

CKET FILE COPY ORIGINAL RECEIVED

JAN 27 1993

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections)
of the Cable Television)
Consumer Protection and)
Competition Act of 1992)
)
Rate Regulation)

MM Docket 92-266

COMMENTS OF THE MAYOR AND CITY
COUNCIL OF BALTIMORE

H. Russell Frisby, Jr.
Barbara L. Waite
Venable, Baetjer, Howard
& Civiletti
1201 New York Avenue, N.W.
Suite 1000
Washington, D.C. 20005
(202) 962-4811

Counsel for The Mayor and
City of Council of
Baltimore

No. of Copies rec'd _____
List A B C D E

DA

January 27, 1993

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
I. PRELIMINARY STATEMENT	1
II. THE CABLE ACT OF 1992 PROVIDES LOCAL FRANCHISING AUTHORITIES WITH AN INDEPENDENT GRANT OF POWER TO REGULATE BASIC TIER RATES	3
III. THE COMMISSION'S PROPOSED CERTIFICATION PROCESS IS IN NEED OF REFINEMENT	5
IV. IN ADOPTING A RATE STRUCTURE, THE COMMISSION SHOULD PLACE PRIMARY EMPHASIS ON ITS OBLIGATIONS TO ENSURE THAT BASIC TIER RATES ARE REASONABLE, AND TO REDUCE THE ADMINISTRATIVE BURDEN ON SUBSCRIBERS AND FRANCHISING AUTHORITIES	7
V. THE COMMISSION'S IMPLEMENTATION AND ENFORCEMENT PROPOSALS HAVE SOME MERIT	10
VI. CONCLUSION	13

RECEIVED

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

JAN 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SUMMARY

The Mayor and City Council of Baltimore ("Baltimore City"), by its attorneys, hereby submits its comments in response to Notice of Proposed Rulemaking ("NPRM") released on December 24, 1992 in the above-captioned proceeding.

In the above referenced NPRM, the Commission seeks comment on certain amendments to its rules which have been proposed in order to implement Sections 623, 612, and 622(c) of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"). These proposed amendments are of tremendous concern to Baltimore City because during the years of cable deregulation brought about by the Cable Communications Policy Act of 1984, Baltimore City cable subscribers suffered, inter alia, from unwarranted rate increases and unjustified equipment charges.

To summarize Baltimore City's comments, Baltimore City believes that the Cable Act provides local franchising authorities with an independent grant of power to regulate basic tier rates. However, to fully effectuate the intent of Congress, the Commission must revise its proposed certification process in order to minimize the nature and

cost of the showing that local franchising authorities will have to make in order to demonstrate the lack of effective competition. Additionally, local franchising authorities must have the flexibility to choose between benchmarking and cost-of-service guidelines. Moreover, not only must all proposed increases in basic rates be subject to review by local authorities, these authorities must have sufficient time within which to conduct the review. Finally, given the complexity of the issues, the Commission should consider issuing interim rules.

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

RECEIVED

JAN 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections) MM Docket 92-266
of the Cable Television)
Consumer Protection and)
Competition Act of 1992)
)
Rate Regulation)

**COMMENTS OF THE MAYOR AND CITY
COUNCIL OF BALTIMORE**

The Mayor and City Council of Baltimore ("Baltimore City"), by its attorneys, hereby submits its comments in response to Notice of Proposed Rulemaking ("NPRM") released on December 24, 1992 in the above-captioned proceeding.

I. PRELIMINARY STATEMENT

Baltimore City has been a longstanding and active proponent of the need to reassert local regulatory oversight and control over cable system rates and related practices. Baltimore City's cable system is not subject to effective competition, and, as a result, its citizens have suffered from many of the ills which led Congress to enact the Cable Act.

Cable service in Baltimore City is provided by United Artists Cable of Baltimore in conjunction with UCTC LP Company, (referred to collectively as "United Baltimore") both of which are ultimately controlled by

TCI. The system currently has approximately 100,000 subscribers with a penetration rate of approximately thirty-five percent.

Although Baltimore City's Franchise Agreement does permit it to regulate cable system rates (see Attachment I - Baltimore City Cable Franchise Agreement, Section 22 - Regulation), it was precluded from so doing by the Cable Communications Policy Act of 1984. As a consequence, it became impossible for Baltimore City to protect consumers from steady and unwarranted increases in cable rates. As noted in Attachment II, Rate Activity Memorandum, from its initiation of cable service in June, 1986 to January 1993, United Baltimore has increased basic service rates by fifty-seven percent, plus service rates by ninety percent, late fees by sixty-seven percent, installation fees by fifty percent and the remote access fee by one hundred percent. These rate increases have far exceeded the average rate increases of twenty-nine percent which were of such consternation to Congress. See Cable Act, Sec. 2(a). Moreover, during the same time period in which Baltimore's basic rates increased by fifty-seven percent, the rate of inflation increased by only twenty-three percent.

Additionally, now that its cable system is mature, Baltimore City faces the real danger that capital investment in the system will be artificially increased solely to permit United Baltimore or its parent to withdraw

capital from the cable system. Absent the authority to regulate rates and disallow capital investment that is not used and useful, Baltimore City would be helpless to protect its citizens.

As recognized by Congress, rates for service have not been the only area in need of regulatory oversight. The cost and provision of equipment has been just as problematic. United Baltimore has structured its network so that subscribers are forced to lease a converter box and remote from the company for every outlet. Moreover, it is doubtful that the rental rates are cost justified. To add insult to injury, United Baltimore has consistently refused to honor the City's request that it sell, as well as lease, equipment.

It was the clear intention of Congress in adopting the Cable Act to redress these and other grievances. Baltimore City urges that in adopting regulations the Commission recognize this fact and place its highest priority on protecting consumers.

II. THE CABLE ACT OF 1992 PROVIDES LOCAL FRANCHISING AUTHORITIES WITH AN INDEPENDENT GRANT OF POWER TO REGULATE BASIC TIER RATES

As the Commission noted at paragraph 15 of the NPRM, the purpose of Section 623, as amended by Section 3 of the Cable Act, was "to permit certified local franchising authorities to regulate the rates for basic cable service in areas that are not subject to effective

competition." Congress must be presumed to know the implication of its words when it stated in Section 623(a) that, "[a]ny franchising authority may regulate rates." This language represents an affirmative independent grant of regulatory authority to local franchising authorities subject only to their compliance with federal regulation. Congress has the authority to make such a grant, and to the extent that state law is inconsistent it is preempted. See, e.g. Louisiana Public Service Comm'n v. F.C.C., 476 U.S. 355, 368-370. Moreover, absent any indication to the contrary, the Cable Act must be presumed to give a franchising authority the power to exercise all of the traditional rate regulatory functions which are necessary to fulfill Congressional intent, e.g., rate setting, ordering refunds, etc. Also, the Cable Act would control over the provisions of individual agreements. See, e.g. Centel Cable v. White Development Co., 902 F.2d 905, 909-10 (11th Cir. 1990) (Congress may forbid private agreements which thwart the intent of federal cable legislation); City of Burlington v. Mountain Cable Co., 559 A.2d 153, 155 (Vt. 1988) (courts will not enforce cable franchise agreements which are inconsistent with and would undermine congressional policy regarding cable).

It is only in this fashion that Congress' goal to "ensure that consumer interests [in systems not subject to effective competition] are protected in receipt of cable service" may be met. Cable Act, Sec. 2(b).

III. THE COMMISSION'S PROPOSED CERTIFICATION PROCESS IS IN NEED OF REFINEMENT

The Commission has proposed in the NPRM that a local franchising authority seeking certification must file a one-page form supplemented by "evidence of the lack of effective competition." NPRM at ¶17. According to the Commission, this "evidence" should refer to "documentable data including submissions made to the Commission." NPRM at ¶19. There is no discussion of the type of evidence that the Commission would find acceptable. For example, will the Commission simply accept subscriber penetration figures, or should an authority conduct some sort of study or survey, and if so, what type? May the data be simply submitted by the authority, or must it be certified by outside experts? What types of exhibits are required? Must the authority submit copies of its underlying ordinance and regulations, legal opinions, etc.?

Given the Commission's lack of specificity, local franchising authorities run the risk of having to conduct extensive and costly studies to prove the lack of competition that Congress, in enacting the Cable Act, assumed to be present throughout most of the nation. Such a result would not only be contrary to Congressional intent, but would also tend to discourage local entities from seeking certification. The required showing by a local authority should be minimal and should be based on the representations of local officials. Moreover, an

authority's submission should carry a heavy presumption of validity.

The Commission should also take care to avoid frustrating the intent of Congress in its definition of effective competition. The Commission has proposed to implement the definition of effective competition by means of a very loose definition of the term "multi-channel video programming distributor". For example, while Section 623(L)(1)(B) of the Cable Act indicates that effective competition exists where the number of households subscribing to a competing programmer exceeds fifteen percent of the total households, the Commission proposes to aggregate all other providers of such multi-channel video programming services in determining if the fifteen percent is reached. This is improper. The existence of a multiple number of SMATVs coupled with wireless cable service, for example, cannot constitute "effective competition" to a single franchise-wide cable system. Moreover, the telco offering of a video dialtone service should not qualify as a "multi-channel video programming distributor" offering.

The Commission is correct in its conclusion that its certification decision should be based on the submission by the franchising authority alone. NPRM at ¶23. There is a strong risk that the certification process would become hopelessly bogged down if certifications were permitted to become contested proceedings.

Moreover, a cable operator petitioning either to contest the Commission's initial determination or seeking a change of regulatory status should be subjected to a heavy burden of persuasion. This is particularly the case in the latter instance in order to avoid forcing local authorities to incur tremendous expense while conducting the local proceedings contemplated by the Commission. See NPRM at ¶28. Such petitions, however, should not be subjected to an abbreviated pleading cycle. Local authorities should be given the opportunity to seek meaningful public comment and to fully consider the issues.

IV. IN ADOPTING A RATE STRUCTURE, THE COMMISSION SHOULD PLACE PRIMARY EMPHASIS ON ITS OBLIGATIONS TO ENSURE THAT BASIC TIER RATES ARE REASONABLE, AND TO REDUCE THE ADMINISTRATIVE BURDEN ON SUBSCRIBERS AND FRANCHISING AUTHORITIES

In attempting to adopt the most appropriate rate regulating mechanism, the Commission should seek to achieve two goals: (1) to ensure that basic tier rates are reasonable, and (2) to reduce the administrative burden on subscribers and franchising authorities. Achievement of these goals is contingent in the long run upon the recognition of the fact that local rate regulation has been revived on account of the failure of competition and the imposition of unreasonable rates in many jurisdictions, such as Baltimore (see Cable Act Conference Report at p. 53), and the fact that, given the diversity among cable systems, it is doubtful that one rate formula would be sufficient.

Although there is some merit to the concept of benchmarking in the terms of both administrative simplicity and cost-savings, it is unclear whether benchmarking as proposed will adequately adjust for the differences among cable systems. For example, Baltimore is part of the newly designated Washington-Baltimore Area. However, Baltimore is very different from the other cities and localities in the region in terms of the cost and age of its cable system, the debt load carried by the system, and the City's demographics. It will be difficult to construct a benchmark formula that can take these regional differences into account. For similar reasons, the viability of a formula based on the costs of an ideal or typical system, on the average of current rates of cable systems (which rates are probably too high), or on past regulated rates is questionable.

Consequently, as suggested at paragraph 40 of the NPRM, the Commission should adopt alternative approaches for determining the reasonableness of basic service tier rates and a regulatory authority should have the discretion to choose among these alternatives. Contrary, however, to the implication in paragraph 40, this is a decision not for cable companies but instead for local franchising authorities, to whom under the Cable Act Congress intended to give regulatory authority.

Furthermore, it is clear that Congress intended that the cable service rates be cost-based with additional

factors, as discussed here, to be considered. Cable Act Conference Report at pp. 62-63. Costs vary widely from locality to locality, and it is highly unlikely that any benchmarking system could adequately ensure recovery of reasonable costs and profits across the country.

The Commission should permit local franchise authorities to choose between:

(1) Commission created benchmarks that more accurately reflect conditions for individual systems; or

(2) Commission prescribed cost-of-service guidelines for basic service tier rate regulation by the local franchise authority that use an individual system's costs to define reasonable rates.

Under either alternative, the franchising authority must have the authority to disallow capital investment which is not used or useful. Otherwise, a cable operator, such as United Baltimore, may incur significant additional debt on a mature system solely as a mechanism to prematurely withdraw profits from the system. Benchmark formulas and price caps might restrain such abuse, but will never prevent it.

The Commission is correct in its conclusion at paragraph 63 of the NPRM that Congress intended to separate rates for equipment and installations from other basic tier rates. Equipment and installation charges should be unbundled and set at no more than cost. Moreover, subscribers should be permitted to purchase equipment on

the open market. See NPRM at ¶67. In the past cable operators have been able to collect excessive rates through the lease of equipment, particularly remotes, at prices which were excessive. This must stop.

The Commission is also correct in suggesting that charges for changing service tiers should not exceed a nominal amount when the change is effected solely by coded entry. See NPRM at ¶75. Such is the case in Baltimore and it should remain so. Further, there should be no cost for tier service changes dictated by cable operators.

V. THE COMMISSION'S IMPLEMENTATION AND ENFORCEMENT PROPOSALS HAVE SOME MERIT

In the NPRM, the Commission seeks comment on the best method by which to trigger initial review of current basic tier rates. See NPRM at ¶80 et. seq. Under the first alternative proposed by the Commission, an operator would file its schedule of basic tier rates within a brief period after notification that the local authority had been certified. The local authority would have a brief period within which to review the rates; after which time, absent a negative finding, the rates would be presumed reasonable. This is the preferred alternative. It is efficient and would permit local franchising authorities to immediately redress grievous situations by implementing rollbacks.

Given that it is inevitable that disputes will arise over data, formulas, etc. as local authorities and

operators attempt to use the Commission's rate structure for the first time, authorities should be given ninety days within which to conduct their initial rate reviews. Similarly, local authorities should be given at least ninety - as opposed to thirty - days for review of all subsequent rate filings. See NPRM at ¶81. Also, cable operators should be required to show that their rates (both initial and subsequent filings) comply with Section 623 of the Cable Act. See NPRM at ¶84.

To the greatest extent possible, the Commission should avoid imposing a time schedule that will result in local authorities not having sufficient time to consider rate filings. If this happens, local rate increases will go into effect subject to refund and in many instances, refunds may ultimately be ordered. As the FCC is aware, refunds are difficult to administer on a national level. Local refunds will be even more difficult and costly to administer.

Further, no rate increases, including price changes putatively caused by "increases" in taxes and programming costs, should go into effect without the approval of local authorities. See NPRM at ¶83. Given the tremendous vertical integration and concentration in the cable industry, Cable Act, Sec. 2(a)(4), (5), it would be too easy to pass through phantom costs if automatic rate increases were permitted.

Contrary to the tentative conclusion contained in paragraph 85 of the NPRM, there is merit to permitting local authorities to conduct formal rate hearings. These are issues of tremendous concern to the local citizenry. Consequently, franchising authorities should be given the discretion to conduct such hearings and to establish administrative procedures for the conduct of such hearings and the issuance of written decisions.

The Commission is correct in its conclusion that in the first instance enforcement of cable regulation should occur at the local level. See NPRM at ¶86. Further, under the Cable Act a local franchising authority would have the authority to set a rate, once having rejected a cable operator's rate schedule, because such power is inherent in the ability to regulate rates. However, given the administrative burden of rate setting, it would be perhaps more appropriate to have the cable operator submit new rates. See NPRM at ¶86. Local authorities should, however, be permitted to exercise their power to order refunds and to declare forfeitures.

Given the tremendous and time-consuming authority that Congress has intended be exercised at the local level, it is critical that the Commission pay close attention to all enforcement issues pertaining to cable programming service rates. The process for reviewing complaints concerning such rates should be kept simple and the

involvement of local franchising authorities minimized, given the weight of their responsibilities in regulating basic tier service. Moreover, to the extent that the Commission considers any cost trade-off between basic tier and cable programming service rates, the Commission should favor the maintenance of low basic tier rates.

Finally, in light of the numerous issues facing the Commission, the impending changes on the Commission, and the short time frame imposed by Congress, the Commission should consider adopting interim procedures.

VI. CONCLUSION

Wherefore, Baltimore City hereby urges that the Commission follow the recommendations as set forth herein.

Respectfully submitted,

THE MAYOR AND CITY OF COUNCIL OF
BALTIMORE

By: 
H. Russell Frisby, Jr.
Barbara L. Waite
Venable, Baetjer, Howard
& Civiletti
1201 New York Avenue, N.W.
Suite 1000
Washington, D.C. 20005
(202) 962-4811

Their Counsel

January 27, 1993

ATTACHMENT I

(Page 29 - No. 575)

1 exercise of the City's police power shall be resolved in favor of the latter, except
2 that any such exercise that is not of general application in the jurisdiction or ap-
3 plies exclusively to Grantee or cable communications system which contains pro-
4 visions inconsistent with this Agreement shall prevail only if, upon such exercise,
5 the City finds an emergency exists constituting a danger to health, safety, prop-
6 erty or general welfare or such exercise is mandated by law.

7 **21. FRANCHISE FEE.**

8 **A. Annual Franchise Payment.** Grantee shall pay to the City an annual fee
9 in the amount of five percent (5%) of its gross annual revenues. Such payment
10 shall be in addition to any other lawful payment due hereunder and shall com-
11 mence as of the effective date of the franchise. Within one hundred twenty (120)
12 days after the end of each calendar year, the Grantee shall furnish to the City an
13 annual computation of the franchise fee for the preceding year, computed in ac-
14 cordance with this Agreement and certified by an officer of the Grantee.

15 **B. Acceptance by City.** No acceptance of any payment by the City shall be
16 construed as a release or as an accord and satisfaction of any claim the City may
17 have for further or additional sums payable as a franchise fee or for the perform-
18 ance of any other obligation of the Grantee.

19 **C. Computation of Payments Due.** Payments due the City under this provi-
20 sion shall be computed quarterly, for the preceding quarter, as of March 31, June
21 30, September 30 and December 31. Each quarterly payment shall be due and
22 payable no later than thirty (30) days after the dates listed in the previous
23 sentence, provided, however, that the first such payment due hereunder shall be
24 prorated to the extent that it does not represent a full calendar quarter. Each
25 payment shall be accompanied by a report, signed by the Grantee, showing the
26 basis for the computation and such other relevant factors as may be required by
27 the City.

28 **D. Reimbursement Costs.** To offset the City's costs in granting a cable fran-
29 chise, Grantee shall submit a fee of two hundred fifty thousand dollars (\$250,000)
30 within thirty (30) days of the effective date of the franchise. This shall be in addi-
31 tion to the franchise fee and any other fees due hereunder.

32 **22. REGULATION.**

33 **A. Regulatory Authority.** The City shall exercise appropriate regulatory
34 authority under the provisions of this Franchise Agreement and applicable law.
35 Regulation may be exercised through any duly designated City agency or duly
36 established public commission or other body appointed to advise or support the
37 City in its regulatory responsibilities.

38 **B. Regulatory Responsibility.** The City may exercise or delegate lawful
39 regulatory responsibility.

40 **C. Rates and Charges.**

41 **(1) Initial Rates.** Grantee's initial rates and charges, contained in At-
42 tachment 3 hereto, shall be applied fairly and uniformly to all subscribers in the
43 City and shall be effective for a period of one (1) year from the effective date of
44 the franchise.

1 **(2) Rule Regulation.** Rate regulation may apply to the extent the
2 Grantee is not exempt from local rate regulation by preemption of State or
3 Federal law and in the event the City elects to exercise such regulation. The City
4 may determine, at any time and at its sole discretion, whether it will assume rate
5 regulation authority by written notice to Grantee of such decision.

6 **(a)** Unless the City assumes rate regulation authority, rates may be
7 changed by the Grantee after the initial rate period by filing with the City a
8 schedule of rates proposed and by notifying its subscribers in writing at least six-
9 ty (60) days prior to implementation of the rate change.

10 **(b)** If and when the City assumes rate regulation authority, then
11 rates subject to such regulation may be changed only with the prior consent of
12 the City in accordance with the procedures in subsection (3) below, provided,
13 however, that Grantee shall have the right to increase regulated rates once an-
14 nually without the prior consent of the City in an amount equal to five percent
15 (5%), provided, further, however, that, in the event that Grantee elects to in-
16 stitute such a rate increase, it shall, sixty (60) days prior to the effective date of
17 such increase, notify its subscribers and the City in writing and state the reasons
18 for the increase.

19 **(3) Rate Change Procedure.**

20 **(a) Petition for Rate Change.** If and when the City assumes rate
21 regulation authority, the Grantee may request a rate change for those rates sub-
22 ject to local regulation at any time after the initial rate period has ended.

23 **(b) Reports Required.** The Grantee's request for a rate increase
24 shall include, but not be limited to, the following financial reports prepared in ac-
25 cordance with generally accepted accounting principles, which shall reflect the
26 operations of the system:

- 27 (i) Balance Sheet;
28 (ii) Statement of Operations;
29 (iii) Statement of Changes in Financial Position;
30 (iv) Detailed Supporting Schedules of Expenses, Income,
31 Assets and other items as may be required; and
32 (v) Statement of Current and Projected Subscribers and
33 Penetration.

34 The Grantee's accounting records applicable to the system shall be available for
35 inspection by the City or at all reasonable times upon prior notice of five (5)
36 business days. The City shall have access to records of financial transactions for
37 the purpose of verifying indirect costs prorated to the operation. The documents
38 listed above shall include sufficient detail and/or footnotes as may be necessary
39 to provide the City with the information needed to make accurate determinations
40 as to the financial condition of the system. All financial statements shall be
41 audited by an independent certified public accountant and certified by an officer
42 of Grantee.

43 **(c) Public Hearing.** Within forty-five (45) days of the filing of a re-
44 quest for rate change, the City may hold an appropriate public hearing to consider
45 the proposed rate change, at which hearing all persons desiring to be heard, in-

1 cluding the Grantee, shall be heard on any matter, including, but not limited to,
2 the performance of the franchise, the Grantee's services, and the proposed new
3 rates. Upon notice of any public hearing by the City, the Grantee shall notify its
4 subscribers of the time, place and subject matter of the public hearing by an-
5 nouncement on at least two (2) channels of its system between the hours of 7:00
6 P.M. and 9:00 P.M., for at least five (5) consecutive days prior to the hearing. In
7 addition, Grantee shall publish notice of any public hearing in two newspapers of
8 general circulation at least once, but it may publish the notice two (2) or more
9 times, provided that one (1) publication occurs not less than seven (7) nor more
10 than twenty-one (21) days before the public hearing.

11 (d) *City's Decision.* Within forty-five (45) days after said hearing,
12 the City shall render a written decision on Grantee's request, either accepting,
13 rejecting, modifying or deferring the same and reciting the basis for its decision.
14 In approving or disapproving the request, the City shall consider, *inter alia*, the
15 extent to which the Grantee has reasonably performed under the terms of the
16 franchise.

17 (e) *City's Failure to Render Decision.* If the City fails to render a
18 written decision either accepting, rejecting, modifying, or deferring Grantee's
19 request within ninety (90) days of the filing of Grantee's request pursuant to
20 subsection (a) above, the Grantee shall thereafter be entitled to put its proposed
21 new rates into effect.

22 (4) *Schedule of Rates.* Grantee shall file and maintain with the City a
23 complete schedule of current subscriber rates, including all fees and charges for
24 services not subject to regulation by the City.

25 (5) *Disconnections.* There shall be no charge for disconnection from the
26 system. However, if a subscriber has failed to pay properly due monthly fees or if
27 a subscriber disconnects for seasonal periods, the Grantee may require, in addi-
28 tion to full payment of any delinquent fees, a reasonable fee for reconnection.

29 (6) *No Consideration Beyond Schedule.* The Grantee shall receive no
30 consideration whatsoever from its subscribers for or in connection with its provi-
31 sions of service to its subscribers other than as set forth in this section or as filed
32 with and/or approved by the City.

33 (7) *Refunds to Subscribers.*

34 (a) If the Grantee fails to provide any service requested by a
35 subscriber, the Grantee shall, after adequate notification and being afforded the
36 opportunity to provide the service, promptly refund all deposits or advance
37 charges paid for the service in question by said subscriber.

38 (b) If any subscriber terminates, for any reason whatsoever, any
39 monthly service prior to the end of a prepaid period, a *pro rata* portion of any
40 prepaid subscriber service fee, specifically excluding installation fees, shall be
41 refunded to the subscriber by the Grantee within thirty (30) days of such ter-
42 mination.

43 (8) *Performance Evaluation Sessions.*

44 (a) *Schedule.* The City and the Grantee shall hold annual perform-
45 ance evaluation sessions within thirty (30) days of the anniversary dates of the ef-
46 fective date of the franchise.

1 (b) *Special Sessions.* Special sessions may be held at any time dur-
2 ing the term of the franchise at the request of the City or the Grantee.

3 (c) *Open to the Public.* All annual and special performance evalua-
4 tion sessions shall be open to the public. Grantee shall notify its subscribers of all
5 evaluation sessions by announcement on at least two (2) channels of its system
6 between the hours of 7:00 P.M. and 9:00 P.M., for five (5) consecutive days
7 preceding each session. In addition, Grantee shall publish notice of any public
8 hearing or evaluation session in two newspapers of general circulation at least
9 once, but may publish such notice two (2) or more times, provided that one (1)
10 publication occurs not less than seven (7) nor more than twenty-one (21) days
11 before the public hearing.

12 23. *FINANCIAL AND INSURANCE.*

13 A. *Bonds.*

14 (1) *Performance and Payment Bond.* At least thirty (30) days prior to
15 commencement of construction, Grantee shall file with the City a performance
16 and payment bond in the amount of six million dollars (\$6,000,000), in favor of
17 the City and any subscriber or owner of property within the City who may claim
18 damages as a result of the breach of any duty by the Grantee assured by such
19 bond. At such time, after the commencement of construction of the system, as
20 the face amount of the performance and payment bond shall equal ten percent
21 (10%) of the total remaining cost of construction of the system, Grantee shall so
22 notify the City in writing and, thereafter, until construction of the system is com-
23 pleted, Grantee may periodically reduce the face amount of the performance and
24 payment bond to equal ten (10%) of the total remaining cost of construction of
25 the system, provided, however, that, in no event, may the face amount of the per-
26 formance and payment bond be reduced to less than two hundred fifty thousand
27 dollars (\$250,000). In the event the Grantee shall faithfully comply with all ap-
28 plicable statutes, ordinances and regulations governing the franchise and shall
29 faithfully complete the construction of the facilities contemplated herein and
30 shall receive a certificate of completion from the City, then the face amount of
31 the performance and payment bond shall be reduced to one hundred thousand
32 dollars (\$100,000) and thereafter may be further reduced at the option of the
33 Board of Estimates. Otherwise, the bond shall remain in full force and effect
34 throughout the term of the franchise.

35 (2) *Bond Approved.* Such bond shall be in the form approved by the
36 City Solicitor and may be a corporate surety bond. The bond shall, among other
37 matters, cover the cost of removal of any properties installed by the Grantee in
38 the event said Grantee shall default in the performance of its franchise obliga-
39 tion.

40 (3) *No Limit of Liability.* In no event shall the amount of said bond be
41 construed to limit the liability of the Grantee for damages.

42 (4) *Consolidation of Security.* At City's sole option, the bond required
43 by subsection A(1) above may be consolidated with the security fund required by
44 subsection B below. In the event of such consolidation, City and Grantee may
45 agree to modification of the amounts specified in subsections A(1) above and B
46 below.

ATTACHMENT II

F	Cedric E. Crump Technical Coord.	CITY OF
R	Mayors Office of Cable & Comm. 303 E. Fayette St. 3rd Floor	BALTIMORE
O		INNER OFFICE
M	SUBJECT Cable Rate Activity 1986 - 1993	MEMO
		DATE January 21, 1993

TO: J.J.Daniels

Date	Rates	Service	Increase Amount	Subscribers
7-04-86	\$12.00	Basic 40 channels	00	12,000
1-30-87	\$13.00	Basic 42 channels	\$1.00	19,000
1-30-88	\$15.00	Basic 45 channels	\$2.00	33,000
1-30-89	\$15.50	Basic 46 channels	.50	45,000
5-18-90	\$15.85	Basic 42 channels	-.65 *	70,000
1-30-91	\$17.35	Basic 43 channels	\$1.50	90,000
1-30-92	\$18.25	Basic 45 channels	\$.90**	100,000
1-30-93	\$18.90	Basic 45 channels	\$.65	100,000

The chart above only represents the cost for basic service. Other charges are listed below.

- Remote Control Access - \$2.00 per month per outlet

 - P.P.V. instant order - \$2.00 per month, one outlet only allowed from remote unit.

 - Standard Install - \$60.00 first outlet only
 - Additional outlet - \$25.00 per location

 - Additional Outlet - \$5.00 per month

 - Premium Services - \$11.00 FOR ONE
\$ 7.00 FOR SECOND

 - HBO, CINEMAX,
SHOWTIME, DISNEY
THE MOVIE CH.
HOME TEAM SPORTS
PLAYBOY
- SOME PREMIUM PACKAGES
ARE BEING OFFERED AT REDUCED RATES

ENCORE

- \$ 7.00 OR \$2.50 AS AN SECOND OR THIRD
PREMIUM \$1.50 AS A FORTH PREMIUM

UPGRADES OR SWITCHING OF PREMIUM - \$10.00 PER OCCASION

RATES

pg. 2

* BASIC PLUS ADDED,

** 5% FRANCHISE FEE PASTED THUR AS RATE INCREASE

Basic Plus -- United Artist created basic plus in May 1990. The four channels that make up this tier are USA, ESPN, TNT and American Movie Classics. The tier was originally included in Basic Service, but UA stated that due to Owners of these channels it had to be removed and a tier created. The cost started at .65 cents per month. UA deducted this amount from the cost of basic service to prevent any rate increase at that time. The cost remained at .65 cents until Jan. 1, 1993 when the cost increased by 90% to \$1.25.

United also increased late fees on Jan. 1, 1993 from \$4.00 to \$5.00.

United also instated a reconnect fee in 1988 of \$15.00, the fee was added to any account that was temporary disconnected for non-payment. This cost remains at \$15.00, but an automatic late fee will be accessed to these accounts also pushing the total cost to \$20.00.

No other fees were increased at this time.

INCREASE PERCENTAGES

BASIC SERVICE	1986 TO 1993	57.5 %
PLUS SERVICE	1990 TO 1993	90.0 %
LATE FEE	1988 TO 1993	67.0 %
INSTALLATION	1986 TO 1993	50.0 %
REMOTE ACCESS	1986 TO 1993	100.0 %

Income by County
from the 1990 Census

COUNTY	Median Household Income	Median Family Income	Per Capita Income	Per Capita Income - White	Per Capita Income - Black	Per Capita			
						Income - Native American	Per Capita Income - Asian	Per Capita Income - Other Race	Per Capita Income - Hispanic
State Total	\$39,386	\$45,034	\$17,730	\$19,789	\$12,343	\$13,987	\$16,264	\$10,174	\$13,198
Anne Arundel	\$45,147	\$49,706	\$18,509	\$19,649	\$11,494	\$15,636	\$12,990	\$10,055	\$14,133
Baltimore Co.	\$38,837	\$44,502	\$18,658	\$19,348	\$14,054	\$13,327	\$19,037	\$12,483	\$15,819
Carroll Co.	\$42,378	\$46,491	\$16,320	\$16,447	\$10,815	\$24,068	\$16,527	\$11,052	\$15,856
Harford Co.	\$41,680	\$45,923	\$16,612	\$17,211	\$11,019	\$15,438	\$15,304	\$10,439	\$12,186
Howard Co.	\$54,348	\$61,088	\$22,704	\$23,568	\$18,125	\$23,783	\$19,326	\$13,645	\$18,142
Montgomery Co.	\$54,089	\$61,988	\$25,591	\$28,345	\$17,277	\$17,416	\$17,289	\$10,036	\$13,700
Prince Georges Co	\$43,127	\$48,471	\$17,391	\$20,315	\$15,496	\$14,554	\$13,725	\$9,775	\$11,612
Baltimore City	\$24,045	\$28,217	\$11,994	\$16,563	\$8,991	\$7,988	\$12,820	\$10,011	\$12,075