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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REC-4-10

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

FEB 11 1993

FOOD AND DRUG ADMINISTRATION

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

MM Docket No. 92-266

REPLY OF THE
TOWNSHIP OF LOWER MERION, MONTGOMERY COUNTY, PENNSYLVANIA

The Township of Lower Merion, Pennsylvania submits these comments in reply to the Notice of Proposed Rulemaking, ("NRPM"), released by the Commission on December 24, 1992. Lower Merion Township is a suburban community of 58,003 located just west of Philadelphia. It is the franchising authority for cable television operations within its borders. A separately incorporated municipality, the borough of Narberth, is served by the same headend. In March 1992 the Township granted a five year renewal to the cable operator after protracted negotiations, and after serious consideration was given to denial of renewal.

On the subject of effective competition the Commission seeks comment on whether any minimum amount of programming or minimum number of separate channels must be provided by an entity for it to qualify as a "multichannel video programming distributor." We urge the Commission to establish rules which will guarantee that in order to be considered as a qualifying competitive programming distributor, alternate

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programming providers must offer a mix, level, and quality of programming equivalent to that of the primary cable distributor. This is even more important if the Commission takes the view that the 15 percent penetration rate by competitors (other than the primary distributor) can be met by two or more competitors combined penetration figures. We also question whether an alternative programming provider should be included in the formula if it is unable or unwilling to offer service to the entire franchise area when universal service is a requirement of the franchising authority's cable ordinance.

Concerning the certification process we believe that the franchising authority should not bear the burden of responsibility in proving that the system is absent effective competition. Local government would be hard pressed to determine what other alternative programming providers are serving the franchise area when, in fact, some will not be subject to our franchising authority. In the certification process, the franchising authority should be required to certify that to the best of its knowledge there is not effective competition. If the cable operator disputes this, the burden of proof to the contrary should rest with the operator with the Commission as final arbiter. Finally we believe that certification should be granted based on the franchising authority's assertion in order not to delay rate regulation. To allow rate regulation to wait upon a filing of opposition by the operator and a subsequent decision by the Commission, forestalls expeditious implementation as directed by Congress.

Concerning revocation of certification we believe that granting the franchising authority only 15 days to file an opposition to a petition for revocation by the operator is too short. Depending on the timing of the service of such a petition on the franchising authority, it could be very difficult to file in less than 30 days if action was required by the governing body of the municipality.

In the matter of the benchmarking approach to rate regulation, we believe that there is a basic incompatibility with allowing a cable operator to appeal to the Commission for a rate higher than the benchmark on the basis that its cost-of-service exceeds the benchmark, and at the same time allowing operators with a true cost-of-service below the benchmark to retain this excess profit as an "incentive." Where is there the opportunity for the franchising authority or subscriber to appeal such an excess profit? If the Commission decides upon the benchmark approach, as it has tentatively concluded it will, the formula should be detailed enough to require no special appeals for cost-of-service. Alternatively, there should be a method for the franchising authority and subscribers to determine whether a company is operating at a cost enough below the benchmark to warrant an appeal for a lower rate in that system.

One benchmarking approach discussed in the NPRM is an average per-channel rate for the lowest tier for all systems operating in 1992. The greatest flaw with this alternative is that the majority of cable operators were in all likelihood charging excessive rates for these

channels in 1992. Thus the benchmark will be skewed in the operators' favor.

There appears to be nothing in the proposed regulations which would encourage cable operators to maintain some basic satellite services on the lowest tier. We have already received notice of a channel realignment which will reduce the basic tier exclusively to broadcast and PEG channels. This is disturbing news for those subscribers, generally senior citizens, who benefited from the ability to subscribe to the limited basic service. While we recognize the benefits of the anti-buy-through provision allowing subscribers to purchase premium and pay-per-view services with only the lowest tier as a pre-requirement, we are concerned that the proposed regulations do nothing to provide an incentive for including some additional programming services on the basic tier.

Certain equipment charges, we believe, are the single most available opportunity for cable operators to reap excess profits. We strongly urge the Commission to adopt rules which will eliminate outrageous monthly rental fees for remote controls and/or converter boxes which are required to receive the subscribed services. If a consumer purchases a cable-ready television or VCR, he or she is first penalized by the fact that the requirement for a converter box may negate many of the special features of the television or VCR under certain circumstances, and then hit again with a purely profit-motivated rental fee for the necessary but intrusive box and remote

control. By the same token, second and subsequent outlet charges where the cable operator provides no additional signal boosting equipment to the home should be eliminated as excess profit. The requirements of the Cable Act of 1992 related to anti-buy-through and addressability would further indicate that many subscribers heretofore unencumbered by converter boxes will find them a necessity in the near future. The Commission must act to protect the subscriber from these unwarranted charges.

Not addressed in the NRPM in the matter of home wiring is to what extent a home owner may self-wire and to what extent the cable operator should have access to that wiring. We would like to see some very clear regulations permitting wiring and installation of additional outlets by the subscriber or an alternate contractor as long as they meet the standards required to prevent signal leakage.

In the matter of costs for changing levels of service, we believe that in no case should a subscriber be charged for any reduction in service requested within 90 days of a rate increase to any tier or premium service. Subscribers should be afforded this reasonable opportunity to determine their cable service needs under a new rate structure.

We agree with the Commission's tentative finding that 30 days is insufficient time for a franchising authority to review a proposed basic rate increase and render a decision. We suggest 90 days. Cable

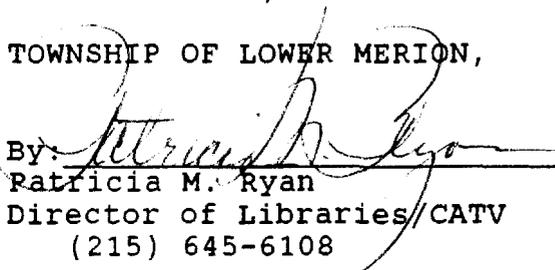
operators should have no difficulty in preparing their rate increase proposals in this time frame.

Regarding whether a subscriber should file rate complaints through the franchising authority or directly with the Commission, we believe that, at a minimum, the subscriber should be required to file simultaneously with the Commission and the franchising authority in order to give the authority the maximum time to provide supporting evidence if warranted. It might also enable the franchising authority to apprise the subscriber if there is already action underway or to gather several complaints under an umbrella complaint. Furthermore, at the very least, the franchising authority should be aware of the level of dissatisfaction in the community.

Thank you for the opportunity to respond to your NPRM.

Respectfully submitted by the
authority of the Board of
Commissioners,

TOWNSHIP OF LOWER MERION,

By: 
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February 9, 1993

cc: Board of Commissioners, Township of Lower Merion
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