

**One Page Summary of Written Statement of Robert Gessner  
President, Massillon Cable TV, Inc. and  
Chairman, American Cable Association  
Before the Subcommittee on Communications and Technology  
“Legislative Hearing on Four Communications Bills”**

The American Cable Association (ACA) is pleased to join with other organizations representing small communications service providers to support H.R. 3787, the Small Entity Regulatory Relief Opportunity Act (SERRO), a narrowly-tailored, bi-partisan bill whose purpose is to streamline the process by which deserving small communications entities request regulatory relief.

As Rep. Latta stated in introducing SERRO, while “small businesses are the engines of our economy – creating two out of three new jobs,” they also are “the most susceptible to burdensome regulations that harm their ability to grow, expand and hire new employees.” Many FCC regulations take a one-size fits all approach and rely on a case-by-case waiver approach to give small entities the opportunity to show that there is good cause for targeted regulatory relief (typically in the form of an exemption from the rule or a delay in its effective date). However, in practice, deserving small entities often are deterred from seeking such relief because of the administrative costs involved in pursuing a waiver, and because there is no guarantee the FCC will act on a waiver request in a timely fashion.

SERRO does not change the substantive standard for requesting relief from one-size fits all rules. Rather, it ensures that the FCC will be more attentive to the impact of its rules on small entities by focusing on the procedural obstacles that impede small entities from requesting the relief to which they are entitled. It accomplishes that objective through three provisions:

First, SERRO directs the FCC to adopt streamlined procedures to reduce the administrative burdens faced by small entities that file waiver petitions and to expedite the resolution of those petitions.

Second, SERRO clarifies that Congress intends for the FCC, as part of its mandated “triennial review” process, to consider the impact of its rules on any and all small entities within its jurisdiction and to modify or repeal the application of particular regulations to some or all small entities where the Commission determines there is good cause to do so.

Third, SERRO establishes an automatic deferral period of at least one year in the application of most new regulations to small entities, subject to exceptions for rules that address public safety concerns or that reduce waste, fraud, and abuse.

These provisions will help reduce the cost of regulatory compliance and allow small entities to better meet the unserved and underserved needs of millions of customers in thousands of small communities throughout the country.



**Written Statement of Robert Gessner  
President, Massillon Cable TV, Inc.  
Chairman, American Cable Association**

**Before the House Energy and Commerce Committee  
Subcommittee on Communications and Technology**

**“Legislative Hearing on Four Communications Bills”**

**March 22, 2018**

Chairman Blackburn, Ranking Member Doyle, and Members of the Subcommittee, my name is Robert Gessner and I am President of Massillon Cable TV, Inc., a small Ohio-based company that provides a full complement of advanced broadband products, including high-speed Internet, digital television, and residential and enterprise phone, to 50,000 homes and businesses in Stark, Wayne, Summit, Holmes, and Tuscarawas counties. I also currently serve as the Chairman of the American Cable Association (“ACA”). I appreciate the opportunity to appear before you today in that capacity to discuss H.R. 3787, the Small Entity Regulatory Relief Opportunity Act (“SERRO”). As I will describe, SERRO is a narrowly-tailored, bi-partisan bill introduced by Representatives Latta and Schrader that, if enacted, will greatly reduce the burdens and uncertainty currently faced by small companies seeking regulatory relief from the FCC.

**I. The Role Played By Small Entities in the Communications Marketplace**

ACA, which celebrates its 25<sup>th</sup> anniversary this year, represents over 700 small and medium sized broadband and video service providers. These companies, which include not only traditional cable operators but also traditional telephone companies, municipally owned systems,

and rural electric co-ops, pass over 18 million homes mostly in rural areas and small cities and provide a wide range of services, including high-speed Internet, television, phone and dedicated fiber-optic connections to more than 7 million subscribers. Like my company, which was founded by my parents more than 50 years ago, a great many of ACA's members are privately-owned, family-run entities: true "mom and pop" operations. Eighty percent of these companies serve fewer than 5,000 subscribers and around half serve fewer than 1,000 subscribers and have ten or fewer employees.

While ACA's members are substantially smaller than the national communications service providers that dominate the marketplace, they are technically sophisticated and play a critically important role in the American economy. Over the past five years, ACA's members have invested more than \$10 billion to upgrade and expand their networks. These investments are helping to close the digital divide by providing competition in areas served by larger providers and by bringing advanced telecommunications services to areas – particularly rural areas – that the larger service providers have passed by. As ACA President and CEO Matthew Polka testified before this Subcommittee earlier this year, ACA members have invested private funds to extend their facilities to more than 840,000 homes that the Federal Communications Commission would consider to be high-cost areas eligible for federal universal service support.

ACA's members generally believe that consumers and competition benefit most when regulation is kept to a minimum. While there are instances where regulatory intervention is necessary to address specific harms, small entities frequently are not the source of the harm that the regulation is intended to address. Thus, it is important that the FCC be thoughtful in applying its rules to small entities. Furthermore, it is equally important that the FCC monitor its rules over time and take prompt action to modify or repeal rules when it becomes apparent that

they are not serving their intended purpose or are imposing disproportionate burdens on small entities. If the Commission is inattentive to the impact of its rules on small entities, and is not responsive to well-founded requests for regulatory relief, the resulting burdens will inevitably harm the public by making it more difficult for small entities to invest in their systems and deploy innovative new services.

I should emphasize that while I am here representing ACA, the indiscriminate imposition of regulatory burdens on small entities is not just a “cable company” issue. Small entities can be found in virtually every segment of the communications industry. These small entities, which provide vital services to millions of consumers, likewise are vulnerable to one-size fits all regulation and face the same kinds of obstacles as ACA’s members when they seek regulatory relief from the FCC. Thus, the procedural benefits that SERRO would provide ACA’s members also would be shared by small entities throughout the communications industry.

## **II. SERRO**

As indicated, SERRO is a modest, bi-partisan piece of legislation that will provide significant benefits to the many small entities that make up an important part of the communications landscape for thousands of communities and millions of customers. Those procedural benefits, as reflected in the title of the legislation, come from an increase in the “opportunity” for small entities to request relief from unnecessary or unduly costly regulatory burdens.

Among the forms of regulatory relief that would most benefit small entities are exemptions from one-size fits all rules or a delay in the implementation of a new rule as applied to small entities. Today, the principal means by which regulated entities, large and small, obtain such relief is by obtaining a waiver of a particular rule from the Commission. But because the

procedural and substantive requirements for obtaining a waiver are the same for all entities regardless of size, small entities often are deterred from seeking relief to which they would otherwise be entitled by the costs associated with the waiver process. Moreover, while the Commission is required by Congress to conduct biennial and triennial reviews of certain of its rules, there is disagreement about the scope of the Commission's duties under those provisions and the extent to which the Commission is required to take action to provide regulatory relief to small entities.

Thus, even if a small entity believes there is good cause for the FCC to exempt it from a particular regulatory obligation or to delay the application of that obligation, it still faces a hard decision as to whether it can justify the cost of pursuing such relief. Those costs typically start with an analysis by legal counsel of the Commission's rules and decisions to determine the likelihood of obtaining relief and the required evidentiary showing required to support the requested relief. A small entity considering whether to move forward with a waiver petition also must be prepared to bear the significant legal costs that typically are incurred in drafting and filing the petition and in preparing the affidavits and exhibits that frequently are needed to support the petition. The Commission's filing fees vary from one type of regulated service to another and can add hundreds, or even thousands of dollars to the initial costs of applying for a waiver. Because most small entities do not have in-house counsel and have little or no budget for unplanned legal expenses, the absence of a sufficiently large subscriber base over which to spread such costs can put the option of seeking regulatory relief out of reach.

Furthermore, assuming that a small entity is able to overcome the initial cost hurdles associated with the waiver process, a decision still must be made as to whether incurring these costs is worthwhile given that there is no guarantee that the petition will be acted on in a timely

fashion, if at all, and that additional legal costs may have to be incurred in order to see the process through to conclusion. As a general matter, there is no designated timetable for the Commission to act on a waiver request. Typically, after receiving a waiver petition, the Commission issues a Public Notice acknowledging receipt of the petition, assigning it a file number and establishing deadlines for interested parties to submit comments in support or opposition to the petition. How long it takes the FCC to issue the Public Notice and how long the comment periods run can and do vary widely. Sometimes the Public Notice appears within a week or two of the filing of the waiver petition; other times, it could be months before the Commission starts the process. Similarly, the comment periods usually run around six weeks, but are subject to extension and can run substantially longer. And a petitioner could face significant additional legal costs if it becomes necessary to file reply comments or to meet with Commission staff to discuss the petition. Most importantly, after incurring these costs, there is no guarantee when or if a decision will be issued by the Commission granting or denying the waiver petition.

As you can imagine, this process can be daunting for small entities with limited resources and a limited customer base. I can speak from personal experience as to how frustrating it can be. In 2009, we converted our systems to an all-digital platform. After doing so, it dawned on us that the FCC's "proof-of-performance" testing rules only worked with analog systems. Not knowing what we were supposed to do, we hired counsel and filed a petition asking the Commission to waive our obligation to comply with the now outmoded proof-of-performance rules. A half dozen other small entities filed similar waiver petitions between 2009 and 2012. But it was not until this past September – over seven years after we filed our petition – that the FCC finally got around to addressing these petitions and the issue raised therein. Being unable

to both comply with the rules and get the FCC to act on our waiver petition for this long is not a position that any company, let alone a small entity, should be put in.

SERRO recognizes that small entities should not have to confront such obstacles when they seek regulatory relief to which they would otherwise be entitled. The legislation does not change the substantive standard for judging waiver requests. However, it enhances the opportunity for small entities to request waivers by requiring the FCC to establish streamlined procedures governing the filing, consideration and resolution of waiver petitions filed by or on behalf of small entities seeking targeted small entity relief from Commission rules. Moreover, SERRO does not dictate precisely what streamlined procedures the Commission is to adopt. Rather, it identifies certain objectives those streamlined procedures should meet, namely expediting the consideration and resolution of small entity waiver petitions and reducing the costs and administrative burdens associated with filing such petitions. These are reasonable objectives that the FCC has occasionally met on a case-by-case basis by shortening comment periods, allowing petitioners to support their waiver requests with simple certifications rather than extensive documentation, and deeming petition requests to be automatically granted if not affirmatively denied by a date certain. SERRO will remove the uncertainty that accompanies the current case-by-case approach to streamlining.

Even with streamlined procedures, relying on waiver requests may not always be the most certain and efficient way to ensure that the Commission's rules do not impose unnecessary or unwarranted obligations on small entities. Therefore, SERRO also would clarify the purpose and scope of the Commission's "triennial review" of its regulations under Section 257 of the Communications Act. That process requires the Commission to report to Congress every three years on the regulations it has prescribed to eliminate "market entry barriers for entrepreneurs

and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services,” as well as any such statutory barriers that the Commission recommends be eliminated.

Members of the Commission have differed in their interpretation of Section 257. Some read the provision as directing the Commission to focus solely on those regulations applicable to the telecommunications and information service sectors of the communications industry and only to report its findings to Congress. On the other hand, other members of the Commission have taken a more expansive view of the provision’s intent and the range of regulations (and regulated entities) covered. Recognizing that there is no reason to limit the triennial review to the rules applicable to entrepreneurs and small businesses in certain sectors of the communications industry to the exclusion of other sectors, SERRO wisely clarifies that the triennial review conducted pursuant to Section 257 should consider the impact of Commission rules on any and all small entities within the agency’s jurisdiction. Moreover, as amended by SERRO, Section 257 requires the Commission not only to report its findings to Congress, but also to repeal or modify particular regulations impacting small entities where the Commission determines good cause exists to do so.

Finally, the bill proposes to establish an automatic deferral period of no less than a year in the application of most new rules to small entities (with exceptions for rules that implicate public safety or reduce waste, fraud, and abuse). Deferring the effective date of certain rules can be beneficial for small entities in several ways.

In the case of rules that require small entities to acquire and install new equipment, it often is difficult for small entities to meet a one-size fits all compliance deadline. Manufacturers



typically fill orders for new equipment for their largest customers ahead of orders placed by small entities. In addition, in some instances, the equipment needed to comply with the requirements of a new FCC rule initially is designed and manufactured to meet the specifications of large service providers' facilities, and only later is modified to be compatible with the facilities of smaller entities. The deferred application of equipment mandates thus can help ensure that there is a sufficient supply of compatible equipment available for small entities. Delaying an equipment mandate's effective date also can hold down compliance expenses for small entities since the initial cost of developing or bringing the equipment to market often is absorbed by the larger companies that purchase in volume.

Deferring the effective date of a rule also allows small entities to save money by drawing on the experience of larger entities with earlier compliance deadlines. For instance, resource-strapped small entities can reduce the cost of implementing notice and similar requirements by reviewing and adopting (with such modifications as might be warranted by the small entity's particular circumstances) the best practices developed by the larger companies and their teams of lawyers and engineers. Deferral also reduces the risk that a small operator will go to the expense of developing a compliance program only to find that the FCC has clarified or otherwise altered the underlying obligation during the first year following its adoption.

In conclusion, ACA is particularly appreciative of the efforts undertaken by Representatives Latta and Schrader to move SERRO forward. SERRO not only has the strong support of ACA, but also of a wide array of other communications industry groups, including the Competitive Carriers Association, the Fiber Broadband Association, INCOMPAS, ITTA, the LPTV Spectrum Rights Coalition, NRECA-America's Electric Cooperatives, NTCA-The Rural Broadband Association, the Rural Wireless Association, the Wireless Internet Service Providers

Association, and WTA-Advocates for Rural Broadband. As Rep. Latta stated in introducing SERRO, while “small businesses are the engines of our economy – creating two out of three new jobs,” they also are “the most susceptible to burdensome regulations that harm their ability to grow, expand and hire new employees.” On behalf of ACA, I urge you to advance this sensible and important piece of bi-partisan legislation.