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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the matter of )  
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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

**OPPOSITION OF  
NATIONAL CABLE TELEVISION ASSOCIATION, INC.  
TO PETITION FOR RECONSIDERATION OF LOCAL GOVERNMENTS**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its opposition to the Petition for Reconsideration and Clarification filed by the National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively, the "Local Governments") in the above-captioned proceeding.

In their Petition, the Local Governments urge the Commission to reconsider its rule implementing section 617(e) of the 1992 Cable Act, which expressly limits the duration of franchising authority power to disapprove system transfers. Specifically, section 617(e) requires local franchise authorities to act upon any request for approval of a transfer of a cable system held for the requisite three-year period within 120 days. If the franchising authority fails to act within the statutory period, the request will be deemed approved, unless the franchising authority and the requesting party agree to extend the time. Under the Commission's recently-adopted rule, the 120-day statutory period begins to run when the cable operator submits a transfer request containing all information

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required by Commission regulations and by the franchise agreement or applicable state or local law.<sup>1</sup>

The Local Governments seek to circumvent the statute by asserting that the 120-day period should not commence until the operator submits any and all information deemed relevant by the franchising authority. But the statute provides no support for such an expansive view. Section 617(e) merely provides that a franchisor has 120 days to act upon any request that contains "such information as is required in accordance with Commission regulations and by the franchising authority." The Commission has appropriately interpreted this provision as requiring compliance with uniform FCC standards, as well as any informational requirements set forth in a franchise agreement or state or local law.

Indeed, as the Commission recognizes, "the statutory language contemplates that the Commission will establish regulations setting forth the information required to be submitted to local franchising authorities in order to commence the running of the 120-day period."<sup>2</sup> The legislative history of section 617(e) also establishes that Congress intended for the 120-day limitation to start when the cable operator has provided all information required under Commission regulations, while allowing for local franchising authorities to request additional information.<sup>3</sup> The interpretation advocated by the Local Governments, however, would grant franchising authorities virtually unlimited authority to require any type of information and thereby suspend the running of the statutory period indefinitely.

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<sup>1</sup> 47 C.F.R. §76.502(i)(1).

<sup>2</sup> Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-264, para. 84, (released July 23, 1993).

<sup>3</sup> H.R. Rep. No. 628, 102d Cong., 2d Sess. 43, 120 (1992).

Moreover, the Local Governments' approach would defeat the whole purpose of section 617(e). The fact that Congress adopted the 120-day time limitation evidences that there is a need to ensure that transfers of cable properties are not subjected to an unnecessarily protracted approval process. Congress recognized that 120 days is ample time to review a transfer request. But if local franchising authorities are given free rein to request any type of information before the clock starts, this time frame will be meaningless. Therefore, a definitive starting point for the 120-day period is necessary in order to fulfill the Congressional purpose of preventing unwarranted, and outright abusive, delays in the sale or transfer of a cable system.

Nevertheless, the Local Governments still claim that the Commission's rule may limit their ability to fully consider whether a transfer request should be approved. But the Commission has determined that the informational requirements which trigger the statutory time period -- i.e., the submission of information necessary to establish the legal, technical and financial qualifications of the proposed transferee and any information required by the franchise or applicable local law -- are sufficient for transfer consideration. Indeed, the detailed information required in the FCC's standardized form ensures that local governments have more than adequate information on which to evaluate a transfer request within the allotted time. Requests for additional information beyond the franchise agreement or local law are permissible, but the Commission appropriately determined that such requests should not delay the 120-day time period.<sup>4</sup>

The Local Governments further argue that the Commission should reconsider its blanket antitrafficking waiver for small systems, even though any waiver granted under this provision is subject to franchise authority approval if required by the franchisor. The Local Governments contend that before any of the more than 5,000 small systems are

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<sup>4</sup> The regulations require cable operators to respond promptly and completely to requests by local franchising authorities for additional information. See 47 C.F.R. §76.502(i)(2).

transferred, the Commission should first conduct an adjudicatory, case-by-case proceeding. But such proceedings seem inadvisable in light of the ability of the franchising authority to supervise transfers where it chooses, and the inordinate strain on Commission resources that would result from a potentially large number of transfers.

Therefore, for the foregoing reasons, the Commission should deny the Local Governments' petition and adhere to its initial decision to initiate calculation of the 120-day time period in section 617(e) when the requesting party submits information in accordance with Commission regulations and the franchise agreement or applicable state or local law. The Commission should, in addition, reject the Local Governments' proposal to require FCC approval prior to transfers of small systems.

Respectfully submitted,

NATIONAL CABLE TELEVISION  
ASSOCIATION, INC.

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October 22, 1993

CERTIFICATE OF SERVICE

I, Leslie D. Heath, do hereby certify that on this 22nd day of October, 1993, copies of the foregoing "Opposition" were delivered by first-class, postage pre-paid mail to the following parties:

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A handwritten signature in cursive script, appearing to read "Leslie D. Heath", written over a horizontal line.

Leslie D. Heath