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

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

Initial Regulatory Flexibility Analysis

DOCKET FILE COPY ORIGINAL

To: The Commission

INITIAL REGULATORY FLEXIBILITY ANALYSIS REPLY COMMENTS OF THE CITY OF LOS ANGELES, CALIFORNIA; THE NATIONAL LEAGUE OF CITIES; AND THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

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The City of Los Angeles, California; the National League of Cities; and the National Association of Telecommunications Officers and Advisors, by their attorneys, and, where appropriate, on behalf of their members, hereby file the following reply comments in response to the Initial Regulatory Flexibility Analysis ("IRFA") contained in the Order and Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding, released April 9, 1996.

I. INTRODUCTION

The NPRM at ¶ 117 inaccurately cites "small business entities" as the only class of small entities that might be affected by the proposed rules. The NPRM completely ignores the

significant economic effect that the proposed rules will have on thousands of small governmental jurisdictions all across the country.

Small governmental jurisdictions are local franchising authorities with existing cable franchises that will be affected by the proposals of the Commission and the commenters. Small governmental jurisdictions are also responsible for forwarding subscriber complaints against unreasonable rates pursuant to the Commission's rules.

II. THE PROPOSALS WILL AFFECT A SUBSTANTIAL NUMBER OF SMALL ENTITIES.

The Regulatory Flexibility Act defines small entities to include small governmental jurisdictions. The Act defines small governmental jurisdictions as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[1] The NPRM proposals will affect over 38,000 such small governmental entities.[2]

The Bureau of the Census compiles statistics on the number and size of sub-state governmental jurisdictions. According to the Bureau of the Census, there are 3,043 counties and 35,935 sub-county general purpose governments (municipalities, towns,

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[1] 5 U.S.C. § 601(5).

[2] See n.3 below.

and townships) in the United States.[3] Of these, 2,250 counties and 35,320 cities, towns and townships have populations under 50,000.[4] Thus, of the 38,363 local general-purpose governments in the United States (counties, cities, towns and townships), 37,570, or almost 98 percent, are small governmental jurisdictions subject to the Regulatory Flexibility Act.

The National League of Cities represents the nation's 19,279 cities. Of these, 18,774, or 97 percent, of all municipalities have a population of less than 50,000. In addition, there are 16,656 towns and townships in the United States. Of these, 16,546, or 99 percent, have a population of less than 50,000.

A significant number of the small governmental jurisdictions affected by the NPRM proposals are very small and stand to be particularly burdened by the proposed rules. For example, 18,770 of the nation's 35,935 cities, towns and townships, or 52 percent, have populations of less than 1,000 persons.

Based on the foregoing information, it is clear that the Commission's proposed rules will have a significant effect on a substantial number of small governmental jurisdictions.

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[3] See U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, 1992 Census of Governments, Vol. 1 Number 1 (based on population counts as of April 1, 1990).

[4] Id.

III. THE PROPOSALS WOULD IMPOSE SIGNIFICANT ADDITIONAL AND UNNECESSARY ADMINISTRATIVE BURDENS ON SMALL GOVERNMENTAL JURISDICTIONS.

Our reply comments on the merits of the NPRM's proposals and those of other commenters discuss at length the effects those proposals would have on local governments, including substantial numbers of small governmental jurisdictions, if adopted. In summary, the NPRM would impose a number of additional requirements that appear to be wholly unnecessary and without any statutory basis. Such requirements would be particularly burdensome on small local franchising authorities, which number over 30,000 nationwide. Many of these communities lack the means to comply with such unnecessary and unfounded requirements.

For example, in addressing complaints against unreasonable cable programming service ("CPS") tier rates, rather than simply requiring a cable operator to file its rate justification with the Commission upon complaint, the new process would require a franchising authority to send its complaint to the cable operator, wait for the operator's response, and then forward that response to the Commission.[5] Yet the NPRM suggests no reason why this additional burden on the franchising authority, or the additional delay caused by this regulatory relay race, should be imposed. Moreover, some commenters propose still more new requirements, including additional reporting requirements and accelerated deadlines, which seem to have no purpose but to discourage and encumber the filing of legitimate complaints of

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[5] NPRM at ¶ 22.

unreasonable rates. The Commission has cited no evidence in the record indicating that its original Form 329 process was in any way inadequate for the submission of subscriber complaints to the Commission.

In addition, if the Commission permits cable operators to avoid giving direct notice to subscribers of rate increases, small entities will inevitably have to handle a flood of additional complaints from subscribers not reached by newspaper notices regarding rate increases. Moreover, if the Commission should interpret the amendment of Section 624(e) in the far-reaching manner sought by the cable industry, so as to preempt franchising authorities' right to negotiate cable system facilities and equipment requirements, such authorities will need to devise indirect means of ensuring that their community needs and interests are addressed as provided under Section 626 of the Cable Act without directly addressing facilities and equipment. Such burdens are entirely unnecessary and were not contemplated by Congress in the 1996 Act.

IV. ALTERNATIVES EXIST WHICH DO NOT IMPOSE SIGNIFICANT IMPACT ON SUBSTANTIAL NUMBERS OF SMALL GOVERNMENTAL JURISDICTIONS.

The text of our reply comments contain detailed discussion of alternatives that would reduce the impact of the Commission's rules on small governmental jurisdictions. For example, with respect to CPS complaints, these include:

1. The Commission should reinstate its initial process for filing of CPS complaints by franchising authorities (with the exception of the 45-day deadline, which is no longer applicable under the amended statute).

2. The new requirements of the statute can be met simply by redesigning Form 329, as the Commission has done, to allow the franchising authority to certify that it has received subscriber complaints.

3. The interests of subscribers will be best served if the franchising authority files a Form 329 with the Commission and serves the operator, and the operator files its rate justification forms with the Commission, as before.

V. CONCLUSION

In preparing its final regulatory flexibility analyses in this proceeding, the Commission should amend its initial findings to reflect the information provided above. We would also urge the Commission to review its proposals in light of this new information and revise them accordingly.

In particular, we urge the Commission to find specifically that the proposed cable act reform rules will have a significant effect on a substantial number of small governmental jurisdictions. We also urge the Commission to adopt rules that

do not impose significant economic or procedural burdens on small governmental jurisdictions.

Respectfully submitted,

THE CITY OF LOS ANGELES, CALIFORNIA; THE NATIONAL LEAGUE OF CITIES; AND THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

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