic cable services?

The FCC has interpreted Section 623 of the Act to state that only a certified local franchise authority can regulate the rates for basic cable service unless their certification is disallowed or revoked. They have also concluded that the only instance where the FCC could act is when a local franchise operator has applied for certification and their

No. of Copies rec'd 0+9
List A B C D E

RECEIVED

JAN 28 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

application is revoked or disallowed. If this interpretation is to prevail, the FCC would have no power to Act in those areas where the local franchise authority chooses not to apply for certification, without respect to the rates charged by the cable operator. This would leave the FCC powerless to extend to subscribers, in areas where no effective competition exists, the protection the ACT intended to provide. We find it hard to believe that this is what Congress had intended.

We suggest that the FCC should take a more liberal interpretation of this section and establish regulations that would extend the their authority into areas where the local franchise operator refuses to apply or is unable to meet the provisions of the certification. Conversely, the FCC should exercise caution not to assume regulatory power unless a local franchise authority refuses to apply for certification. To avoid conflicts of this nature, the FCC could chose to notify the local authority of their intent to assume regulatory authority over the local cable operator unless they decide to apply for certification. The authority could be transferred to the local authority if it later decides to apply for certification.

The FCC should not override decisions taken at the local level and should not become involved in resolving disputes between the cable operator and the local authority. Nor should it override a rate decision made by a local authority that can show it applied the appropriate formulas in establishing a reasonable basic tier rate.

2. <u>Must there be evidence of the lack of effective competition before a local authority can be certified to regulate the basic service rate?</u>

We agree with your initial finding that the local franchise authority must provide evidence of the lack of effective competition as a basis for certification as a regulatory authority. Clearly, it is the intention of the Act to regulate basic cable rates in the absence of effective competition. While we also agree that the local authority may be in the best position to test whether or not effective competition exists, the procedure specified in the Act for gathering the necessary information to make this determination may prove to be a burden on local staff. It is for this reason that we urge you to develop a standard and simple form to be used by all local authorities in the certification process.

Challenges by cable operators to a local determination that no effective competition exists in the franchise area could also place unnecessary burdens on the local authority.Accordingly, we urge you to hear challenges as a part of the certification process rather than as a part of a subsequentchallenge to the certification. This would enable the FCC to meet the 30-day deadline established in the Act. The FCC could establish a procedure where cable operators would have the ability to comment prior to the 30 day deadline.

3. How should the FCC balance the rate regulations for the basic tier with possible increases in the expanded service tiers?

Undoubtedly, it was the intent of the Act to provide regulatory authority for the establishment of a low-priced basic service tier. The question becomes whether, or not, regulation on the basic service tier would require the FCC to permit more flexibility in pricing for higher priced tiers. How the regulations deal with this issue is, in our opinion, one of the most challenging tasks facing the FCC and local regulatory authorities.

The FCC should try to protect consumers from unreasonably high rate increases that may result from the new retransmission consent fees that may be charged by some local television broadcast companies. If the cable operator is allowed to pass the entire amount of the retransmission fee onto the subscribers, there may not be any incentive on the part of the cable operator to seek alternatives. Moreover, we can see situations where the addition of retransmission fees could actually cause the basic service rate paid by subscribers to increase, instead of decrease as the law intended.

Although the statute defines retransmission fees as one of seven factors that the FCC must consider when establishing reasonable rates, we do not see where it was Congress' intent to dictate how the FCC is to balance these factors in its rate calculations. Accordingly, it would appear that the FCC has the flexibility to assign different weights to each of the seven statutory goals to come up with a equitable basic service rate. Since retransmission consent fee is only one of seven statutory factors, the FCC could decide to place less weight on this factor than on the other six.

It is for these reasons, that we agree with the FCC's tentative conclusion that the statute proposed to allow the FCC sufficient flexibility in establishing a "standard of reasonableness" for basic tier rates. The FCC should ensurethat the standards used to establish a basic service rate do not encourage increases in the extended service tier.

B. Section II, A, 3(c) **Regulation Governing Rates of the Basic Service Tier**

Benchmark versus cost-based approach to regulation of the basic service tier.

Section II, A, 3(c) paragraph 34 of the Notice of Proposed Rulemaking defines the benchmark approach as a "price against which a given cable system's basic tier rate would be compared." Under this approach, the FCC would establish a rate, or a formula which would be used to calculate such a rate. The section goes on to describe three possible alternatives in establishing benchmark rates: 1. Rates charged by systems facing effective competition; 2. Past regulated rates; and 3. Average per-channel rates charged in 1992.

We strongly support the use of a benchmark alternative over a cost-based approach to establish an equitable basic service rate. It is interesting to note that in recent conversations with a representative of our local cable TV carrier we learned that their company also supports the establishment of a benchmark rate over a cost-based approach. This is due to the difficulty in establishing which costs would be allowable and the burdens it would place on franchise authorities and cable systems to audit the system.

Although we agree with your conclusion that any of the three benchmark alternatives could achieve reasonable rates at lower costs and less administrative burdens than the cost-of-service method, we feel that a benchmark rate based on rates charged by systems facing effective competition to be the most equitable of the three. This opinion is based on our belief that it was the primary intent of the Act to protect subscribers from any cable system that is not subject to effective competition from rates that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition. In fact, Congress felt strongly enough about this point to make the absence of effective competition a condition of

RECEIVED

JAN 28 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

certification of a local franchise authority. What better way to ensure that rates in areas where there is no effective competition are equitable, than to base the benchmark on rates charged in areas where effective competition does exist. We also agree with your conclusion that regulation needs to include a "price cap formula" that would limit how quickly systems with rates below the benchmark could raise their rates to the benchmark price. We find that your proposal to tie increases in the benchmark rate to increases in a related service price index rather than a broad based consumer price index to be the most equitable. Increases in industries such as indoor entertainment, museum admissions, amusement parks, professional sports tickets, and other related entertainment industry prices could be included in the index. In our case, a related service price index of the southern California area would be most representative and easiest to compile.

I would like to take this opportunity to thank you for allowing us the opportunity to comment on your proposals for rulemaking. I hope that you find our comments useful to you in finalizing these regulations.

Sincerely,

Dr. Manuel M. Lopez,
Mayor