

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

In the Matter of:	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	
and Competition Act of 1992	)	
	)	CS Docket No. 01-290
Development of Competition and	)	
Diversity	)	
in Video Programming Distribution:	)	
Section 628(c)(5) of the Communications	)	
Act:	)	
Sunset of Exclusive Contract Prohibition		

**Initial Regulatory Flexibility Analysis**

**Comments of the**



On behalf of more than 900 independent cable companies, ACA submits these comments in response to the Initial Regulatory Flexibility Analysis (“IFRA”) appended to the NPRM.<sup>1</sup> Together, ACA members serve more than 7.5 million cable subscribers. ACA members range from small, family-run cable systems to multiple system operators focusing on smaller systems and smaller markets. About half of ACA’s members serve

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<sup>1</sup> *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition, Notice of Proposed Rulemaking, FCC 01-307 (rel. Oct. 2001), Appendix A, “Initial Regulatory Flexibility Act Analysis.”*

less than 1,000 subscribers. All ACA members face the challenges of building, operating, and upgrading broadband networks in smaller markets and rural areas.

ACA has a vital interest in extending the sunset of the prohibition on exclusive contracts. Access to satellite programming is essential for smaller cable systems. ACA's comments provide several examples of how the sunset of the prohibition could result in small cable companies losing access to over one-third of their satellite programming services. The impact on hundreds of small cable businesses would be severe. Indeed, the loss of enforceable access rights to key satellite programming would raise serious questions concerning the continuing viability of many small cable businesses.

In ACA's comments, we propose the following alternatives to the sunset of Section 628(c)(2)(D):

- Extending the prohibition past October 2002.
- Extending the prohibition past October 2002 for programming transactions between small cable companies and vertically integrated programming vendors.
- Extending the prohibition past October 2002 for programming transactions between small cable companies and vertically integrated programming vendors and imposing additional restrictions on satellite programming vendors affiliated with network broadcasters.

The Regulatory Flexibility Act ("RFA") requires the Commission in its initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities.<sup>2</sup> The IRFA must contain a description of any significant alternatives to the

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<sup>2</sup> 5 USC § 603(a).

proposed rule that would accomplish the stated objective of the statute and that would minimize any significant economic impact of the proposed rule on small entities.<sup>3</sup> An example of an alternative includes an “exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>4</sup>

The Commission has a statutory obligation to consider the impact any Commission action would have on small entities. Economic realities require the Commission to establish an alternative treatment for small cable companies. Because of the impact to small cable as discussed above and in ACA’s comments, the Commission must address these issues and include a comprehensive discussion of the impact its actions will have on small cable in its Final Regulatory Flexibility Analysis.

Respectfully submitted,

**AMERICAN CABLE ASSOCIATION**

By: \_\_\_\_\_ /s/

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<sup>3</sup> 5 USC § 603(c).

<sup>4</sup> 5 USC § 603(c)(4).