THE INDEPENDENT VOICE OF THE CABLE TELEVISION INDUSTRY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William Caton, Acting Secretary,
Federal Communications Commission
1919 M St. N.W.
Washington, D.C. 20554

Ex Parte Presentation in Docket 92-266

Dear Mr. Caton:

Enclosed is a copy of a letter and attachment delivered to the Chairman and Commissioners Quello, Barrett, Ness and Chong. Please associate this material with the record in Docket 92-266.

As you will note the letter makes reference to discussions, ex parte contacts, with the Commission staff. On August 25, 1994, Steve Effros, President of the Cable Telecommunications Association (CATA) met with the Chairman's Chief of Staff, Blair Levin to discuss the "going forward" issue in the above-referenced docket. Mr. Effros reiterated comments filed by CATA in the proceeding.

On August 29, 1994, Mr. Effros met with Kathleen Wallman, Chief of the Common Carrier Bureau and William Johnson, Deputy Chief of the Cable Television Bureau to discuss the same issue.

On September 19, 1994, Mr. Effros and Bob Ungar, General Counsel of CATA, met with Meridith Jones, Chief of the Cable Television Bureau, Kathleen Wallman, Chief of the Common Carrier Bureau, William Johnson, Deputy Chief of the Cable Television Bureau, and Ed Hearst of the Cable Television Bureau. Again, the topic of discussion was the "going forward" issue. The staff was given copies of a comment already filed in the proceeding by Summit Communications. In addition there was discussion, generally, of the matters raised in the attached letter.

Sincerely,

Bob Ungar,
General Counsel

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September 23, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Reed E. Hundt
Chairman, FCC
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Chairman:

As you know, one of the many concerns that CATA has brought to your attention repeatedly has been the extreme impact on smaller cable systems of the Commission's rules implementing the Cable Act of 1992. Many members of Congress have also brought to your attention their concerns regarding the administrative burdens and distinctions that they agree should be addressed regarding the unique problems faced by small systems.

We have been in extensive conversations with Commission staff on this issue. In particular, in discussions with Blair Levin, Meredith Jones and Kathleen Wallman, CATA has suggested the outlines of a proposal that we think could resolve many of these difficulties. It eliminates administrative burdens while at the same time assuring that consumers remain protected. It puts more reliance on the mutual needs and interests of small local cable operators and their community officials than it does on federal bureaucracy. And, it accomplishes the statutory mandates that the Commission is working under.

Attached is a memo and outline of that proposal. I would appreciate the opportunity of meeting with you at your earliest convenience to discuss this idea in more detail. I really think this can be a "win-win" proposal for all involved and hope that the Commission can act on it in the near future.

Sincerely,

Stephen R. Effros

Stephen R. Effros
President

SRE/shr

Enclosure

cc: Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness

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CATA Proposal For Small System Alternative Regulation

After many discussions with operators of small cable systems, CATA has concluded that the goal of the Cable Act of 1992 can be achieved most fairly by an alternative method of rate regulation for systems serving fewer than 1000 subscribers. The present method of rate regulation prescribed by the Commission, based on the 1200 series of forms or cost of service showings is too complicated and burdensome. Many communities have decided not to regulate simply because they want to avoid the complexities of the Commission's regulations. Yet, the possibility of regulation remains a constant threat, and in this atmosphere of uncertainty, cable systems, particularly small ones, have difficulty obtaining financing for system upgrades. In such a regulatory limbo, nothing happens. Systems are reluctant to make any rate adjustments for fear of provoking subscribers and franchising authorities and, of course, cannot present a lending institution with a plan for financing new construction. The community is denied the new services that might be enabled by system upgrades. (It should be noted that many small systems do not have excess channel capacity. Thus for small systems, "going forward" and "upgrades" are the same thing.) For the small systems and small communities affected by this problem, a different approach is needed.

The purpose of CATA's alternative regulation proposal is to: 1. relieve small systems (and small communities) of the administrative burden of complying with FCC prescribed regulation and to: 2. provide some certainty to small systems in order to make it more feasible to finance system improvements and provide new, desired services to cable consumers.

We propose the following: Systems with fewer than 1000 subscribers should be relieved of the present mandatory method of rate regulation. Instead, these systems and their franchising authorities should be permitted the option of achieving a reasonable rate structure through a traditional bargaining process bounded, of course, by the regulatory criteria spelled out in the Cable Act. Franchising authorities would still have the right to choose the more structured regulation prescribed by the Commission. Cable operators would be permitted to appeal to the Commission.

The advantages of such an alternative form of regulation are significant. There is a unique relationship between small system cable operators and the communities they serve. In many cases, these small communities are in poorer, rural areas, where, even before the advent of rate regulation, the cable operators did not profit maximize. The owner or general manager is a member of the community - a neighbor - and knows the problems of the community. (In this regard, it is not significant that the system may be

part of an MSO. The difficulties of wiring and maintaining cable service in a small community remain the same.) The increased per-subscriber cost of wiring a small community are understood by both the cable operator and the franchising authority. The franchising authority, for its part, is capable of working out rate agreements with the operator, but is often reluctant to address rate regulation in the complicated context of the Commission's rules. The operator and the community could come to their own decision on such issues as "going forward," inflation adjustments, external costs etc. etc.

The use of a traditional, simplified local process will still allow small communities to take the steps necessary to safeguard their residents - but in a way more tailored to the needs of the community. Moreover, alternative regulation would never be the only option. A franchising authority could always choose the federal scheme. Alternative regulation would only take place if both the franchising authority and cable operator agree.

Alternative rate regulation could also help create the certainty small operators need in order to finance system upgrades. Each rate increase will not necessarily have to be the subject of hearings and delay. Instead, rate agreements could prescribe increases for the future, and cable operators would have a better opportunity to obtain financing for upgrades based

on such certainty. The administrative burden on both the community and the cable operator would be reduced to the absolute minimum.

Alternative regulation would apply only to systems with fewer than 1000 subscribers. Systems in this category comprise 62.55% of all cable systems, but serve only 3.57% of all subscribers. By permitting alternative regulation, the Commission would relieve itself of the substantial burden of determining whether the proper Commission forms have been properly applied in thousands of small communities.

A system of alternative regulation could be permitted consistent with the Cable Act. Under the Act the Commission must prescribe rate regulations for the basic and cable programming service tiers and must do so pursuant to certain criteria. The Act does not require, however, that the same regulations must apply to all systems regardless of size. The Act requires the Commission to design regulations to reduce the administrative burdens and cost of compliance for systems with fewer than 1000 subscribers. One method of doing this is to design <u>different</u> regulations for such systems.

Naturally, the criteria for regulation spelled out in the Act would have to be followed. For instance, mindful of the Act's requirement that "the costs of obtaining, transmitting, and

otherwise providing signals carried on the basic tier" be considered, the Commission could easily find that system costs per subscriber for very small systems are great and that this is a factor best appreciated by the local authorities. Similarly, the Commission could find that local authorities are in the best position to determine how a system's upper tier rates relate to "the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors." Indeed, this has been the norm in small communities for years. They have always looked at the comparable systems in their area to determine if rate proposals appeared to be in a "zone of reasonableness." Thus, although complaints to the Commission regarding upper tier rates must be permitted under the Act, the FCC can certainly establish a process that gives great weight to local franchising authority determinations.

A certification process must be established under the Act, but, again, the Act does not prohibit a <u>different</u> process for smaller systems. One option would be for a franchising authority in a community served by a system with fewer than 1000 subscribers to simply notify the Commission that it had agreed with the cable system to opt for alternative regulation. Upon receipt of such a notice, the franchising authority could be considered to have met the statutory requirement of notification

and certification for alternative regulation. No forms would be necessary. The cable operator would already have been "served," since the basis for alternative regulation would be the prior agreement to engage in such a process between the operator and the franchising authority.

Alternative regulation could be implemented by an initial Order either in the Fifth Notice of Proposed Rulemaking in Docket 92-266 (systems entitled to transition relief) or on reconsideration of the Fourth Report and Order. The record in this Docket is replete with various filings noting the special problems faced by small systems which would be sufficient to justify the Commission's taking such an action.

Outline of Alternative Regulation

I. FCC would permit "alternative rate regulation" for systems with fewer than 1000 subscribers.

   A. Alternative regulation would be available to all systems in this category whether they have been regulated or not.

   B. Alternative regulation would be available to all systems in this category regardless of ownership - whether MSO or not.

C. Pending complaints before the FCC would be evaluated based on new criteria giving weight to local findings.

II. Alternative regulation would allow small systems to be regulated at the local level pursuant to negotiations not based on the FCC's forms or benchmarks

A. The basis of permitting this form of regulation would be to eliminate the extraordinary administrative burden of using the FCC's method for both systems and localities which voluntarily choose this approach, and to create more financial certainty for small systems to upgrade facilities.

B. Local authorities could reach an agreement which encompassed both the basic tier and other tiers considered regulated tiers under the Act. Upper tier regulation would still be statutorily subject to a federal complaint process, but the Commission could determine that where a local franchising authority had made a reasonable attempt to apply the statutory criteria, it would not interfere.

C. Alternative rate regulation would only occur with the consent of both the cable system and the local

franchising authority.

1. Local authority would still be required to certify (as the Act requires) and, if it chooses, to regulate under the Commission's rules.

2. Cable system could, in the event alternative regulation did not reach a satisfactory conclusion, opt for regulation under the Commission's rules and could appeal a local rate decision to the FCC.

3. The certification process for communities that opt for alternative regulation need not require the formality of the present process.

   a. A written statement that alternative regulation is being pursued should be sufficient, without necessity of filing a Form 328.

   b. Franchising authority could merely state that it has the means to engage in alternative regulation, and has procedures to provide interested parties access to the process.