

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

In the matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92-26 and MM Docket No. 93-215).

Today's decision to provide additional rate regulation relief for small systems and to enlarge the scope of relief by increasing the number of systems that satisfy the definition of "small" are steps which I have supported for some time. While we have made efforts to develop solutions to problems endemic to these systems, market reaction and reports of small systems in technical default of financing agreements and bordering on bankruptcy were evidence that our rules were insufficient in addressing these concerns.

Though I support today's action, I must raise two(2) issues which give me reason for pause. First, it has always been my position that small independent systems and systems owned by small multiple system operators needed greater flexibility under our rate regulations to accommodate characteristics that are unique to these entities. In today's decision, we allow a small system to retain the benefits of our modified rules even if that system is acquired by a "large" MSO. While I understand that this allows a small system to attract potential lenders in the financial market, I also believe the advantages of our rules will become misplaced and potentially misused. Indeed, small systems acquired by large MSOs will presumably have management and operations benefits as well as the financial affiliation in the marketplace that would clearly prove advantageous to the system. Moreover, these rules could ultimately result in a large MSO owning small systems that receive disparate treatment under our rules so that only the acquired small system will be permitted to establish its rates under the newer regulatory framework. I, therefore, question the justification for continuing the additional rate regulation relief.

Second, I am concerned about our application of the modified rate rules to pending rate cases that have not reached final determination. The Commission will be in a position of having some prior decisions made under less favorable regulations and then bestowing a benefit on cases that, for whatever reason, have yet to become final. However, I believe public policy should dictate our actions here. Though the Commission or local franchising authorities could determine under the previous rules that a reduction in the rate is warranted, in the end, the system would be entitled to increase its rate on a prospective basis. The effect on consumers of lowering and then raising rates would undoubtedly be confusion.

In addition, I question whether it makes sense on the one hand for the Commission to recognize the need for meaningful relief for these systems and then on the other to apply rules that fail to satisfy that need.

Though I have these concerns, I believe that the Commission has taken the proper action to address and then to resolve specific issues adversely impacting small systems.