

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

In the Matter of

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) Annual Assessment of the Status of
) Competition in the Market for the
) Delivery of Video Programming

) CS Docket No. 98-102

JUL 8 1998

COMMENTS OF OPTEL, INC.

OpTel, Inc. ("OpTel"), submits these comments in response to the Notice of Inquiry ("NOI") in the above-referenced proceeding.

DISCUSSION

I. The Private Cable Industry Is Positioned To Provide Telephone, Internet Access, Data, And Video Services To Consumers.

The Commission is well aware of the growing competitive role that private cable systems are playing in the local multichannel video programming distribution ("MVPD") markets. As competitive multichannel video programming distributors, private cable operators are increasingly making in-roads into markets long-dominated by the incumbent franchised cable operators. OpTel alone now has almost 400,000 passings and over 200,000 video subscribers in eleven major U.S. cities.

The Commission may not, however, be as aware of the other communications sub-markets in which private cable operators are beginning to provide much needed competition. Private cable operators, led by OpTel, and using microwave networks, are now able to bundle their video service offerings with private telephony, data, Internet access, and other enhanced services.

For example, using its advanced microwave networks, OpTel markets an integrated package of voice, video, and data services to MDUs. Indeed, in two of its major markets (Houston and Dallas-Ft. Worth), OpTel now uses its own central office switch and its own transport network to provide facilities-based residential telephone competition to the ILEC. OpTel is in the process of expanding its telecommunications infrastructure in other markets and expects, by the end of calendar year 1999, to offer facilities-based telecommunications in each of its major markets. OpTel now is licensed as a competitive local exchange carrier ("CLEC") in each state in which it competes.

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Thus, while the franchised cable companies have backed away from their promises to provide "full service" cable/telephone networks, and the ILECs have largely abandoned their efforts to compete in the local MVPD markets, OpTel in particular, and the private cable industry in general, are moving forward toward the goal of providing facilities-based competition in every segment of the communications markets.

II. The Commission's Microwave Rules Should Be More Flexible.

The future success of private cable systems as competitors in the telecommunications and MVPD markets will, in large measure, turn upon their ability to construct and operate advanced microwave networks and to modify the system architecture of these networks as the market demands. As a result, the future competitive viability of private cable as an industry is directly related to the flexibility of the Commission's microwave regulations.

This will come as no surprise to the Commission, which opened the 18 GHz band for use by private cable systems specifically in order to "encourage more robust competition in the multichannel video delivery marketplace."¹ That step has now begun to reap competitive benefits for the public and helped to ensure that, at least in one segment of the MVPD market, the incumbent franchised cable operators will face real competition. Even greater microwave licensing flexibility will be required, however, if the private cable industry is to fulfill its potential and inject much needed competition in other currently monopolistic markets.

First, because of signal attenuation problems at 18 GHz, other, lower frequency microwave bands must be made available to private cable if these systems are going to compete with franchised cable on a widespread basis. A single 18 GHz microwave link cannot normally exceed 8 miles. This limitation artificially inhibits the growth of private cable system competitors.

Using a hub and spoke microwave architecture, a private cable operator can serve numerous individual communities or MDUs from a single headend. When the customers to be served, however, live beyond the range of the 18 GHz facilities, the cost of serving the subscribers is increased, perhaps beyond the point at which the operator can provide service at a competitive price. This, naturally, diminishes competition at the subject site and in the market generally.

¹ See Amendment of Part 94 of the Commission's Rules to Permit Private Video Distribution Systems of Video Entertainment Access to the 18 GHz Band, 6 FCC Rcd 1270 (1991).

In addition to the technical limitations of the 18 GHz band, recent regulatory changes also have impaired the future use of the band for private cable services. The FCC has established new "quiet zone" rules such that no new applications will be accepted in the 17.8–19.7 GHz bands within the Denver and Washington, D.C., areas. This change alone will stifle further growth or expansion of private cable competition in these two metropolitan areas. Moreover, several satellite licensees have urged the Commission to issue blanket licenses for satellite downlink operations throughout the 17.7-20.2 GHz band.² Although OpTel has not fully studied the impact of this proposal, preliminary analysis suggests that blanket licensing in the 18 GHz bands for satellite downlinks may have negative implications for terrestrial microwave users.

For all of these reasons, OpTel has filed a petition for rulemaking requesting that the Commission open the 12 GHz CARS band to OFS licensees for the delivery of video programming material.³ 12 GHz microwave facilities have double the range of 18 GHz microwave, and they are not affected by the new "quiet zone" rules or threatened by the satellite blanket licensing proposal.

Thus, this change alone would enhance competition in the MVPD markets and further the public interest "by promoting spectrum efficiency and increasing the flexibility of licensees."⁴ There is simply no reason to give preferential treatment to one group of competitors in the MVPD market — particularly not the current monopolists — by granting them exclusive access to the 12 GHz frequencies for the delivery of video programming.

In addition, the Commission should take steps to eliminate archaic microwave rules that no longer serve important or substantial regulatory purposes. For example, OpTel has been advised by the staff that the restriction on private microwave carriage of video programming materials in Section 101.603 applies even if the programming is transmitted in a digital format. There is, however, no basis for this restriction in a digital world.

Once digitized, the "video" portion of a signal is indistinguishable from the voice and data portions of the transmission. A private cable operator using a fully digital system at 18 GHz to deliver an integrated package of services should not be required to limit the "video" portion of that signal to frequencies between 18.142-

² See Public Notice, IN Report No. 97-27 (rel. Sept. 5, 1997).

³ OpTel Petition For Rulemaking, RM-9257 (filed Apr. 1, 1998).

⁴ Amendment of Part 94 of the Commission's Rules, 6 FCC Rcd at 1273.

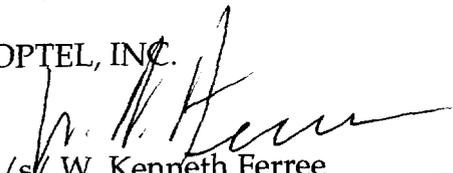
18.580 MHz. One cannot simply import analog rules into a digital market and expect a rational and coherent regulatory framework to result.

CONCLUSION

Although the private cable industry is vibrant and growing, regulatory barriers remain that inhibit competition. Most importantly, the Commission should reexamine its microwave licensing rules to provide new competitors with maximum operational flexibility. OpTel looks forward to working with the Commission in the future on these important issues.

Respectfully submitted,

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