

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)
)
Rate Regulation)

MM Docket 92-266

To: The Commission

REPLY COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

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REPLY COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

The Small System Operators urge the Commission to adopt separate standards and procedures for the regulation of small systems' rates. For the reasons set forth in the Comments filed by the Small System Operators in the captioned proceeding, special treatment for systems with fewer than 1,000 subscribers in a franchise area is warranted.

I. "SMALL SYSTEM" SHOULD BE DEFINED TO INCLUDE RURAL SYSTEMS SERVING SPARSELY POPULATED AREAS

Many commenters in the captioned proceeding supported special treatment for "small systems," ^{1/} but there is little agreement on the definition of

^{1/} See, e.g., Comments of Ad Hoc Rural Consortium at 2, Comments of Consortium of Small Cable System Operators at 4, Comments of Jones Intercable, Inc., et al. at 55-56, Comments of the United States Telephone Association at 16, Comments of the Community Antenna Television Association at 17.

those "small systems" that should qualify for such treatment. 2/ The Small System Operators urge the Commission to craft a definition based on the characteristics of small system operation which justify special treatment under rate regulation. Systems serving areas with less than 1,000 subscribers are entitled to "small system" treatment due to their small subscriber base in any given community and high cost for construction and operation attributable to many factors, including: large geographical area covered by systems, low density (measured in subscribers per mile), and lack of volume discounts on programming. As outlined in the Comments filed by the Small System Operators in this proceeding, the unique problems stemming from low density service areas and high construction and operation costs of systems with fewer than 1,000 subscribers warrants special treatment for these small systems. For purposes of the rate regulation rules, the definition of "small system" should not be too broad (to include systems which do not face the unique problems that justify special treatment) nor too narrow (to exclude from the special treatment systems which simply cannot afford further restrictions on already limited revenue streams or the tremendous administrative burdens inherent in rate regulation). To this end, the Small System Operators have urged adoption of a definition of "small system" that would apply only to those very small systems serving fewer than 1,000 subscribers. The 1,000 subscriber limitation on "small systems" is consistent with the FCC's stated goal of reducing rate regulation burdens on systems of this size. 3/

2/ See, e.g., Comments of Consortium of Small Cable System Operators at 4, n.13, Adelphia Communications Corporation et al. at 111, Comments of Community Antenna Television Association at 24, Comments of Mountain Cablevision at 1.

3/ NPRM at ¶ 128.

As a further refinement of the definition of "small system", the Small System Operators support the Comments of Adelphia Communications Corporation, et al., which suggest that the number of subscribers in a given franchise area should be used rather than the number of subscribers per headend for purposes of determining whether a given area is entitled to "small system" treatment. 4/ Only those very small franchise areas with less than 1,000 subscribers should be deemed to be "small systems" for purposes of rate regulation. As observed by Adelphia, pursuant to Section 623 of the Act, Congress intended that rate regulation be administered on a community unit basis rather than a system-wide basis. 5/ Therefore, it is clear that the burdens associated with rate regulation also should be measured at the community unit level. 6/ Adelphia is also correct in pointing out that a definition based on number of subscribers per headend might discourage technical upgrades such as interconnection of systems with fiber optic cables. Indeed, systems which are currently interconnected would have a strong incentive to establish separate headends, thereby increasing the cost of service to be recovered from subscribers.

Although the Small System Operators do not oppose a broader definition as suggested by some commenters (encompassing systems with up to 10,000 subscribers), 7/ it is important that the unique characteristics of systems serving franchise areas with fewer than 1,000 subscribers not be lost in arguments for the broader exemptions. For example, density (measured in number of homes passed per mile) for most systems serving franchise areas with fewer than 1,000

4/ Comments of Adelphia Communications Corporation, et al. at 111.

5/ Comments of Adelphia Communications Corporation, et al. at 111.

6/ See id.

7/ See Comments of Consortium of Small Cable System Operators at 4, n.13.

subscribers tends to be significantly lower than density for systems serving franchise areas with 10,000 subscribers. The average density for the Small System Operators' systems serving less than 1,000 subscribers is 38 homes passed per mile. This number is striking when compared with the national average of 87 homes passed per mile. 8/ Similarly, small systems are less able to achieve economies of scale. The imposition of any additional administrative burdens impacts disproportionately on systems serving franchise areas with fewer than 1,000 subscribers, which can least afford added expenses.

Other commenters suggest that "small systems" be defined not only based on size of the system, but also based on whether they are independent or affiliated with other systems. 9/ However, whether an operator of a small system happens to be affiliated with other systems, small or large, it will experience the very same problems and difficulties as an unaffiliated small system.

The Consortium of Small System Operators, a group of independent small system operators, argues that only independently-owned systems should qualify for special consideration under the rate regulation rules. 10/ There is no reason to penalize small systems which happen to be affiliated with other systems by categorizing them as "MSO's" and denying their eligibility for special consideration under the rate regulation rules. The language of the 1992 Cable Act specifically identifies systems with less than 1,000 subscribers as appropriate for special treatment under rate regulation rules. The statute, however, does not

8/ 1992 Cable & Station Coverage Atlas at 5.

9/ See, e.g., Comments of Consortium of Small Cable System Operators at 4, n.13; Comments of the National Association of Telecommunications Officers and Advisors at 88-89.

10/ Comments of Consortium of Small Systems Operators at 4, n.13.

discriminate between independently owned small systems and those owned by affiliated entities. Moreover, there is little danger that this definition of "small system" for purposes of the rate regulation rules would significantly benefit large MSO's. Operation of small systems in rural areas by large MSO's is a small fraction of their operations -- in fact, they have intentionally shied away from providing service to these less profitable, low density areas.

II. THE FCC SHOULD REQUIRE FRANCHISE AUTHORITIES TO SEEK JOINT CERTIFICATION WHERE MULTIPLE FRANCHISE AUTHORITIES REGULATE THE SAME CABLE SYSTEM

Many commenters in the captioned proceeding suggest that it would be appropriate for the Commission to permit franchise authorities to seek joint certification to regulate rates. ^{11/} The Small System Operators urge the Commission not only to encourage, but to require, franchise authorities to seek joint certification where separate certification would result in more than one franchise authority having jurisdiction to regulate the rates charged for the uniform programming services provided by a single headend. The vast majority of the Small System Operators' headends serve multiple franchise areas.

Often the configuration of a system is such that the Small System Operator's cable will be routed through several very small communities in order to connect several larger towns which are part of the Operator's system. The Small System Operators generally make cable service available to residents of these small communities that are passed. Although the numbers vary somewhat, the total number of subscribers for one of these areas may be less than 30 total subscribers! Under the rate regulation scheme as currently proposed, the local franchise authority for these "in-between" areas through which a system happens

^{11/} See, e.g., Comments of North Reddington Beach at 2-4.

to pass has every bit as much authority to regulate the system's rates as the franchise authorities in the larger towns that the system is designed to serve.

The requirement that these franchise authorities coordinate their rate regulation requirements (both substantive and procedural) by seeking joint certification would clearly reduce administrative burdens on small systems and on the FCC. It would be more efficient for small system operators to deal with one local rate regulator per system than multiple regulators. Administrative requirements would be greatly reduced (e.g., the overall number of filings would be less, forms of filings would be consistent, entire systems would be regulated in a consistent manner, and lower administrative costs of compliance with rate regulation requirements could be spread over entire system's subscribers). Furthermore, the notion that uniform rates are required throughout a system's geographic area, as suggested by the Commission in the NPRM, 12/ is mutually exclusive with the practice of permitting individual franchise authorities within a system to separately regulate rates. Joint certification of franchise authorities would also reduce the flood of certification requests flowing to the FCC, resulting in more rapid and efficient resolution of certification requests.

III. THE COMMISSION MUST ADOPT A SEPARATE BENCHMARK FOR SYSTEMS WITH LESS THAN 1,000 SUBSCRIBERS

Adoption of an industry-wide, per-channel benchmark for cable rates would unfairly impose upon small operators the expensive process of cost-of-service proceedings. If, for example, the Commission were to adopt a \$1.00 per channel benchmark for basic and cable programming service, a large, metropolitan system offering 30 channels on basic and a tier for a total price of

12/ NPRM at ¶ 112.

\$27.00 would not have to reduce rates at all because the presumptively reasonable benchmark price would be \$30.00. On the other hand, a small, rural system offering only 19 channels on basic service (with no cable programming tier available and no technology in place to offer tiered programming) for the same \$27.00, would have to slash rates by 30 percent in order to meet the presumption of reasonable pricing. ^{13/} This is not to suggest that per channel benchmarks are inappropriate. Indeed, it is absolutely necessary to establish benchmarks on a per channel basis because of the cost of offering each channel. However, comparison of the large 30-channel system with the small 19-channel system demonstrates the need for a separate benchmark for smaller systems.

In addition to other problems that would be created by an industry-wide benchmark, to the extent that small operators are not given additional leeway with respect to the establishment of benchmark rates, many of their marginal operations will be unable to meet the requirements of their bank loans. As mentioned in previous Comments filed by the Small System Operators, small systems are often highly leveraged. These systems generally do not turn a profit, but spend their income on debt service and other operating costs. Because of their marginal existing operations, any limitations on future rates will likely put many of these systems in technical default on their loan agreements, which generally establish cash flow-to-debt ratios.

In their Comments in the captioned proceeding, the Small System Operators suggest that the separate benchmark for small systems be adjusted upward by 20 percent for those very small systems with less than 500 subscribers

^{13/} The technical inability of many small systems to offer cable programming tiers provides additional support for the establishment of a separate benchmark for small systems. In many cases, every single channel offered by a small system will be subject to the more stringent basic rate regulation since no tiers are offered.

and also for systems serving areas with density of less than 30 homes passed per mile. The Small System Operators also support other commenters' suggestions that additional graduated upward adjustments would be appropriate for smaller systems with higher capital costs, less than 20 homes passed per mile, greater proportion of underground construction, difficult terrain covered by a system, and other factors which would increase the cost of providing service. 14/

In addition to separate benchmarks, small systems require an alternative, simplified showing for cost-of-service regulation. As suggested by Jones Intercable, Inc. et al., a small system with rates exceeding the benchmark should be permitted to make a simplified showing that it is not making an undue profit under its current rate structure in lieu of a full-blown cost-of-service proceeding. 15/

IV. COMPLAINT PROCEDURES FOR CABLE PROGRAMMING RATES

The Small System Operators suggested in their initial Comments in the captioned proceeding that complaints regarding cable programming rates be filed initially with the franchise authority, which would screen them. Only those complaints setting forth a prima facie case of unreasonable rates would be forwarded to the Commission. In addition to these requirements, the Small System Operators support the thrust of the Comments filed by the Community Antenna Television Association ("CATA") with respect to cable programming rate complaints. CATA, which correctly anticipates much consumer confusion regarding rate structures and the many new requirements under the 1992 Act, recommends adoption of procedures whereby complaints could be resolved on a

14/ See, e.g., Comments of Community Antenna Television Association at 18-19.

15/ Comments of Jones Intercable, Inc., et al. at 57.

local level rather than requiring that complaints be filed initially with the FCC in Washington. Any complaint regarding cable programming services should be sent first to the franchise authority and be served on the cable operator. If the franchise authority believes that a prima facie showing has been made, the franchise authority should direct the operator to respond to it in writing, explaining the law and its strategy for compliance. 16/ If, after having received the response, the subscriber still wishes to proceed with the complaint, the franchise authority would forward it to the FCC along with the cable operator's response. 17/ This approach would conserve Commission resources by reducing the number of complaints to be examined by the Commission. Because of the sweeping changes that will result from implementation of the 1992 Cable Act, many subscribers will file complaints simply out of confusion and/or frustration stemming from the many changes that will necessarily occur in their cable service. Under the complaint procedures recommended by CATA, complaints based on misunderstanding of the new law may be resolved by the franchise authority or the cable operator without Commission intervention or involvement.

V. CONCLUSION

Systems with less than 1,000 subscribers in a franchise area should have presumptively reasonable rates. When rates for systems with less than 1,000 subscribers are challenged, there should be flexibility built into the

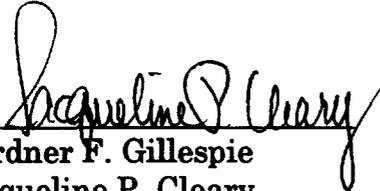
16/ Comments of Community Antenna Television Association at 33.

17/ Id.

reasonable rate benchmark for small systems in recognition of their high costs and limited ability to recover those costs due to their small subscriber bases.

Respectfully submitted,

COALITION OF SMALL
SYSTEM OPERATORS

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NAME OF OPERATOR	TOTAL # OF SUBSCRIBERS	TOTAL # OF COMMUNITY UNITS	TOTAL # OF STATES SERVED	TOTAL # OF HEADENDS	# OF HEADENDS WITH LESS THAN 1,000 SUBSCRIBERS
Douglas Communications Corp. II	103,090	494	13	437	428
Galaxy Cablevision	54,887	200	6	129	112
MW1/USA Cablesystems, Inc.	37,334	484	16	443	443
Vantage Cable Associates, L.P.	30,737	126	7	126	123
Triax Communications Corp.	326,052	1,075	16	444	361
Buford Television, Inc.	77,206	260	8	168	154
Classic Cable	29,904	78	5	73	65
Midcontinent Media, Inc.	72,502	174	4	170	162
Star Cable Associates	60,279	150	6	62	33
Leonard Communications, Inc.	61,500	226	9	125	110
Phoenix Cable, Inc.	26,900	58	8	37	25

FOR SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS

NAME OF OPERATOR	AVERAGE # OF SUBSCRIBERS	AVERAGE # OF HOMES PASSED PER MILE	AVERAGE # OF MILES OF PLANT	AVERAGE # OF ACTIVATED CHANNELS	AVERAGE # OF SUBSCRIBERS PER MILE	AVERAGE PENETRATION
Douglas Comm. Corp. II	191	40	8	16	24	60%
Galaxy Cablevision	396	37	19	28	20	54%
MW1/USA Cable Systems, Inc.	84	29	7	21	12	41.3%
Vantage Cable Associates, L.P.	221	45	7.23	21	30	66%
Triax Comm. Corp.	364	39	15	22	25	44%
Buford Television, Inc.	322	24	29	24	11	45.83%
Classic Cable	331	51	10	25	39	76.4%
Midcontinent Media, Inc.	240	57	5.85	16	41	72%
Star Cable Associates	429	28	32	26	13.4	47.8%
Leonard Comm., Inc.	252	40	9.6	19.9	26	65%
Phoenix Cable, Inc.	313	24.4	24.6	18	12.7	52%

CERTIFICATE OF SERVICE

I, Peggy E. Gelinas, hereby certify that copies of the foregoing Reply Comments of Coalition of Small System Operators were mailed, by first class mail, postage prepaid this 11th day of February, 1993 to:

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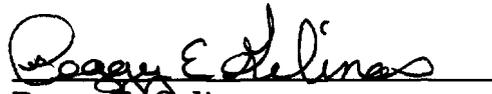
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