

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of Sections 11 and 13 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
)
Horizontal and Vertical Ownership)
Limits, Cross-Ownership Limitations)
and Anti-trafficking Provisions)

MM Docket No. 92-264

JOINT COMMENTS OF THREE RURAL TELEPHONE/CABLE COMPANIES

The rural telephone companies identified below¹ (the "Companies" or "Joint Commenters") by counsel and pursuant to Section 1.415(a) of the Commission's Rules and Notice of Proposed Rulemaking, MM Docket No. 92-264, FCC 92-542, released December 28, 1992, hereby submit their Comments with respect to the Commission's proposals relating to cross-ownership of multichannel multi-point distribution services ("MMDS") and satellite master antenna television services ("SMATV") systems.

¹ Hinton Telephone Company, pursuant to a Section 214 rural exemption grant, presently offers video programming via traditional coaxial cable and is also a MMDS licensee. Hinton desires to employ the most efficient delivery technology to serve its rural customers. Oklahoma Western Telephone Co. is a MMDS licensee. It was granted a Section 214 rural exemption on July 24, 1992; review by the Commission is pending as a result of a Petition for Review filed by CableVision of Texas, Inc. Oklahoma Western also seeks to employ the most efficient video technology to serve its rural subscribers. Fort Mojave Telecommunications, Inc. was granted a Section 214 exemption on July 25, 1990. It believes that MMDS is a viable technology (in addition to traditional coaxial cable) for video programming delivery to the Fort Mojave Indian Reservation, which it serves.

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Preliminary Statement

The Commission instituted this proceeding to implement the ownership provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). The Companies are rural telephone companies which have been granted authority to provide cable service to their communities pursuant to Section 613(b)(3) of the Communications Act of 1934, as amended, and Section 63.58 of the Commission's Rules. The Companies serve sparsely populated, primarily rural areas. Fort Mojave Telecommunications is authorized to serve the rural and sparsely populated Fort Mojave Indian Reservation. The Joint Commenters direct their comments herein specifically to the Commission's proposals regarding the implementation of Section 11 of the 1992 Cable Act, codified at 47 U.S.C. 533(a). This section generally prohibits ownership of both wire-line cable service and MMDS or SMATV within the same service area. But this section further states that the Commission shall waive the prohibition for all existing MMDS and SMATV systems which are owned by a cable operator on the date of enactment. In addition, the Commission is empowered to waive the prohibition to the extent the Commission determines it necessary to ensure that all significant portions of a franchise area are able to obtain video programming. These provisions went into effect on December 4, 1992.

In re Amendment of Parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, Second

Report and Order, 6 FCC Rcd 6792 (1991), the Commission amended 47 C.F.R. § 21.912 to adopt new MMDS/cable cross-ownership rules prohibiting common ownership of a cable system and a MMDS system in the same service area, unless that cable company is not the only cable company providing service to the community. Cross-ownership situations existing prior to the effective date of the rules were grandfathered. The Commission also adopted Section 21.912(d), which exempted rural cable companies from this restriction, unless an MMDS entity is already operating on four channels in the area. Eligibility for the exemption appears to be otherwise coextensive with the eligibility for a telco/cable rural exemption under Section 63.58 of the Commission's Rules. These rules became effective on January 2, 1992. In the instant NPRM, the Commission has tentatively concluded that its recently promulgated rules as outlined above are consistent with and effectively implement the cross-ownership provisions of the 1992 Cable Act.

Discussion

The Joint Commenters submit that the Commission's tentative conclusion is well founded. The current MMDS cross-ownership rules appear to fulfill the requirements of the 1992 Cable Act, with two clarifications and one substantive change. First, the Commission should clarify that the rural exemption adopted in Section 21.912(d)(1) effectively exempts rural telephone companies providing cable service under a Section 63.58 rural exemption. Second, the Commission should clarify that the cross-ownership provision of Section 21.912 prohibits the issuance of an authorization for MMDS service to an existing wireline cable operator for its

franchise area and does not prohibit a MMDS licensee from obtaining a traditional cable franchise in its community where competition in cable services already exists.

The current cross-ownership rule should be amended substantively to no longer exclude rural cable systems from the cross-ownership exemption where a four-channel MMDS competitor is already present, as currently required by the rule. As demonstrated below, the public interest is best served by allowing rural cable companies to use such video signal delivery technologies as may best serve the unique needs of rural communities most effectively and efficiently; rural companies should not be arbitrarily limited.

Prior to 1981, the Commission required telephone companies desiring to provide cable service to their rural communities to file petitions requesting waiver of the Commission's *telco/cable cross ownership rules*. Waivers were available in the first instance because rural areas had insufficient customer bases to attract traditional cable providers. The large majority of these petitions were unopposed and, upon a proper showing, were routinely granted. However, the Commission determined in *In re Elimination of the Telephone Company - Cable Television Cross-Ownership Rules*, 50 RR 2d 845 (1981), that the waiver petition process, even when unopposed, placed "considerable burden(s) upon both rural telephone companies and the Commission." 50 RR 2d 851. The expense of obtaining legal, engineering and other assistance, *inter alia*, was deemed too great an impediment to rural community access to broadband services. Therefore, the Commission removed the waiver requirement for qualifying rural communities.

By granting cable service exemptions to rural telephone companies the Commission has recognized that provision of cable service by these companies serves the public

interest by encouraging the extension of cable service into areas which otherwise may go unserved due to extraordinarily high per-customer costs and other impediments. However, while the per-customer costs for rural cable systems are generally higher than costs faced by urban cable systems, the costs for rural systems are also highly variable. Thus, rural cable companies have low-cost and high-cost customers. High-cost customers are generally hard-to-reach, remotely located customers. Wireless technology may be a very efficient delivery system for these customers, while traditional coaxial service may be best for low cost customers. Limiting these systems to one technology or the other would keep per-customer costs for rural systems artificially high. Thus, restricting rural systems to coaxial technology where a wireless provider already exists would actually have an anti-competitive effect by forcing both systems to face artificially high costs for certain customers. Such systems are not in competition, they merely serve different customer groups. As demonstrated above, the Commission has determined that service to rural areas should not be inhibited, while the U.S. Senate has also recently recognized the unique needs of rural telephone companies.² These clear statements of public policy should not be viscerated.

Moreover, the Commission should clarify its grandfathering provision to note that MMDS licensees may provide franchised, traditional cable service to the same community where competition in traditional services would thereby exist. Thus, a MMDS licensee would be allowed to overbuild an existing traditional cable provider where the local franchise determines that such competition is in the public interest and grants a franchise. Similarly, if a MMDS

² A Senate bill to transfer 200 MHz of Federal spectrum to private use would utilize spectrum auctions, but would set aside one license for rural telcos when an auction is used to assign spectrum for services that compete with a telco in a rural area of fewer than 2,500 residents. Such telcos would pay a fee equal to the average amounts paid for auctioned licenses.

licensee does overbuild, the now-competitive cable operator would be free to apply for and receive a competitive MMDS license for the community. Rural operators, including Indian-controlled telecommunications entities, should be free to employ the most efficient and effective video delivery technology, be it "wired" or "wireless."

Finally, the Commission has tentatively concluded that only cable operators with MMDS licenses prior to January 2, 1992 will be grandfathered. However, the 1992 Cable Act also provides that existing cross-ownership situations should be grandfathered, but has an effective date of December 4, 1992. The Joint Commenters respectfully submit that the only interpretation that is consistent with both the 1992 Cable Act and allows continuity in this area is to adopt the effective date of the 1992 Cable Act as the "cut-off" for the grandfathering provision.

Conclusion

Small rural cable companies provide greatly needed service to their communities, and face generally high and widely-variable per-customer costs. In these circumstances, the MMDS cross-ownership exemption for rural systems is mandated by the public interest and should be maintained. However, the Commission's current formulation of that rule operates to limit the signal delivery options for these systems when faced by wireless competition. Allowing both wireless and traditional rural cable systems to choose the most efficient delivery system will reduce rates and otherwise promote the public interest. Therefore, the Commission should maintain the rural exemption to the cross ownership rules even where wireless competition is present.

Respectfully submitted,
JOINT COMMENTERS

By: David A. Irwin
David A. Irwin
Michael G. Jones

Their Attorneys

Irwin Campbell & Crowe
1320 18th Street, N.W.
Suite 400
Washington, D.C. 20036

(202) 728-0400

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CERTIFICATE OF SERVICE

I, Lorena L. Ferry, hereby certify that on this 9th day of February, 1993, a copy of the foregoing "Joint Comments of Three Rural Telephone/Cable Companies" has been served either by hand delivery or first-class United States mail, postage prepaid, upon the following:

Jacqueline Chorney*
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8002
Washington, D.C. 20554


Lorena L. Ferry

* Denotes hand delivery