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

FEB 11 1993

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 92-266

To: The Commission

REPLY COMMENTS OF ADHOC RURAL CONSORTIUM

The rural telephone companies identified below¹, known as the Ad Hoc Rural Consortium (the "ARC") by counsel and pursuant to Section 1.415(a) of the Commission's Rules and Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 92-544, released December 24, 1992, hereby submit their Reply Comments with respect to the Commission's proposals relating to rate regulation and the reduction of burdens for small systems.

Preliminary Statement

The Commission instituted this proceeding to implement the rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). All ARC participants are rural telephone companies which provide cable service to their communities pursuant to Section 613(b)(3) of the Communications Act of 1934, as amended the "Communications Act"). The members of ARC serve sparsely populated, primarily rural areas, which may not otherwise have access to cable service, or, at least, would have

¹ The Companies are Moultrie Telecommunications, Inc., Lovington, Illinois; RGA Cable, Toledo, Washington; Video Inc., Bay Springs, Mississippi; Cross Cable Television, Inc., Warner, Oklahoma; Springcom, Inc., Springport, Michigan; Waitsfield Cable, Waitsfield, Vermont; Eustis Telephone Exchange, Brady, Nebraska; Hinton CATV, Hinton, Oklahoma; and Fort Mojave Telecommunications, Inc., Needles, California

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received cable service on a delayed basis. ARC directed its comments filed on January 27, 1993, specifically to the Commission's proposals regarding the implementation of Section 623(i) of the Communications Act which requires the Commission to design rate regulations that will minimize the burdens and costs of compliance applicable to systems with fewer than 1,000 subscribers. ARC urged the Commission to implement Section 623(i) by establishing a presumption that, absent a specific showing to the contrary, the cable rates for systems with under 1,000 subscribers are presumed to be just and reasonable and otherwise lawful. ARC further proposed that the Commission establish the same presumption with regard to telephone companies providing cable service to their communities pursuant to the rural system exemption. See, 47 C.F.R. §63.58. ARC stated that this presumption should apply regardless of the number of subscribers served by such a system.

Discussion

The Coalition of Municipal and Other Local Governmental Franchising Authorities (the "Coalition") filed comments regarding the reduction of burdens on small systems, stating that the basic framework for rate regulation of small systems should be the same as the framework adopted by the Commission for larger cable operators. The Coalition argues that the Commission allow local franchising authorities to determine whether and to what extent to regulate small systems within the general framework established by the FCC. According to the Coalition, this framework should include an annual reporting requirement which will include operating income, expense and rate base data. According to the Coalition, these requirements may be less detailed than the reports it would require for larger systems, provided the information is sufficient to determine that the smaller systems' rates are reasonable. Finally,

the Coalition contends that there is no valid reason to exempt small systems from any rate regulations necessary to ensure that basic tier rates are reasonable.

ARC submits that the Coalition's comments give short-shrift to the valid concerns of Congress that small systems not be unduly burdened. The primary thrust of the 1992 Cable Act is the stabilization of cable rates and the prevention of unwarranted cable rate increases. As recognized by the Commission in its NPRM in this proceeding, small system operators face higher per-customer costs due to their high underlying costs and the smaller customer base over which these costs are spread. Thus, the Commission queried whether a presumption of lawful rates would be appropriate recognizing the fact that small systems are "unlikely to be earning returns or charging rates that could be effectively altered to the benefit of subscribers through regulatory oversight."² Rate regulation of small systems could not fail to result in rate increases due to the limited ability of small systems to absorb these costs. Thus, the costs of regulation will defeat the ends they seek to serve.

Telephone companies that operate cable systems pursuant to the rural-system exemption face the same financial concerns. In fact, the rural exemption itself is based upon the need to limit the regulatory burdens confronting such telcos. 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 rule. 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

² NPRM at ¶ 131.

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 the availability of broadband services in rural areas. Therefore, the Commission removed the waiver requirement for qualifying rural communities and replaced it with a general exemption.

As demonstrated above, the Coalition's proposals are a step backward and should not be adopted. The same concerns which prompted Congress to mandate the reduction of burdens on small systems still apply to so-called "streamlined" regulation, i.e. the expense to small systems and the Commission at a time when the new administration is telling agencies to cut staff.

In addition, the U.S. Senate has also recently recognized the unique needs of rural telephone companies.³ These clear statements of public policy by both the Commission and Congress should not be viscerated.

Conclusion

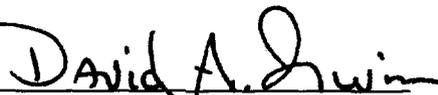
Small cable systems provide greatly needed service to their communities, and have provided service at just and reasonable rates. The imposition of unwarranted and unnecessary regulations upon these companies will only serve to raise rates; a result contrary to the general thrust of the 1992 Cable Act. Imposing rate regulations on these companies would not benefit

³ A Senate bill sponsored by Senators Inouye, Stevens, Danforth, Kerry and Burns proposes 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.

the public, and in fact would operate to subscribers' detriment. Therefore, the Commission must follow the dictates of the Regulatory Flexibility Act and adopt the presumption that cable systems with fewer than 1,000 subscribers have just, reasonable and otherwise lawful rates.

Further, the Commission should adopt the presumption of lawful, just and reasonable rates for telephone companies operating cable systems pursuant to a rural service exemption. As noted above, adoption of the presumption is the only action consistent with the 1992 Cable Act and the rationale and purpose for adoption of the rural exemption. Any other course would threaten the continued provision of service to these areas at affordable rates, and runs counter to the Commission's clear statement of policy promoting the extension of broadband service into rural areas.

Respectfully submitted,
AD HOC RURAL CONSORTIUM

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February 11, 1993

CERTIFICATE OF SERVICE

I, Lorena L. Ferry, hereby certify that on this 11th day of February, 1993, copies of the foregoing "Reply Comments of Adhoc Rural Consortium" have been served either by hand delivery or first-class United States mail, postage prepaid, upon the following:

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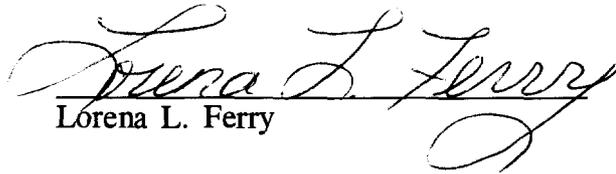
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