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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Lisa M. Chandler
Also admitted in the District of Columbia

September 10, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Comments of the Small Cable Business Association
CS Docket No. 98-132

Dear Ms. Salas:

On behalf of the Small Cable Business Association ("SCBA"), we enclose ten (10) copies of the above-referenced Comments. We request that each Commissioner receive a copy of SCBA's Comments.

If you have any questions, please call us.

Very truly yours,

Lisa M Chandler

Lisa M. Chandler

Enclosures

cc: Small Cable Business Association

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements	)	**CS Docket No. 98-132**

COMMENTS OF THE SMALL CABLE BUSINESS ASSOCIATION

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September 10, 1998

SUMMARY

The Commission's present cable television public file and notice requirements impose unnecessary administrative burdens on cable systems and high per-subscriber costs on the customers of small cable systems. The rules are often difficult to understand and frequently conflict with one another, forcing smaller, independent cable businesses to incur the expense of obtaining legal advice. Many of the rules also require small cable businesses to maintain public files at several locations, further increasing their expenses. In addition, the rules contain an artificially low ceiling for small-system relief, excluding systems with 1,000 or more subscribers even though the Commission has recognized the need to extend small-system relief to systems with 15,000 or fewer subscribers.

The Commission should modify its cable television public file and notice rules. It should adopt CATA's proposal and incorporate SCBA's proposed changes. CATA's proposed reorganization of the rules into separate subparts of Part 76 will significantly reduce confusion regarding public file and notice obligations. Consolidation of the rules will not, in and of itself, relieve the financial and administrative burdens the current public file rules impose on small systems.

To provide necessary financial and administrative relief to small systems and their customers, SCBA advocates (1) broadening the exemption under 47 C.F.R. § 76.305(a) to include all small systems with 15,000 or fewer subscribers; and, (2) replacing the public file requirement with an obligation to provide subscribers with the information upon request. These changes will greatly benefit small systems and subscribers without adversely affecting the benefits conferred by providing public access to these records.

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	)	
1998 Biennial Regulatory Review --	)	**CS Docket No. 98-132**
Streamlining of Cable Television	)	
Services Part 76 Public File	)	
and Notice Requirements	)	

To: The Commission

COMMENTS OF THE
SMALL CABLE BUSINESS ASSOCIATION

I. INTRODUCTION

The Commission's public file requirements for cable television impose significant burdens on smaller, independent cable businesses without producing substantial public benefits. Small cable businesses must expend precious resources — financial and administrative — toward complying with outmoded documentation requirements. The money saved by modifying the present requirements will ultimately reduce upward pressure on rates.

The Small Cable Business Association ("SCBA"), with approximately 300 members serving more than two million subscribers nationwide, remains the only voice solely dedicated to representing the interests of smaller, independently owned cable businesses. Because changes to the Commission's cable television public file requirements will result in significant savings for small systems and their subscribers, SCBA takes this opportunity to files its comments.

II. BACKGROUND

The Commission's cable television public file requirements, as presently drafted, pose unnecessary burdens on small cable systems. The Commission's rules exempt some, but not all, small cable systems from maintaining a public file for some, but not all, documents.[1] Section 76.305(a) of the Commission's rules exempts systems with fewer than 1,000 subscribers from retaining certain records in public files, *e.g.*, political files. Other sections, however, require all systems, regardless of size, to make certain records available for public inspection, thus requiring an otherwise "exempt" system to establish a public file.[2] The distinctions drawn by the Commission's rules between systems with fewer than 1,000 subscribers and those with 1,000 or more subscribers become blurred as the rules zigzag across the 1,000-subscriber threshold. More importantly, even small systems with more than 1,000 subscribers require relief from the public file requirements.

The financial and administrative burdens posed by the present cable television public file requirements adversely affect small cable systems. The changes proposed by CATA and SCBA simplify compliance with the public file requirements and drastically reduce the burden to all small systems. SCBA strongly urges the Commission to amend its rules to incorporate the changes discussed in these comments.

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[1] *See* 47 C.F.R. § 76.305(a) (exempting systems with fewer than 1,000 subscribers from specified public file requirements).

[2] *See e.g.*, 47 C.F.R. § 76.302.

III. THE COMMISSION SHOULD EXEMPT ALL SMALL CABLE SYSTEMS FROM ITS PUBLIC FILE REQUIREMENTS.

The Commission should modify its cable television public file requirements to exempt all small systems, as defined by the Commission in its *Small Systems Order*.[3] The Commission's rules currently exempt only cable systems with fewer than 1,000 subscribers and then only from certain public file requirements.[4] To limit this exemption to only systems with fewer than 1,000 subscribers ignores (1) the actual financial and administrative burdens imposed on small systems with 1,000 or more subscribers; and, (2) the Commission's previous recognition of the need to provide administrative relief to systems serving 15,000 or fewer subscribers.[5]

A. The Commission should apply its "small system" definition to all public file requirements.

The Commission should exempt all "small systems," as defined by the *Small Systems Order*, from any cable television public file requirements. In its *Small Systems Order*, the Commission broadened its definition of a "small system" to include systems with up to 15,000 subscribers.[6] The Commission expanded the definition of a "small system" in recognition that many small systems did not meet the statutory definition of a small

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[3] *See e.g., In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, FCC 95-196, 10 FCC Rcd 7393 (1995) ("*Small Systems Order*").

[4] *See* 47 C.F.R. § 76.305(a).

[5] *See Small Systems Order* at ¶¶ 3, 25.

[6] *Small Systems Order* at ¶ 25.

system but still faced substantial hardships.[7]

The Commission should similarly recognize the disparate burdens the public file requirements place on small systems with more than 1,000 subscribers. Further, rather than advancing the public interest, the current requirements provide no public benefit. Instead, the burden imposed on small systems impairs small systems' ability to operate in the public interest.

B. Public file requirements unnecessarily drain small systems' financial and administrative resources.

The structure and substance of the Commission's current cable television public file requirements present unique challenges to a small system owner. The public file obligations are scattered throughout Part 76 of the Commission's rules and some appear to conflict with one another.[8] Untangling this web of regulations can be time-consuming for a small system owner or expensive if the owner must use outside expertise.

In a previous rulemaking regarding cable television public file obligations, the Commission eliminated many public file requirements largely because the high costs of complying with the public file requirements outweighed their utility.[9] These costs included

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[7] *Small Systems Order* at ¶ 26 (commenting that "larger systems [(*i.e.*, systems with up to 15,000 subscribers,)] generally face many of the same challenges that systems of 1,000 or fewer subscribers do in providing cable service").

[8] *See* 47 C.F.R. § 76.305(a) (exempting certain small systems from political file obligations); *but see* 47 C.F.R. § 76.207(a) ("Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made . . . on behalf of a candidate for political office.")(emphasis added).

[9] *See In the Matter of Amendment of Part 76 of the Commission's Rules and Regulations Relative to the Obligations of Cable Television Systems to Maintain Public*

the expense of (1) training personnel to handle compliance with public file requirements; (2) gathering and compiling public file data; (3) photocopying; (4) mailing copies to the various locations required to maintain such files; and (5) storage.[10] The Commission concluded that "[t]o a large extent, the information in the public inspection file either has no utility due to a number of deregulatory actions already taken by the Commission, or is not being utilized by the public to a sufficient degree to warrant retention."[11]

Application of that analysis to many remaining public file requirements imposed on small systems suggests that they too should be eliminated. Smaller cable businesses frequently must consult with legal counsel just to understand the Commission's requirements. They additionally spend substantial amounts to collect the documents and information required, employ personnel to maintain the file, and otherwise ensure that each community served by the system has the necessary documents.[12] Subscribers ultimately pay these expenses.[13] For small systems, these costs are high when measured on a per-

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Inspection Files and Retain Subscriber Records, Report and Order, FCC 84-590, 99 F.C.C. 2d 959 at ¶ 9 (1985) ("*Public File Order*").

[10] *See Public File Order* at ¶ 9.

[11] *See Public File Order* at ¶ 13 (Although the Commission's elimination of many of the public file requirements resulted from the deregulation of cable, the Commission appropriately noted that the high costs of compliance outweighed the requirements' relative utility.)

[12] *See e.g.*, 47 C.F.R. § 76.305(b) (requiring cable operators to locate their public files "at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s)").

[13] *See* 47 C.F.R. § 76.924 (d)(2) (listing system operating expenses, which would likely characterize the costs of maintaining a public file as either a "general [or]

subscriber basis.

The Commission's current rules impose public file requirements on every cable system. Subscribers of those systems absorb the cost of maintaining that file. The fewer the subscribers, the higher the per-subscriber cost. Consequently, what amounts to an immaterial cost for a large system (*e.g.*, 50,000 subscribers) can prove very high for small systems. For example, if compliance costs $2,000 per system, the per-subscriber cost for a system with 100 subscribers equals $20, $2 per subscriber for a 1,000-subscriber system, but less than $0.05 for a 50,000-subscriber system.

The high per-subscriber cost of small system compliance outweighs the benefits of maintaining a public file. SCBA's members report that public files remain largely unused by the public. In light of their de minimis use and their high cost, the Commission should reconsider its current requirements.

IV. THE COMMISSION SHOULD ADOPT CATA's PROPOSAL.

The Cable Telecommunications Association ("CATA") proposes changes to the current public file and notice requirements, reorganizing the present rules into separate subparts of Part 76. SCBA generally supports CATA's proposal with one qualification — the Commission should create an exception to the public file requirements for small systems that have 15,000 or fewer subscribers.

At minimum, CATA's proposal will simplify compliance by consolidating all public file and notice requirements in separate subparts of Part 76. Such consolidation will permit

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administrative expense[]" or "other operating expense"); *see also* 47 C.F.R. § 76.934(h)(4)(i) (outlining what expenses equal "operating expenses").

cable operators to determine their obligations without necessarily incurring the cost of consulting legal counsel. This will result in reduced costs. SCBA therefore strongly urges the Commission to adopt the changes CATA proposes.

V. THE COMMISSION SHOULD ALSO ADOPT SCBA'S PROPOSED CHANGES.

In addition to reorganizing Part 76 to consolidate all rules that have public file and notice requirements, SCBA advocates creating an exemption for small systems. Currently, only systems with fewer than 1,000 subscribers remain exempt from the public file requirement and that exemption only applies to limited materials.[14] The Commission should instead (1) expand the exemption to include all small systems with 15,000 or fewer subscribers; and, (2) for exempt systems, replace the requirement to maintain a public file with an obligation to provide the public with the information upon request.

As explained above, the hardships faced by small systems resulting from their public file obligations affect all small systems, not just those with fewer than 1,000 subscribers. In keeping with Congress' directive that the Commission "reduce regulatory burdens and the cost of compliance for small systems,"[15] the Commission should broaden its exemption under Section 76.305(a) to include all small systems, including those systems with more than 1,000 subscribers but 15,000 or fewer subscribers.

Expanding the Section 76.305(a) exemption to include all cable systems with 15,000

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[14] *See* 47 C.F.R. § 76.305(a).

[15] *Small Cable Order* at ¶ 4 (citing Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. §§ 534, 543(i)).

or fewer subscribers only solves part of the problem. Other sections of the Commission's rules obligate all cable systems to maintain a public file.[16] In those instances, the Commission's rules may also require that the system operator maintain the public file in more than one location.[17] Even if the Commission expands Section 76.305(a) to include all "small systems," those systems will still need to maintain multiple public files. Without making additional changes to the public file rules, the exemption of all "small systems" becomes meaningless.

To avoid this result, SCBA advocates further modifications to the public file rules. For "exempt" systems, the Commission should eliminate any requirement to maintain a public file. Rather, the Commission should only require small systems, at their own expense and within a reasonable period of time, to provide the information to subscribers upon request.

SCBA's proposal provides a win-win situation for everyone. The Commission will have clearly defined public file requirements, small systems will not unnecessarily waste precious financial and administrative resources, and subscribers can still obtain the documentation the Commission's rules require cable systems to maintain. The Commission should therefore modify its rules to incorporate CATA's proposal and modify the public file requirements in accordance with SCBA's suggested changes.

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[16] *See e.g.*, 47 C.F.R. § 76.302(a).

[17] *See e.g.*, 47 C.F.R. § 76.302(c).

VI. CONCLUSION

The Commission's current public file requirements impose unnecessary financial and administrative burdens on small systems and unfairly discriminate among variously sized small systems. The Commission should expand the present exemption for small cable to include every small system that serves 15,000 or fewer subscribers. To make this exemption meaningful, small systems should no longer have to maintain public files. Instead, the Commission should require small systems to provide subscribers with the information they seek for free and in a timely fashion. In addition, the Commission should reorganize the public file and notice rules to correspond to CATA's proposal. These changes will improve the value of the public file requirements and provide significant savings to cable systems.

Respectfully submitted,

SMALL CABLE BUSINESS ASSOCIATION

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