Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	MM Docket No. 93-215
Definition and Regulatory Treatment of Small Cable Businesses	MM Docket No. 92-266

JOINT REPLY COMMENTS OF CABLE OPERATORS

These Joint Reply Comments are submitted on behalf of the cable television operators listed in Attachment A hereto ("Commenters").[1]

INTRODUCTION

In their initial Joint Comments, Commenters proposed that the Commission adopt a standard defining an entity with 400,000 or fewer subscribers (or an equivalent gross revenue standard) as a "small cable business". Other commenters responding to the

[1] The parties listed in Attachment A are primarily mid-sized and smaller cable operators who are hit hardest by the Commission's current approach to regulation.

Commission's Further Notice of Proposed Rulemaking[2] proposed nearly identical standards. The National Cable Television Association ("NCTA") and the United States Small Business Administration ("SBA"), advocated the adoption of a similar standard based on $100 million annual revenue (or a subscriber-based equivalent) for identifying a small cable business.[3] Other commenters, while not advocating identical standards, also proposed standards significantly higher than those currently used by the Commission.[4] No comments were filed supporting the Commission's current definition and treatment of small cable businesses and small cable systems.

Many of the comments in this proceeding also addressed the Commission's definition of a "small cable system".[5] Commenters fully support the position of NCTA and others that the plain language of the Cable Television Consumer Protection and Competition Act of 1992 ("the Cable Act") mandates that the Commission must grant relief from regulatory burdens to "cable systems" serving 1,000 or fewer subscribers, regardless of ownership. Moreover, it is clearly within the Commission's discretion to grant such

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[2] In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 94-234 (Released Sept. 26, 1994)("Fifth Order on Recon" or "Further Notice").

[3] Comments of the National Cable Television Association, Inc. at 22; Comments of the Chief Counsel for Advocacy of the Untied States Small Business Administration on the Further Notice of Proposed Rulemaking, at 5.

[4] Comments of the Cable Telecommunications Association ("CATA") at 2 (CATA stated that if a revenue standard were adopted it would support the standard advocated by NCTA).

[5] NCTA Comments at 7-15.

regulatory relief to all cable systems with 5,000 or fewer subscribers. Such small systems have survived through efficient operation, tenacity and hard work. They cannot maintain the kind of administrative staff, accountants and lawyers necessary to comply with the Commission's incredibly complex and burdensome regulations. Moreover, these cable systems face significant competition from DBS and other sources. Their only chance for survival is to maintain maximum efficiency in their operations and to provide good quality, low-cost service to the public. Those objectives are significantly burdened by the expenditures of time and money necessary to comply with the Commission's excessive regulation.

I. ALL CABLE *SYSTEMS* WITH LESS THAN 1,000 SUBSCRIBERS MUST BE AFFORDED RELIEF, REGARDLESS OF AFFILIATION

In their initial comments, several parties in this proceeding emphasized that the Cable Act and the Commission's own stated policies compel regulatory relief for "small cable systems", as well as for "small cable businesses". The Cable Act dictates that for rate regulation purposes "the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for *cable systems* that have 1,000 or fewer subscribers."[6] The Act defines a "cable system" as "a facility . . .that is designed to provide cable service. . .to multiple subscribers within a community. . . ."[7] The plain language of the Act, therefore, makes no distinction between cable systems based on ownership. Indeed, in

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[6] 47 U.S.C. § 643(i) (emphasis added).

[7] 47 U.S.C. § 522(7).

the First Report and Order in this proceeding, the Commission recognized that the Act and public policy mandate that all cable systems with fewer than 1,000 subscribers, regardless of ownership, be relieved of regulatory burdens: "No distinction should be made between small systems that are independent and those controlled by MSOs. First, the language of the Cable Act does not distinguish between independently owned small systems and those owned by MSOs. Second, the problems faced by small systems serving smaller, often more rural communities occur whether or not the system is owned by an MSO."[8] The Commission's subsequent adoption of a definition of a "small system" based on ownership,[9] therefore, is inconsistent with the plain language of the Act, as the Commission itself has recognized.

As the Commission noted in its initial analysis, it is in the pubic interest to provide regulatory relief for all cable systems serving fewer than 1,000 subscribers, regardless of ownership. Moreover, since the same public interest considerations apply to small systems with more than 1,000 subscribers, the Commission should establish a "small system" definition to cover systems with up to 5,000 subscribers. The Commission is aware that small systems have an extraordinarily high cost per subscriber for facilities, programming, equipment, overhead and other costs and there are fewer subscribers across which to distribute these costs. Small systems also have far greater difficulties and higher costs in obtaining and

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[8] Report and Order, MM Docket No. 92-266, FCC 93-177, ¶ 464 (released May 3, 1993).

[9] See Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of proposed Rulemaking, MM Docket No. 92-266, FCC 94-38 at ¶¶ 216, 223 (released March 30, 1994).

maintaining financing, which makes it difficult to re-build and upgrade facilities. Smaller and more rural communities also are unlikely to provide a source of local advertising revenues or a market for new "advanced" services.

The Commission has recognized previously that "the problems faced by small systems serving smaller, often more rural communities occur whether or not the system is owned by an MSO".[10] This is particularly true in the case of rate regulation, which is handled on a system-by-system (or franchise-by-franchise) basis. Each individual system must justify rates and recover its own costs within the rate regulation structure. Indeed, under the Commission's rules, it is impossible for an MSO to distribute the higher costs of its smaller systems into the rate base of its larger systems. Further, due to the local franchise focus of the Commission's regulations and the historically local nature of cable, local authorities look to the local system management for compliance with rate and franchise requirements. Moreover, as other commenters have noted, not all MSOs have a centralized corporate staff to assist with the assorted daily regulatory issues that arise at each system.[11] In such cases, each local system staff must handle the majority of regulatory issues without utilizing the MSO's resources. Accordingly, Commenters strongly support the proposals for the Commission to provide regulatory relief to all cable "systems" with fewer than 1,000

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[10] Report and Order, at ¶ 464.

[11] See, e.g., Comments of Falcon at 7; Comments of Bend Cable Communications, Inc., Cable Management Corporation and River Valley Cable TV.

subscribers,[12] but believe the public interest requires a "small system" definition that would provide for total deregulation to the extent permitted by law of all systems with fewer than 5,000 subscribers.

Providing relief to those cable systems would be entirely consistent with the position taken by all of the parties in this proceeding that the Commission should adopt a definition of small cable "businesses" that should receive regulatory relief. As discussed in Commenters' original comments, there are many cable businesses consisting of multiple systems, that do not have the financial and administrative resources necessary to comply with the Commission's regulations and compete with the constantly increasing variety of video providers, but that are not small "systems". The Further Notice clearly recognized that an additional definitional category should be created to provide relief to such small cable businesses, in addition to the relief provided to small systems as mandated by the Act.

II. THE COMMISSION MUST PROVIDE MEANINGFUL RELIEF TO SMALL CABLE BUSINESSES AND SMALL CABLE SYSTEMS

While the Commission's decision in this proceeding to address the definition of cable entities that may be granted regulatory relief was important, even more critical is that the Commission take meaningful steps toward such deregulation. The very limited relief granted to small operators by the Commission so far has still failed to free such small entities

[12] See Comments of the National Cable Television Association, at 13; Comments of the Cable Telecommunications Association.

from onerous regulatory requirements. For instance, the Cable Bureau recently granted a petition for hardship rate relief for Horizon Cable TV, Inc., allowing the small operator to raise its rates in order to survive.[13] In granting this relief, however, the Bureau stated that in the future it would require small operators to demonstrate first that their hardship rate increases could not be justified under a cost of service filing.[14] Such a requirement is the type of onerous imposition that should not be imposed on small cable businesses. The Commission must recognize the substantial cost of undertaking even "streamlined" cost of service showings. Indeed, requiring small cable businesses, such as Horizon, which operates six systems serving 2,269 subscribers, to provide cost of service showings indicates that the Commission's approach is still geared towards the treatment of multi-billion dollar local exchange carriers. The Commission must reformulate its approach to regulating the cable industry to recognize that many cable businesses are too small to exist under the current exacting and excruciating regulatory burdens.

It appears that the Commission does not realize how complex its regulations are, particularly when they are applied to the diverse cable industry. In spite of the thousands of pages of decisions and interpretations regarding rate regulation, the Commission has asserted to Congress and others that the rate regulations are not overly complex. Even in its recently adopted going-forward rules, the Commission has emphasized that "our rules are

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[13] Horizon Cable TV, Inc., DA 94-1447 (released Dec. 13, 1994).

[14] Id. at ¶ 16.

clear and simple". While the going-forward rules are certainly less complex than the Commission's benchmark and cost-of-service rate regulations, they are complicated and uncertain in their application throughout the cable industry. The net result is that, while some programming is being added, the Commission is still in the process of responding to fundamental questions regarding the going-forward rules, which affect cable operators so drastically that many have continued to delay adding programming until the requirements are clarified. Rate regulation is but one example of the Commission's overregulation and micromanagement of small cable businesses, small cable systems, and the entire cable industry.

Many of the Commission's regulations in specific areas appear to have been adopted without any recognition of the overall, cumulative impact of the regulatory burden on the cable industry. Compliance with the myriad of complex procedural and substantive regulations is extremely burdensome even for those companies that maintain full-time legal staffs and law firms to decipher and apply the regulations. We urge the Commission to step back and evaluate the overall burden on the cable industry of complying with regulations that are so incredibly complex and uncertain in their application.

CONCLUSION

Wherefore, for the reasons stated above and in Commenters' initial comments, the Commission should adopt a definition of a small cable business as one with 400,000 or fewer subscribers. Further, the Commission should adopt a definition of a small cable system that is consistent with the plain language of the Cable Act and provides regulatory relief to all cable systems with fewer than 5,000 subscribers, regardless of ownership.

Respectfully submitted,

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Attachment A

Antietam Cable
Auburn Cablevision
Brownwood TV Cable Company, Inc.
Buford Cablevision
CableAmerica Corporation
Cable Holdings, Inc.
Cass Cable TV, Inc.
Community Antenna Systems
Florida Satellite Network, Inc.
Gilmer Cable TV
Helicon Corporation
Illini Cablevision, Inc.
Lakewood Cablevision
Mid-Hudson Cablevision, Inc.
OCB Cablevision
Schuylkill Valley Trans-Video
Shen-Heights TV Associates
Sjoberg's Cable Television
Sweetwater Television Company
United Video Cablevision, Inc.