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

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)))	MM Docket No.92-266

COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of the GTE Domestic Telephone Operating Companies and GTE Laboratories Incorporated, hereby responds to the Further Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 93-389, ¶¶22-36, released August 10, 1993. The Further Notice asks whether any small-system relief from administrative burdens and costs of complying with cable rate regulation ordered pursuant to Section 623 of the Communications Act of 1934, as amended, 47 U.S.C.§543, should be granted without reference to the system's affiliation with a Multiple System Operator ("MSO").

As with its participation earlier in this docket and in the many other FCC proceedings implementing the 1992 Cable Act,[1] GTE's interests are those of a provider of broadband transmission capacity to cable operators and other multichannel video program distributors and of a prospective entrant into video

[1] Cable Television Consumer Protection and Competition Act of 1992, P.L.102-385, 106 Stat.1460.

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programming markets from which local exchange telephone companies largely have been foreclosed -- in their service areas -- for the past quarter-century.[2]

The initial Report and Order in this docket declined to distinguish between "independent" and MSO-affiliated cable systems of fewer than 1000 subscribers, on the grounds that there was no such distinction in the statute and no MSO-related difference in the relatively higher costs of small system operation. FCC 93-177 at ¶464.[3] On the other hand, the Report and Order granted only minor relief to small systems and deferred resolution of certain reporting and record-keeping questions. (¶462)

Upon further reflection partly inspired by numerous petitions for reconsideration and massive lobbying of small-operator aggregations, the Commission appears poised to extend small system relief. In this new context, it asks whether any such favors "should extend to all small systems or only to such systems that are not affiliated with or controlled by large MSOs." The Further Notice footnotes that the answer "will be guided in part by our reconsideration of the rate regulation mechanism, and how it may apply uniquely to small systems." (¶23 and note 42)

Frankly, GTE finds the issue of the relevance of MSO affiliation virtually impossible to assess in the absence of specific Commission proposals for relief.[4]

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[2] Prospects for prompt local telephone company entry to intraexchange video program provision have been advanced by the decision in *Chesapeake and Potomac Telephone Company of Virginia v. United States,* Civil No.92-1751-A, U.S. District Court of the Eastern District of Virginia (Alexandria Division), August 24, 1993, holding unconstitutional under the First Amendment the telephone-cable crossownership ban at 47 U.S.C.§533(b).

[3] Section 623(i) requires the Commission to fashion its rate regulations "to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers." The Commission may wish to revise the implementing definition of small system at Section 76.901, which reads "fewer than 1,000."

[4] The single concession in the rules thus far, at Section 76.934, allows a franchising authority to permit a small operator to "certify" its initial compliance with basic rate regulation rules, without

Assuming, however, that these may include the "streamlining" of certain cost showings[5] as well as less-burdensome reporting and recordkeeping, FCC 93-177 at ¶462, we offer a few points to keep in mind when the specifics of relief are more nearly in focus.

• The FCC previously has found, and the several pertinent rulemaking records here do not contradict, that the cable television business exhibits certain economies of scale.[6]

• When the statute, at Section 623(i), speaks of "burdens," it appears to allow the term to be construed in relation to the resources available for meeting the burdens. If so, it would be permissible to assess the relative affordability of, say, a central accounting house staff to an MSO as against the expense of *ad hoc* outside accounting consultation to an independent operator.

• Similarly, if the costs of basic rate analysis and rate case preparation, or the expenses of FCC reporting and/or recordkeeping, can be spread over multiple cable systems as an allocated expense from MSO headquarters, the outlays might not only be more affordable but lower in the absolute.[7]

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having to file the actual charges and back-up calculations. It would seem, however, that in order to certify truthfully, an operator would have to perform the calculations in any event, thus enjoying relief only from formal filing. And if the franchising authority were to go beyond merely accepting the certification at face value, it might require more information of the small operator. This is without even considering the case of the small operator whose rates exceed the benchmarks and ostensibly must justify them by a cost-of-service showing. Finally, whatever relief is embodied in Section 76.934 does not extend to any subsequent operator proposals for rate increase.

[5] Notice of Proposed Rulemaking, MM Docket 93-215, FCC 93-353, ¶¶71-78.

[6] Report to Congress, MM Docket 89-600, 5 FCC Rcd 4962, 5004, 5008-10 (1990). *See also,* Dertouzos-Wildman study appended to Viacom Petition for Reconsideration in MM Docket 92-266, June 21, 1993, 7-8.

[7] In this regard, GTE is puzzled by the FCC's earlier declaration that high costs are equally high for MSO affiliates and for independent systems. FCC 93-177 at ¶464.

In summary, the extent to which administrative burdens and costs of compliance can be shared or reduced across multiple systems would argue for relatively more relief to independent systems and relatively less to MSOs.

Respectfully submitted,

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ITS ATTORNEYS

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 31st day of August, 1993 to all parties of record.

Ann D. Berkowitz