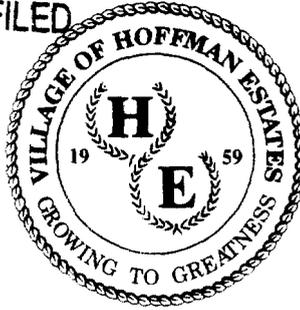


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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 3 1996

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In the matter of )  
)  
Implementation of Section 302 of )  
the Telecommunications Act of 1996 )  
)  
Open Video Systems )

CS Docket NO. 96-46

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THE VILLAGE OF HOFFMAN ESTATES, ILLINOIS EX PARTE COMMENTS ON  
OPEN VIDEO SYSTEMS

The Village of Hoffman Estates respectfully submits these ex parte comments to the Federal Communications Commission ("Commission" or "FCC" in the above-captioned proceeding.

I. INTRODUCTION

On March 11, 1996, the Commission released a Notice of Proposed Rulemaking (FCC 96-99) ("Notice"), requesting comment on how it should implement the regulatory framework for open video systems ("OVS"). In response, the National League of Cities, the National Association of Telecommunications Officers and Advisors, the National Association of Counties, and the U.S. Conference of Mayors, Montgomery County, and several

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cities (hereinafter “NLC”), filed joint comments containing specific proposals for implementing that framework.

In their comments, NLC identified four key principles that must guide the Commission in formulating its rules. First, the Commission’s rules regarding the PEG and other Title VI requirements mandated by Congress for OVS must ensure that OVS operators will meet local community needs and interest. Second, the Commission must adopt nondiscrimination provisions that ensure that all programmers will have truly open and affordable access to OVS and that prevent an OVS from becoming a cable system in disguise. Third, the 1996 Telecommunications Act does not permit cable operators to become OVS operators. Fourth, the Commission’s rules must acknowledge the property interest that local governments hold in the local public rights-of-ways.

Hoffman Estates strongly supports NLC’s comments and urges the Commission to follow these four principles in formulation OVS rules.

## II. DISCUSSION

The Commission’s statutory mandate in adopting PEG requirements for OVS is clear. As NLC notes, the Telecommunications Act of 1996 requires the Commission to establish PEG obligations for OVS that are consistent with local needs and interests, and to impose on an OVS operator obligations equivalent to those obligations imposed on cable operators. To fulfill these mandates, the

Commission should, as proposed by NLC, require OVS operators “to match or negotiate,” that is, to match each incumbent cable operator’s PEG obligations, or to negotiate agreements acceptable to the affected communities.

Local governments, as franchising authorities and PEG programmers, play a critical role in ensuring that local communications needs and interests are met. Moreover, local governments are in the best position to deliver on the Act’s intent to accomplish PEG access over open, or closed, video systems.

It is imperative that citizens maintain access to the communications infrastructure of the United States. Only through the availability of PEG access to the public can free speech be maintained. In the system serving the Village of Hoffman Estates, there are typically 15 public access programs produced monthly. The Village, its local schools and library contribute 24 hour programming on their own channels. It is critical that these local lanes of information be kept open.

### III. ASSIGNMENT AND MANAGEMENT OF CAPACITY

The Act limits an OVS operator from programming more than one-third of an open video system’s capacity when that capacity is exceeded by demand. This limit raises a number of questions, such as: (1) should OVS capacity be reallocated when demand increases; (2) who will administer the allocation of channel capacity; (3) will an OVS operator be allowed to limit or deny a cable operator access to capacity; (4) should an OVS operator be allowed to establish

minimum or maximum limits on the amount of capacity that an unaffiliated video programmer is allowed; and (5) should the Commission prescribe any terms and conditions under which channels will be shared.

Initially, the demand for capacity will be for analog rather than digital capacity, until the state of the technology develops. Therefore, it will be necessary to address these capacities differently in enforcing capacity constraints until such time as digital capacity is readily accessible.

Non-OVS providers may need a minimum guaranteed time right to capacity initially allocated to guarantee the viability of their services. As additional capacity is needed, only the OVS provider should reallocate its capacity, until the one-third minimum is reached.

This brings into question how “must carry” broadcasters will be treated. If “must carry” is applicable to OVS, perhaps that portion of the spectrum should be treated as the floor above which capacity is measured. Broadcasters who negotiate retransmission agreements should be treated as “chosen” programmers and count as part of available capacity as someone, whether the OVS provider or not, has determined that they are a necessary part of their program content.

OVS operators should be permitted to limit or deny a cable operator access to system capacity only if the OVS system is in direct competition from that provider in that specific area. If an OVS provider is granted the ability to

restrict certain programmers, it is then no different than a cable provider. In a major metropolitan area, it may be necessary to allow cable providers access to areas which it does not serve, while restricting it in areas that it does serve. In this manner the OVS would provide competition to the existing cable provider.

Also, OVS providers should not be allowed to force programmers to share a channel unless such an arrangement is desired by the programmers involved. Forced channel sharing would allow for discrimination as to the availability of a programmers content.

In the interest of non-discrimination, it would be helpful for the FCC to institute some guidelines as to allocation of capacity and the rates for such capacity. The ability of OVS providers to discriminate on the basis of rates could give them unfair control of access to their capacity making them de facto cable operators.

#### IV. COMMON COST ISSUES

As with any venture by a telephone company into competitive information markets, the issue of cross-subsidization is a valid concern. An OVS operator's regulated telephone customers should not have to carry a disproportionate share of the cost of commonly used network infrastructure, nor should they have to bear any of the cost of a separate network.

V. CONCLUSION

The Village of Hoffman Estates respectfully requests the Commission to adopt a framework for OVS consistent with the proposals and principles recommended by NLC et al. in their comments, and in keeping with the provision of a level playing field in the communications industry.

Respectfully submitted,

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