U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

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FEDERAL COMMUNICATIONS COMMISSION
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
	)	
Implementation of Cable Act	)	CS Docket No. 96-85
Reform Provisions of the	)	
Telecommunications Act of 1996	)	

Comments of the Assistant Administrator for Size Standards of the United States Small Business Administration

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Comments

The Commission has provided specific rules to clarify implementation of Section 301(c) of the Telecommunications Act of 1996 which provides for greater deregulation of small cable operators. In particular, the Act provides the following statutory definition of small cable operators: "...the term 'small cable operator' means a cable operator that directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." As noted in the Commissions's Order and Notice of Proposed Rulemaking, several issues arise on the implementation of this definition of a small cable operator. The following comments provide suggestions for the Commission's consideration in three areas: national subscriber count, definition of affiliates, and definition of gross revenues.

I. National Subscriber Count

The Office of Size Standards agrees with the Commission's proposal to establish on an annual basis a specific number of subscribers to define one percent of total cable subscribers. It would be impractical to define a small business entity in terms of a percentage of an industry's operators. Not only would the number of subscribers constantly change, but the small business status of cable operators at the margin could also change on a random-like basis. Instead, a business needs to know a precise figure, whether defined in revenues, employees or cable subscribers, by which it could readily determine its current and future status as a qualifying small business entity.

One question that needs to be addressed prior to establishing a small cable operator size standard based on number of subscribers is the method of measuring a cable operator's size. It could be based either on an average over a specified time period, such as a twelve-month period; or a snapshot in time, such as the number of subscribers at the end of a year. The snapshot approach is easier to obtain and places less of a burden on affected businesses. Although slightly less accurate, we would recommend the snapshot approach so long as the Commission is basing the size standard on its ease of implementation.

II. Definition of Affiliate

The definition of an affiliate of a small cable operator is proposed to be the same as defined by the Commission for its small systems cost-of-service rules. An affiliate of a cable operator would be an entity that has 20 percent or more ownership in the cable operator, or who exerts de facto control. It may be advisable for the Commission to expand upon its definition of affiliates as it has done in other Commission's regulations (e.g., personal services communications). This would provide a degree of consistency in the Commission's treatment of affiliation between different entities, and more importantly, provide further guidance to the public on what relationships lead to affiliation. We believe the Small Business Administration's definition of affiliation contained in 13 CFR Part 121.103 serves as an excellent example of the types of relationships that give rise to affiliation between two entities.

III. Definition of Gross Receipts

The Commission proposes to define gross revenues, in general, to encompass all sources of income and to include revenues aggregated from all affiliates. We agree with this definition as proposed. With respect to the Commission's request for comments on whether only affiliates of the cable operator that are also cable operators should be included when aggregating gross annual revenues with respect to the $250 million threshold, we strongly disagree with such an approach. We strongly recommend that the revenues of all affiliated concerns be aggregated together when determining size. If revenues are not counted in full for all affiliated concerns there is a potential for abuse in which businesses which, either singularly or in the aggregate, can exceed the size standard and compete with much smaller businesses that are disadvantaged due to size. The purpose of affording special protections to small businesses is to assist those businesses, which because of their size, are unable to access the same resources or do not have the same ability to comply with regulatory requirements, as their larger competitors. For this reason, we recommend the Commission adopt its proposed definition of gross receipts without change in the treatment of affiliates.

The Commission expressed concerns about a requirement for small cable operators to provide audited financial statements when claiming small business status. As an alternative, the Commission may want to give consideration to using federal tax returns in determining the revenue size of a business. (Other financial records may be relied upon if the tax return is unavailable or not acceptable.) Since all "for-profit" businesses are required to file tax returns, information retrieval is not a burdensome problem. The SBA has recently defined receipts based on a taxable year for the purpose of size determination. This change tends to reduce paperwork and expenses, and provides consistency with information reported to other federal agencies. For your information, below is SBA's definition of receipts (See 13 CFR Part 121.104(a)(1):

> (a) Definitions. In determining annual receipts of a concern:
> (1) Receipts means "total income" (or in the case of a sole proprietorship, "gross income") plus the "cost of goods sold" as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms (Form 1120 for corporations: Form 1120S for Subchapter S Corporations: form 1065 for partnerships: and form 1040. Schedule F for farm or Schedule C for other sole proprietorships). However, the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS)...."

Respectfully submitted,

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of Size Standards

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