

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

_____)	
In the Matter of)	
Annual Assessment of the Status of)	
Competition in the Market for the)	MB Docket No. 04-227
Delivery of Video Programming)	
_____)	

**REPLY COMMENTS OF ADVOCATE COMMUNICATIONS, INC.
d/b/a ADVANCED CABLE COMMUNICATIONS**

In response to

THE CITY OF WESTON, FLORIDA

And

THE TOWN FOUNDATION, INC.

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Introduction

These Reply Comments are filed by Advocate Communications, Inc., d/b/a Advanced Cable Communications (“Advanced Cable”) in response to the Comments of the City of Weston (the “City”) and The Town Foundation, Inc. (the “Foundation”), which were purportedly filed in accordance with the Federal Communications Commission’s (“FCC” or the “Commission”) Notice of Inquiry into the state of competition in the cable industry. Initially, Advanced Cable notes that the City does not have standing to file comments as the subject agreement is a private agreement between Advanced Cable and the Foundation. Moreover, as noted in the Commission’s Notice of Inquiry, “Section 628(g) of the Communications Act of 1934, *as amended*, directs the Commission to report to Congress on the status of competition in the market for the delivery of video programming. This Notice of Inquiry (“Notice”) solicits data and information on the status of competition in the market of the delivery of video programming for our eleventh annual report (“2004 report”).¹ The Comments of the City/Foundation do not respond to the purpose of the Notice of Inquiry. While they state that they address the issues raised in paragraph 12 of the Notice, they fail to provide documented information to assist the FCC in addressing the issues set forth therein. Instead, the Comments improperly seek FCC assistance to a particular situation facing the Foundation. Consequently, the Comments of the City/Foundation do not respond to the Notice, and should not even be considered by the Commission in its 2004 report.

While the City/Foundation assert certain concerns about the subject agreement² with Advanced Cable, they provide little or no factual support for those concerns. However, the City/Foundation also admit that Advanced Cable’s rates are “lower than rates of cable providers for individual service in surrounding cities” (Comments at page 3)³, and that “Advanced Cable offers premium services, digital services, broadband Internet service, and markets Voice Over Internet Protocol services offered by Vonage.” Comments at 6 n.13. Thus, Advanced Cable is a responsible cable operator providing all commercially viable services that are available, including High Definition Television

¹ Paragraph 1 to the Notice of Inquiry.

² As noted in the Comments, the subject agreement, known as the Cable Services Agreement, was executed in December 1987 by Advanced Cable’s predecessor, the Developer of the Weston Community, and the Foundation.

³ In a recent survey of cable television operators in Broward County, Florida, Advanced Cable’s rates offered in the City of Weston were found to be \$12 to \$15 lower for a comparable channel line up. In fact, Advanced Cable has the lowest rate per channel of any cable provider in the surrounding South Florida area.

("HDTV"), and will be launching additional advanced services, such as Video-on-Demand, in the near future.

Finally, in an effort to resolve the concerns of the City/Foundation, Advanced Cable has offered to delete the provision of the subject agreement that requires should the Foundation desire to terminate the agreement, "the Foundation must purchase the equipment owned by Advanced Cable at its appraised value. (Agreement, §18)." Comments at page 4.⁴

Historical Background

The City's/Foundation's Comments contain many generalities with little factual support. One comment that provides an example of such a statement is that there was "not full disclosure to the residents who are then locked into contracts." Comments at page 3. Absolutely no support for this statement is provided. Most bulk contracts provide that 100% of the residents of the property must agree to receive and pay for the cable service, which is then provided at a discounted rate.⁵ Additionally, Advanced Cable notes that its purchase of the cable system was an arm's length transaction between two companies that had no prior relationship. The price negotiated and paid by Advanced Cable for the cable system was certainly based upon the fact that a bulk agreement was in place and that its term was for an additional fifteen (15) years.

The City's/Foundation's Complaints are not Supported

The City/Foundation complain that Advanced Cable is providing more channels than is permitted under the subject agreement and that Advanced Cable should only be providing a limited lineup for a lesser price. Comments at page 3. This argument is extraordinary; most complaints are usually that the cable operator is not providing enough channels desired by the residents. Under all practical circumstances, Advanced Cable believes that it is providing the residents of Weston with the type of basic programming lineup and number of channels that the highly educated, upscale residents of Weston demand. The market has revealed that one of the reasons that subscribers leave cable companies in favor of satellite companies is for the number and diversity of channels offered by satellite companies. Advanced Cable has conducted market surveys to determine subscriber viewing habits and channels subscribers want to receive. A copy of its most recent survey was provided to the City/Foundation. Those market surveys reveal that the robust channel lineup that Advanced Cable is providing in Weston is the type of channel lineup that the residents demand. Advanced Cable truly believes that the City is receiving very few, if any at all, complaints about the channel lineup Advanced Cable is providing. In fact, if Advanced Cable was not providing such a robust channel

⁴ This offer was made to counsel for the City/Foundation after receipt and review of the Comments since Advanced Cable was not previously aware of the Foundation's concern over that provision of the agreement.

⁵ Florida Statutes specifically recognize bulk contracts for condominiums, and require that residents who are blind and/or hearing impaired be permitted to opt out of the agreement. Section 718.115(d)(2).

lineup, the City would be receiving a great number of complaints about the channel lineup. Moreover, the customer survey reported that 84.1% of Advanced Cable's Weston customers are either very satisfied or satisfied.

The City/Foundation also complain, with no support, that there are residents within the City of Weston who cannot afford Advanced Cable's services. Comments at page 4. However, demographic information about the City reveals that its residents are primarily upscale, middle aged suburbanites comprised of mostly highly educated executives. The City's own 2003 Performance Report shows that the median age is 34.1 with a median income of almost \$81,000.⁶ However, more recent surveys show that median income in the portions of Weston relevant to Advanced Cable reach levels closer to \$120,000. Reports concerning penetration of satellite providers of video programming within the City of Weston show that just over 20% of the residents within the City are subscribing to such services. Thus, these figures show that while some residents may be subscribing to other forms of video programming services,⁷ income level is not a factor.

The City's/Foundation's next complaint is that the subject agreement is perpetual. They correctly note that the agreement is for a period of ten (10) years and provides for automatic renewals of ten (10) years. They claim that one of the reasons that the agreement becomes perpetual is because if the Foundation was to terminate the agreement, it "must purchase the equipment owned by Advanced Cable at its appraised value. (Agreement, § 18)... likely with an appraised value of tens of millions of dollars making it from a practical standpoint not viable for the Foundation to terminate the Agreement." Comments at page 4. What is interesting is that during the discussions between the Foundation and Advanced Cable, this very provision was used by Foundation representatives as a sword. The Foundation stated it would hire "an appraiser to value the system for purchase by the Foundation ... in the event we have not come to agreement on the proposed termination...."⁸ Nevertheless; Advanced Cable has offered to the City to delete this requirement to purchase the equipment by the Foundation should it determine to properly terminate the agreement.

The City's/Foundation's next issue about the subject agreement being perpetual concerns the Cable Services Rights Agreement that the Developer agreed to enter into as a consideration for the purchase of the cable system. As the Comments note⁹, in that

⁶ Based on the 2000 U.S. Census.

⁷ Cable operators have found that in wealthier areas, residents often subscribe to both cable and satellite services in order to have all video programming options available. Thus, the high penetration of satellite providers of programming services does not necessarily mean that residents are not satisfied with Advanced Cable's services.

⁸ E-Mail from John Flint, City Manager/President of Foundation, to Jim Pagano, Vice President/General Manager of Advanced Cable, dated April 30, 2004.

⁹ Advanced Cable disputes the City's/Foundation's claim that the "Foundation was not aware of" the Cable Services Rights Agreement. Comments at page 4, n.5. Advanced Cable is certain that the Foundation was aware of the Agreement as it and the Developer were controlled by the same persons. The City may not have been aware of it as it was not a party to the private purchase agreements. While the City claims that

agreement, “the Developer agreed not to consent to the termination of the Service Agreement by the Foundation for the 15-year term of the franchise.” Comment at page 4. The Cable Services Rights Agreement does not make the agreement perpetual. To the contrary, the impact of the Cable Services Rights Agreement is to set a date certain when the agreement may be terminated. A result that goes against the Comments’ claim that the agreement is perpetual.

Finally, as the Comments note, the Commission in 2003 concluded that the record regarding MDUs did “not demonstrate the existence of widespread perpetual contracts nor support the need for government interference at this time.”¹⁰ The City/Foundation have not provided any additional evidence as support to change the Commission’s decision on perpetual contracts and MDUs. Consequently, as no evidence has been provided and, based upon the fact that this proceeding is not the proper one to ask for the type of relief sought, Advanced Cable respectfully requests that the Commission not consider the City’s/Foundation’s comments and not grant any of the requested relief.

Respectfully submitted,

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Advanced Cable should have provided this agreement to it, at no time since 1998 was Advanced Cable ever required or asked to provide a copy of that agreement or any of the purchase agreements to the City.

¹⁰ First Order on Reconsideration and Second Report and Order, CS Docket 95-184, MM Docket No. 92-260, 18 FCC Rcd. 1342, 1370 (2003).