

Cable Communications Agency

CITY OF INDIANAPOLIS

WCTY Government Channel 16

MEMORANDUM

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TO : Federal Communications Commission

FROM : Esther Meier, Admin. Asst, Cable Communications Agency

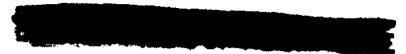
DATE : 07/02/96

SUBJECT: Petition for Reconsideration/FCC Open Video System Rulemaking

Please distribute the Petition for Reconsideration as follows:

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Thank you for your time and attention to this matter.

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Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C.  
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In the Matter of

Implementation of Section 302 of the  
Telecommunications Act of 1996

Open Video Systems

CS Docket # 96-46

**Petition for Reconsideration/FCC Open Video System Rulemaking**

July 1, 1996

To Whom It May Concern,

Thank you for the opportunity to submit this **Petition for Reconsideration** regarding FCC Open Video Systems (OVS) Rulemaking.

First, let me speak to the concerns of municipalities across the nation who are fearful that this recent rulemaking is preemptive of our Right-of-Way authority. While the Order admits local governments' right to manage our rights-of-way and to impose a fee in lieu of franchise fees on the OVS operator, the Order preempts all local franchising requirements affecting OVS, not merely the federal Cable Act franchise requirement, as the Telecommunications Act of 1996 requires.

The Order says that local governments can impose reasonable right-of-way management requirements only if all right-of-way users are treated "equally." This appears to be a more onerous standard than the "non-discriminatory and competitively neutral" standard in the legislative history. This could deprive local governments of some of the compensation they are due for use of the public rights-of-way and make effective right-of-way management impossible.

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In regard to PEG Access obligations, the Order contains ambiguous "cost sharing" language that makes it unclear whether the cable operator's existing PEG support obligations are to be doubled or halved by the entry of an OVS. The Order holds that where a cable operator has an institutional network, (I-NET) obligation, an OVS operator is not **required** to build an I-NET, but if it does, access channels are to be "designated" in the same way as on the cable operator's I-NET. This language does not make sense because an OVS operator is not required to build an I-NET to start with.

Additionally, from a practical standpoint, the FCC needs to clarify what an Institutional Network is. While the 96 Telecommunications Act allows for the negotiating of I-NETs into cable franchise agreements, (I-NETs traditionally carry voice, video and data), the Act forbids municipalities from asking for Telecommunications Services from cable operators as part of a franchise agreement, which is what the cable industry is claiming an I-NET is.

A key issue not dealt with by the FCC, and perhaps because it is considered statutory due to the exemption of a franchise agreement for an OVS operator, but there are no provisions within the Order that address subscriber complaints by the consumer. Indianapolis, like many communities is concerned that in the FCC's haste to remove what it has termed "barriers of entry", that in effect, it will remove the consumer protection that is provided by Local Franchising Authorities in protecting consumers and mediating subscriber complaints.

Historically, the LFAs have handled these matters and are experienced in doing so. The LFA is the last line of defense for a frustrated public. How does a public differentiate between video services offered by a cable company or a telephone company? Does the FCC think that the consuming public will quit calling their service cable TV simply because they are subscribing to an OVS that offers identical services? Why should the public have to suffer with the inconsistency of not having an LFA mediate their complaints anymore? With an OVS model, there is no discernable difference between the cable and OVS video services for the public. Why should there be a falloff in how complaints get resolved of a local nature? These will be complaints that are similar in nature no matter who or what the carrier vehicle is.

Cannot the FCC and its Commissioners exempt OVS from franchising requirements but leave intact those customer service standards imposed upon the cable operators either by local ordinance or by FCC Standards? Cannot the LFA's therefore mediate OVS complaints that are not rate related?

On the Open Access issues, we are concerned that the rules of the Order allow OVS operators

great latitude in this area, and thus create a substantial risk that OVS will become merely cable in another form.

The FCC approval of an OVS certification is a meaningless formality. The certification need not even specify which local communities are affected, nor be served on those communities. Interested parties have only five days to comment, and the FCC acts within ten days.

If demand for OVS carriage outstrips the available capacity, the OVS operator may not select programming for more than one-third of the system's capacity. But LEC's will probably be able to evade the FCC's rules on this point. Independent video programming providers may need to wait three years or longer for an opportunity to obtain carriage.

The Order calls for the OVS rates to be just and reasonable, and not unjustly or unreasonably discriminatory. But the FCC's rules on this point have no teeth and instead largely protect the OVS operator's carriage rates from challenges. For example, there is a "strong presumption" that carriage rates are reasonable if independent video programming providers occupy at least one third of the OVS capacity and the rate is no higher than a weighted average of the rates paid by others. The complainant must provide evidence of a price differential even to file a complaint in the first place. Yet, the FCC does not require an OVS operator to make its rates public. Thus, complainants appear to have no access to information that is essential to file a complaint.

The OVS operator may charge different rates to different programmers based on several inherently unverifiable factors, such as economies of scale or cost savings; creditworthiness or financial stability; or the number of subscribers reached. The operator may also offer preferential rates for nonprofit organizations. but the *Order* does not require such a preference.

The FCC's criterion for a "reasonable" carriage rate is the imputed rate that the OVS operator pays itself for carriage of its own programming. But this imputed rate apparently compensates the OVS operator for its loss of subscribers on the channels it does not program, effectively requiring all unaffiliated programmers to pay higher rates than the OVS operator's own affiliates.

In matters of the FCC's OVS dispute resolution process over Open Access issues, the process is heavily biased in favor of OVS operators.

The Order also disallows an LFA from requiring specific channel alignment for PEG Access Channels. This creates two problems. It allows the OVS operator to realign PEG channels on a whim and presents identity and logistical problems for hundreds of access channels around the

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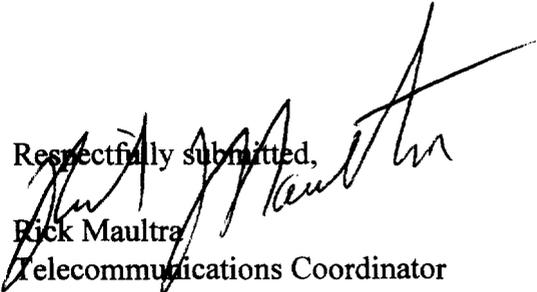
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country, many of which are simply known by their channel appearance such as Channel 16, etc. Access trucks, stationary, equipment and viewer loyalty will become obsolete if this simple, yet important rule cannot be changed. It also would be consistent with what hundreds of cable operators are already doing.

Thank you for your kind consideration in reviewing our Petition for Reconsideration regarding your recent OVS Rulemaking Order.

Respectfully submitted,



Rick Maultra  
Telecommunications Coordinator  
City of Indianapolis

CC: Cable Bureau/FCC Information Office  
FCC Commissioners  
Marion County Franchise Board  
Peggy Piety-Corporation Counsel  
NATOA