

**BEFORE THE FEDERAL COMMUNICATIONS
COMMISSION
MONDAY, JUNE 24, 2002**

**TESTIMONY OF MATTHEW M. POLKA
PRESIDENT OF THE AMERICAN CABLE ASSOCIATION**

INTRODUCTION

Thank you, Mr. Chairman. It is a privilege for me to be here today.

My name is Matt Polka, and I am the President of the American Cable Association. ACA is an association that represents more than 950 independent cable businesses serving more than 7.5 million rural and small market customers in all 50 states. These independent cable businesses often struggle to serve their customers on limited resources and with limited manpower. But despite these challenges, ACA members are taking the lead in providing advanced telecommunications services to customers in smaller markets and rural areas.

At the outset, let me emphasize ACA's support for the Commission's efforts to increase diversity in the workplace. Our

members look forward to working with the Commission to achieve these goals.

In its Comments in this docket, ACA proposes the following modifications to the EEO requirements to help balance the administrative burden for smaller, independent cable businesses:

- First, the threshold for exemption from the EEO outreach requirements should be raised.
- Second, recordkeeping and reporting requirements should be streamlined.
- And third, Form 395-A should be streamlined.

ACA proposes that this relief apply to cable companies serving fewer than 15,000 subscribers. This threshold is based on the standard established by the Commission for small system relief from rate regulation.

In the alternative, ACA proposes that this relief apply to cable employment units with 10 or fewer employees.

Item one will provide relief to cable operators that don't have the financial means or access to recruiting sources for extensive

outreach efforts. Items two and three will help simplify the reporting requirements and improve the quality of information gathered by the Commission.

STATUTORY AUTHORITY TO PROVIDE RELIEF

The Commission has the statutory authority to provide this relief. A plain reading of the statute shows Congress' intent to provide the Commission such discretion. In Section 634 of the Communications Act, Congress explicitly provided that the "Commission may amend [its] rules from time to time to the extent necessary to carry out the provisions of [Section 634]."¹ Further, the Act states that the outreach rules established by the Commission shall specify the terms under which a cable entity shall undertake outreach efforts *to "the extent possible"*.² By using this phrase – "to the extent possible" – Congress provided a safety valve that the Commission could rely on to provide relief to small cable businesses.

¹ 47 U.S.C. § 554(d)(4).

² 47 U.S.C. § 554(d).

WHY THE ADMINISTRATIVE RELIEF IS NEEDED

Let me explain why this relief is critical. Many ACA members are smaller cable companies – about half of ACA’s members serve fewer than 1,000 subscribers, with members, on average, serving only 8,000 subscribers. As the Commission has recognized, smaller cable companies often serve rural communities and smaller markets, and almost always have extremely limited financial and administrative resources. In addition, these companies do not have the same access to recruitment resources as cable systems in urban areas. In these respects, small cable businesses are significantly different from their larger counterparts. For the majority of ACA’s members, therefore, compliance with the EEO obligations takes away scarce resources from their already lean budgets and overstretched employees. These are not concerns for larger operators.

CONGRESS' AND THE COMMISSION'S RECOGNITION OF THE NEED FOR ADMINISTRATIVE RELIEF

Fortunately, Congress has consistently recognized the difficulty that administrative burdens impose on small cable systems. The 1992 Cable Act and the 1996 Telecommunications Act both contain provisions that provide regulatory relief to small systems. For example, Section 301(c) of the Telecommunications Act requires that the Commission design its regulations to reduce the administrative burdens and costs of compliance for cable systems with 1,000 or fewer subscribers. It also provides for greater deregulation for small systems.

The Commission has also consistently recognized the challenges that small cable companies face. For example, in its 1995 Small System Order,³ the Commission analyzed the economic, physical, and financial characteristics of cable systems above and below 15,000 subscribers and determined that there were significant differences between the larger and smaller

systems. The Commission found that systems serving fewer than 15,000 subscribers - and I quote from the Order here - “face many of the same challenges that systems of 1,000 or fewer subscribers do in providing cable service.”⁴

THE PROPOSED 15,000 SUBSCRIBER THRESHOLD

ACA agrees with the Commission’s analysis in the *Small System Order*. The same analysis can be applied here – the administrative challenges facing smaller cable companies to gather, process, and report data are no different in the EEO context than in the rate context. It is not only the very tiny systems with 100 or 500 subscribers that are in need of regulatory relief. Systems serving up to 15,000 subscribers require the same relief. Therefore, ACA proposes adopting this 15,000 subscriber threshold for administrative relief under the EEO requirements. In the EEO context, though, the 15,000 subscriber

³ *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*, 10 FCC Rcd. 7393 (1995).

⁴ *Id.* at ¶¶ 25-27.

threshold would be applicable to smaller cable companies as opposed to individual systems.

I strongly believe this is the appropriate threshold for three important reasons:

- First, it would provide relief to a broader class of cable companies that Congress and the Commission have already recognized requires relief. The Commission has had a longstanding policy to exempt cable employment units with fewer than six full-time employees from its EEO outreach requirements.⁵ But this number – 6 – does not include many smaller companies that the Commission, through its careful analysis, has already determined require administrative relief.
- Second, the 15,000 subscriber exemption would simplify the regulatory structure governing small cable companies by adopting a familiar, easily-understood

threshold. The current EEO outreach rules exempt “cable employment units” with fewer than six full-time employees. But many smaller cable companies are located in rural areas and operate widely-scattered small systems. Unfortunately, I hear time and again from these ACA members that they have a hard time determining just what an “employment unit” is. The 15,000 subscriber threshold is well-established in the area of rate regulation and would be easily understood by these small companies.

- *And third*, the 15,000 subscriber threshold would relieve regulatory burdens for a significant number of small cable companies in need, but it would affect relatively few positions within the industry. Just as important, raising the threshold would not contravene Congressional intent. The cable industry as a whole

⁵ NPRM at ¶ 48.u

employs about 131,000 people.⁶ Only about [14,000] of these positions are with ACA member companies, and a good portion of those positions are not the “positions of management authority” that Congress was concerned about when it enacted the EEO legislation. The relief that ACA proposes will make a big difference for smaller cable companies, but it will not affect many management positions within the industry. Further, there is no evidence in the record that there is a lack of females or minorities in positions of management authority at smaller cable companies.

STREAMLINED RECORDKEEPING AND REPORTING REQUIREMENTS AND A STREAMLINED FORM 395-A

For this same class of smaller cable companies, ACA has also proposed streamlining recordkeeping and reporting requirements, and a streamlined Form 395-A. As I have already discussed, Section 634 of the Communications Act gives the

⁶ http://www.ncta.com/industry_overview/indStats.cfm?statID=1.

Commission wide latitude to set the administrative requirements that cable entities must meet to comply with the statute. For example, ACA is considering posting its members' job openings on ACA's website.

In the case of Form 395-A, compiling and processing the extensive information required to complete the form is a hardship for smaller cable companies. Therefore, for these companies, ACA recommends a new one-page Form 395-AS for small cable businesses. The new form would contain the following information:

- The number of subscribers the company has;
- The number of full-time hires during the reporting period; and
- The company's outreach efforts during the reporting period.

This format would simplify the reporting requirement and thereby improve the quality and consistency of the data gathered by the Commission. It will also better enable the Commission to develop

small market outreach efforts. Again, the *Small System Order* provides a precedent for this type of relief: under that Order, Form 1230 was streamlined to a one-page filing.

CONCLUSION

I would like to conclude by thanking the Commission for inviting me to testify before you today.

The record shows that small cable companies require relief from the EEO requirements. The Commission and Congress have consistently recognized the burdens facing small cable businesses and have provided them legislative and administrative relief. Under Section 634 of the Communications Act, the Commission is given the authority to provide relief to these entities, and there is ample evidence in the record that this relief is necessary.

To summarize, the Commission should provide relief by exempting cable companies with fewer than 15,000 subscribers from the EEO outreach requirements, and by streamlining the recordkeeping and reporting requirements and Form 395-A for

these companies. Alternatively, it should provide this relief to cable employment units with 10 or fewer employees.

I speak on behalf of ACA and its members when I say that we fully support the Commission's efforts to increase diversity in the workplace. We are committed to working with the Commission to solve this issue.

Thank you for your time.