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FEDERAL COMMUNICATIONS COMMISSION
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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)
)
 Implementation of Section 8)
 of the Cable Television Consumer)
 Protection and Competition Act)
 of 1992)
 Consumer Protection and Customer)
 Service)

MM Docket No.: 92-263

COMMENTS

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SUMMARY

The Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") requires the Commission to prescribe standards that may be adopted and enforced by State and local governments governing cable television customer service. Cox Communications, Inc., Comcast Corporation and Jones Intercable, Inc. ("Commentors") believe that the NCTA standards can be used in defining an appropriate benchmark for Federal standards. The Commission's standards will be mandatory upon their adoption by a franchising authority, and therefore the standards developed by the Commission must possess sufficient flexibility to accommodate all marketplace characteristics. In some circumstances, the uncritical adoption of Federal standards by the Commission could prove too burdensome.

The Federal standards that the Commission adopts will not be self-executing, will augment, rather than amend, existing franchise agreements, and must be formally adopted by a franchising authority in order to become effective. Franchising authorities may not unilaterally amend current franchises to implement customer service standards that exceed Federal customer service standards, and Federal standards represent the outer limits of the requirements that operators must fulfill during their current franchise terms. However, franchising authorities and cable television operators may agree to implement customer service standards that differ from those standards established by the Commission.

State and municipal authorities do not have unfettered discretion pursuant to Section 632(c)(2) of the 1992 Cable Act to enact customer service standards that impose requirements that exceed the standards set by the Commission. Where standards are

excessive, state and local authorities must be required to demonstrate that the standards they adopt will be consistent with the policies underlying the 1992 Cable Act, and must also recognize that excessive standards will result in higher cable television service rates.

Special relief should be available for cable television operators who are able to demonstrate that implementation of customer service standards by state and local authorities that exceed Federal standards would be too burdensome, inconsistent with the policies underlying the 1992 Cable Act and not in the overall interests of their subscribers.

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INTRODUCTION

Comcast Corporation, Cox Cable Communications, Inc., and Jones Intercable, Inc. (the "Commentors") by their attorneys, file these Comments in response to the Notice of Proposed Rule Making in MM Docket No. 92-263 (the "Notice") implementing Section 8 of the Cable Television Consumer Protection Act of 1992 ("1992 Cable Act").

The 1992 Cable Act requires the Commission to prescribe standards that may be adopted and enforced by State and local governments governing cable television customer service. The Commission therefore requests comments on the procedures that must be established, as well as the substantive standards that must be adopted, in order to implement Section 8 of the 1992 Cable Act.

The procedures by which customer service standards become service requirements for cable television operators is not specifically provided for in the 1992 Cable Act.¹ Therefore, the Commission must determine during this proceeding how the standards that it adopts will be implemented by franchising authorities. The Commission must also determine the extent to which state and local franchising authorities may preempt the Commission's standards, and conversely, when the Commission may preempt state or local customer service regulations which exceed Federal standards. In addition, the Commission must construe the provisions of Section 632 which provide that (1) a franchising authority may establish and enforce customer service requirements of the cable operator; (2) that a franchising authority and a cable operator may agree to customer service requirements that exceed the standards established by the Commission; and (3) that a municipal law or regulation, or State law, may be established that imposes customer service requirements that exceed the standards set by the Commission.

Commentors believe that these provisions must be interpreted in a manner that is consistent with the policies of the 1992 Cable Act, which mandate that rates must be reasonable and that the costs for additional services required by a franchising authority must be reflected in a cable system's rate base. In addition, Section 632, which permits State and municipal authorities to enact customer service standards that exceed the standards established by the Commission, must be reconciled with the principle that state and local franchising authorities may not unilaterally amend the terms of an existing franchise.

¹ Notice at 3.

**THE NCTA CUSTOMER SERVICE STANDARDS SHOULD SERVE AS
A BENCHMARK FOR CUSTOMER SERVICE STANDARDS BUT
SHOULD NOT BE APPLICABLE TO ALL CLASSES OF SYSTEMS**

Commentors believe that the NCTA's voluntary customer service standards should serve as the basis for the standards that the Commission adopts in this Rule Making. The Commission's standards, however, must be flexible enough to accommodate different sizes of systems and various market conditions. The adoption of customer service standards that can accommodate smaller systems and systems located in rural areas is consistent with congressional intent as reflected in the House Report², which states that customer service standards should be flexible and should allow a local franchising authority to tailor requirements to meet the needs of a local cable community. Unless the customer service standards adopted by the Commission provide for variable operating conditions, they will not ultimately serve the interests of the subscribers that they are designed to serve. It naturally follows, then, that a franchising authority and a cable operator must also have the flexibility to agree on standards that may differ from Federal standards but which will be more appropriate for their franchise area. Particular standards agreed to between a franchising authority and an operator may be more or less stringent than those adopted by the Commission.

Procedurally the Commission should require that a franchising authority provide the operator with written notice that it intends to implement the Federal standards and an opportunity to oppose that implementation where, given the characteristics of the system and its marketplace, the Federal standards would adversely affect the operations of the system or require an increase in rates.

² H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 105 (1992) ("House Report").

Among the issues the Commission raises in the Notice is whether different minimum service obligations would be appropriate based on, inter alia, the size of a multiple system operator. Commentors believe that the size of a multiple system operator is not a relevant factor in determining the level of customer service with which an operator must comply. The number of subscribers that a system serves, its location in an urban or rural area, or its proximity to other systems that are commonly owned, may all have a direct impact on the ability of a particular system to meet or exceed customer service standards. The size of a company, however, should generally not have any measurable impact on the level of customer service that it will be able to provide to subscribers in a particular community.

Commentors believe that billing standards and communications between systems and subscribers may be generally applied to all classes of systems. Subscribers should be advised in a clear, concise, and informative manner about services, prices and options, installation and service policies, and how to use the cable service that the operator provides. Although the specific nature of the information that a system provides to its subscribers will depend upon a system's size and technical advancement, a standard format can be adopted that would be applicable to various sizes of systems.

The Commission should allow a phase-in period to permit operators to implement the Federal customer service standards.³ Commentors believe that twelve months would be an appropriate period, but that the Commission should grant waivers of the twelve

³ To the extent the FCC adopts standards that parallel those included in the NCTA's customer service standards, many systems have already taken steps to achieve those goals and compliance with new Federal standards may already be at hand.

month period upon an appropriate showing that additional time to comply with the standards is warranted and would be consistent with the interests of a system's subscribers.⁴

FEDERAL CUSTOMER SERVICE STANDARDS ARE NOT SELF-EXECUTING

Commentors do not believe the Federal standards that the Commission adopts should be self-executing, and an analysis of the statute suggests that they should be formerly adopted by a franchising authority in order to become effective. There is an interplay between Sections 632(a)⁵ and 632(b) of the 1992 Cable Act which define the roles that the Commission and franchising authorities should play in order to ensure that Federal

⁴ A phase-in may be especially appropriate where new personnel and/or equipment must be in place before the standards can be met. Additionally, where substantial costs are at issue, the phase-in period will ease the impact of those expenses on subscriber rates.

⁵ Section 632(a) provides that a franchising authority may establish and enforce customer service requirements:

(a) Franchising Authority Enforcement -- A franchising authority may establish and enforce

- (1) customer service requirements of the cable operator; and
- (2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.

The new Section confirms the authority that franchising authorities already had under the Cable Communications Policy Act of 1984 (the "1984 Cable Act") to establish customer service requirements. Section 632(a) of the 1984 Cable Act provided that a franchising authority could require, as part of a franchise (including a franchise renewal) provisions for enforcement of customer service requirements. This language was deleted in favor of more general language in section 632(a) which permits franchising authorities to establish and enforce customer service standards. The deletion of this language does not, however, suggest that a franchising authority may amend an existing franchise to impose standards that exceed those that the Commission adopts in this proceeding. See discussion at page 7.

customer standards are established and enforced in an efficient, but reasonable, manner. Congress provided in Section 632(a) that a franchising authority "may establish and enforce" customer service requirements, and in Section 632(b), that the Commission shall establish standards by which cable television operators may fulfill their customer service requirements. The use of the word "may" in connection with both the authority of a franchising authority to adopt standards and the operator to fulfill its obligations indicates that Congress did not intend that the Commission's customer service obligations be mandatory. Neither of these provisions requires that operators must fulfill their customer service obligations under the regulations implemented by the Commission. When read together, subsections (a) and (b) express a clear congressional preference for regulation of customer service standards at the local level where regulations can be adapted to suit particular community needs. Thus, Federal customer service standards were not intended to be self-executing and must be formally adopted by a franchising authority in order to become effective.

Because franchising authorities are not required to adopt Federal standards, it follows that a franchising authority and a cable operator may enter into an agreement to adopt customer service standards that are less stringent than those adopted by the Commission. Had Congress intended that all cable systems adhere to Federal customer service standards without regard to local conditions, this intent would have been clearly expressed in the 1992 Cable Act. Instead, Congress provided in Section 632(b) that the Commission establish standards by which cable operators may fulfill their customer service

requirements.⁶ Therefore, franchising authorities have the choice to adopt the Federal standards, or to agree with operators to adopt standards that differ from the standards adopted by the Commission.

**A FRANCHISE MAY NOT BE AMENDED UNILATERALLY TO
EXCEED CUSTOMER SERVICE STANDARDS**

The Commission states that under Section 632(a) of the 1984 Cable Act a franchising authority could have imposed customer service requirements only as part of an initial franchise award or renewal, but that the 1992 Cable Act imposes no such limitation⁷. Therefore, the Commission questions whether Section 632 permits a franchising authority to modify franchise agreements prior to renewal.

Commentors submit that Congress did not intend to allow franchising authorities to unilaterally amend existing franchise agreements to provide for customer service standards that differ from those adopted by the Commission. If an existing franchise could be amended to incorporate standards that exceeded Federal standards, subsection 632(c)(2), which allows operators to agree to stricter standards, would effectively be nullified. Quite clearly, Congress would not have provided in subsection 632(c)(2) that a franchising

⁶ The Conference Report on the 1992 Cable Act indicates that "franchising authorities and cable operators are permitted to agree to customer service requirements, even if those requirements may result in the establishment of customer service standards which are more stringent than the standards established by the FCC under section 632(b)." H.R. Conference Report No. 102-862, 102d Cong., 2d Sess. 78 (1992). See Section 632(c). Congress contemplated that franchising authorities and cable operators may enter into their own customer service standard agreements. These agreements may result in terms that exceed those adopted by the Commission, but there is no suggestion that they cannot result in terms that are less stringent, or different from Federal standards.

⁷ Notice at 4.

authority and a cable operator could agree to standards that exceeded Federal standards⁸ had it intended that a franchising authority could unilaterally amend a franchise to provide for more stringent provisions. Instead, Congress would simply have provided that a franchising authority could impose standards that exceed Federal standards, regardless of the provisions of any existing franchise. Similarly, a cable operator cannot unilaterally amend an existing franchise agreement to provide for a more lenient standard. Only by mutual agreement can standards differing from those adopted by the Commission be incorporated in a franchise agreement.

**FRANCHISING AUTHORITIES MUST HAVE THE BURDEN OF
DEMONSTRATING THAT THE ADOPTION OF STANDARDS THAT EXCEED
FEDERAL STANDARDS ARE IN THE PUBLIC INTEREST**

Congress directed the Commission to consider, *inter alia*, operating costs of the cable system, including the quality and costs of the customer service provided by the cable system and services required under the franchise. The Commission must ensure that the rates for basic and programming services are reasonable, and in doing so, must consider the costs attributable to services required under the franchise and the capital and operating costs of the cable system, including the quality and costs of the customer service that is provided by the cable system.⁹ The adoption of customer service standards by state or local authorities that exceed Federal standards can act as an upward pressure on rates, or can

⁸ It is likely that if a franchising authority had the ability to impose stricter customer services at will, it could coerce an operator to provide other concessions or other services during the franchise term which the operator would not otherwise provide or which would not be in the best interests of the system's subscribers.

⁹ See Sections 623(b)(2)(C)(vi) and 623(c)(2)(E) of the 1992 Cable Act.

result in an operator diverting resources from providing cable television services to subscribers. The ability to enact customer service standards which exceed those standards adopted by the Commission must be tempered by their effect on overall service and subscriber rates. If their adoption increases the operational costs of a system, these additional costs must be factored into the basic cable rate base. Congress recognized the costs of customer service standards as a component of an operator's rate base, and any additional costs resulting from the passage of a regulation or ordinance that requires compliance with customer service standards that exceed Federal standards must naturally be taken into account in any formula which the Commission adopts to determine the reasonableness of cable television rates.

State and municipal authorities should not be permitted to enact more exacting standards in a vacuum without regard to other policies underlying the 1992 Cable Act, including Congress' directive that the rates for cable services be reasonable. State and municipal authorities that propose to enact customer service standards that exceed Federal standards should be required to demonstrate that the proposed standards will not adversely affect subscribers' interests and will not be inconsistent with maintaining reasonable rates. The Commission should require this balancing test to be made pursuant to a hearing in which the operator and the public may participate. Unless the Commission requires state and municipal authorities to engage in a deliberative process by which they must identify and balance the competing interests of stricter standards, higher rates, or less service, there

will be no assurance that the congressional policy of maintaining reasonable rates will be achieved.¹⁰

Similarly, a franchising authority that insists on adopting more stringent customer service standards in connection with a new franchise or a franchise renewal pursuant to section 632(a), which permits a franchising authority to establish and enforce customer service standards, should be required to demonstrate, upon the request of the cable operator, that the increased costs that would result from the more stringent standards will be outweighed by additional service to subscribers. If the franchising authority is unable or unwilling to make this showing, it should not be permitted to impose the more stringent standards.

PETITIONS FOR SPECIAL RELIEF

Commentors believe that there will be some instances in which operators will be required to obtain special relief from excessive customer service standards that may be imposed by local authorities. Based on the strong federal interest in maintaining reasonable rates for basic cable service, operators should generally be able to obtain relief where it can be demonstrated that adherence to excessive customer service standards is inconsistent with

¹⁰ The Commission has ample authority to require such showings under its general authority provided for in Section 154(i) of the Communications Act of 1934, as amended, (the "Communications Act") to "make such rules and regulations, and issue such orders, not inconsistent with [the Communications Act] as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Further, Section 303 (r) of the Communications Act provides the Commission with the authority to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act . . ." 47 U.S.C. §303 (r). The adoption of procedural regulations that would require State and local authorities to make a showing that their actions, otherwise permissible, would not be inconsistent with other provisions of the 1992 Act, is therefore within the Commission's power.

a policy of maintaining reasonable rates. Such a showing would be appropriate, for example, where a system served several communities, and one franchising authority adopted customer service standards that exceeded Federal standards. As a practical matter, those standards and their accompanying costs would become applicable system-wide, as where, for example, a franchising authority insisted that customer service representatives answer telephones more frequently than was required by Federal standards. Requiring extended office hours might pose a similar situation. In each instance the most stringent set of standards would set the level of service for all of the communities served by the system. Where the more stringent standards resulted in increased costs, it would cause the rates for all subscribers to increase. This result would be manifestly inconsistent with congressional intent. Similarly, in other situations, an operator should have the ability to seek special relief from the Commission where it can be demonstrated that the imposition of more stringent standards does not comport with the overall interests of subscribers.

ENFORCEMENT OF CUSTOMER SERVICE STANDARDS

The Commission notes that the 1992 Cable Act provides no role for the Commission in the enforcement of customer service standards.¹¹ Commentors believe that the enforcement of customer service standards should remain within the discretion of each franchising authority. Many franchises already contain enforcement provisions which require compliance with all regulations to which a system is subject, provide penalties for non-compliance, and contain enforcement provisions to ensure compliance with specific customer service standards. Where a franchise is silent with regard to any of these

¹¹ Notice at 3.

enforcement procedures, the franchise renewal process will provide franchising authorities an appropriate vehicle to address non-compliance. Section 8 of the 1992 Cable Act does not provide franchising authorities with any additional authority to unilaterally amend existing franchises to provide for enforcement of Federal customer service standards.

Commentors suggest that the Commission could enhance the implementation and enforcement of its customer service standards by requiring an operator to maintain in its local public file a customer service compliance record. This compliance record would be periodically updated, would demonstrate a system's level of compliance with the Federal standards and would indicate the areas in which a system was deficient. Upon an inquiry by the franchising authority, an operator would be required to explain any deficiency and demonstrate how it would cure the deficiency in the future. Until the operator has an opportunity to respond to any inquiry and a reasonable time to cure any deficiency, no remedial action should be taken against the operator by the franchising authority.

CONCLUSION

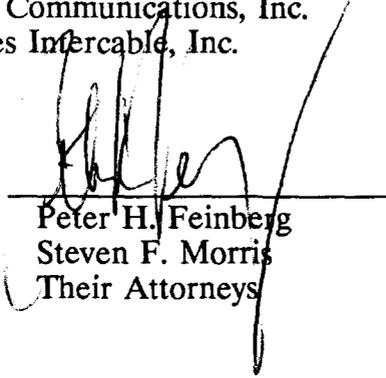
The Commission should adopt customer service standards which take into account varying system sizes and marketplace characteristics. The NCTA's current service standards should serve as a benchmark for the adoption of Federal standards. The regulations that the Commission adopts should clarify that franchising authorities may not unilaterally amend existing franchises to implement standards that exceed Federal standards, but that franchise authorities and cable operators can agree to adopt standards that are different than the Federal standards adopted by the Commission. State and municipal authorities that propose to implement customer service regulations that exceed Federal standards must consider the impact that the adoption of more stringent standards will have on cable

television rates and services, and must demonstrate that their proposed standards will not interfere with the policies underlying the 1992 Cable Act. Where it is appropriate, cable operators should be able to obtain relief from customer service standards adopted by state and local authorities which are inconsistent with the policies underlying the 1992 Cable Act, and which do not serve the best interests of their subscribers.

Respectfully submitted,

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