Notice of Proposed Rulemaking should be forthcoming after an interim benchmark system is designed. Comments on the interim system and mechanisms to go forward will, most likely, create a more accurate and efficient regulatory system. In any case, Northland believes that if a price index is used, the adjustment system also should consider exogenous costs that cannot be controlled by the cable operator. Costs such as state and local taxes, co-op pole rates, franchising authority required expenditures, program costs and retransmission costs should be allowed automatically to pass through to the consumer if they exceed the price index.

A. "Effective Competition" as a Factor for Setting Benchmarks.

The Commission requests comments on the feasibility of using the rates charged by cable systems facing "effective competition" to define benchmarks for basic service tier regulation. Northland believes that rates charged in situations of so-called "effective competition" would most likely counter the other factors mandated by the Cable Act to consider, such as direct costs, joint and common costs, state and local taxes and a reasonable profit. We believe that the definition of "effective competition" is arbitrary and has no bearing on actual long-term marketplace price equilibriums.

The Commission should be aware that when competing cable systems have overbuilt a franchise area, "cut throat" pricing tactics often take place in the short-run. The purpose of such "cut throat" practices are often to "greenmail" the incumbent cable operator into buying the overbuilding operator's system at a price higher than the construction cost. In any case, the equilibrium price of two overbuilt

systems would not necessarily be established for as long as five years. Therefore, the interim "cut throat" prices may be well below a price determined in the long-run, even considering perfect competition.

Northland is coping with one situation where an operator overbuilt our entire cable system in Mexia, Texas. In 1990, Sugarland Telephone Company ("SLT") built a system in Mexia and extended it to the surrounding unincorporated areas. SLT undercut our rate, charging $12.95 for approximately 36 channels. Northland had to meet SLT's prices to compete.

In 1990, there were an estimated 3,400 homes in the franchise area, and Northland served approximately 1,820 subscribers. Today, Northland serves 1,849 subscribers and we estimate SLT serves fewer than 150 subscribers. We believe SLT is heavily subsidizing its cable operations with funds derived from its telephone monopoly ratepayers. Northland is forced to subsidize the Mexia system, despite the fact that Northland was able to retain all of its original subscriber base.

Even though the SLT system is fully competitive in terms of its channel offering and other services, the Mexia situation does not fall within the scope of the definition of "effective competition" established by Congress because SLT serves fewer than the required 15 percent of the households in the area subscribing to its service.

Northland believes that there is not sufficient data to find a statistically meaningful sample to determine benchmark rates for "effective competition," especially when long-run equilibrium is considered. We believe further that rates for a 9 to 12 channel basic service tier are also rare in "effective competition" cases.

Therefore, although the Commission must by statute gather data and consider this factor, Northland advises that little serious weight should be given to this arbitrary measure.

V. Regulation of Cable Programming Services.

The Commission tentatively concludes that the statute intends for it to establish criteria to govern the determination on an individual case basis of whether rates for cable programming services are unreasonable based on a reasoned balancing of factors such as rates for similarly situated systems, effective competition, historical rates, and others. Northland believes that the statue intends the Commission to have more of an oversight role than to take an active part in regulating rates on a system by system basis using a sophisticated benchmark system. Northland stresses that creating a multiplex of benchmarks for every variety of tiers is expensive, ineffective, and has the potential to negatively impact consumer welfare. We further believe that benchmarking on a price per channel basis dangerously values the cost of a speaker on cable television, and could have severe negative effects on the further development of quality programming and the quantity of services carried on cable television.

We suggest, instead, that the Commission survey sample data each year that would satisfy the major factors listed in the statute. The Commission could publish this data and use it to establish guidelines for answering complaints. If a subscriber complains to the Commission, the complaint should be forwarded to the cable operator for response. The cable operator then could respond directly to the complainant in terms of the FCC published data and other factors, with a copy

forwarded to the Commission. The operator's response would also indicate that the complainant could request a further response from the Commission. If the Commission is requested to respond, it then could determine whether the rate generally conformed to its guidelines.

VI. Implementation and Enforcement of Regulations.

The Commission seeks comment on an expeditious way to trigger initial review of a cable operator's current basic service tier rate once a local franchising authority has been certified to regulate that rate. Northland stresses that the Commission should take a practical perspective in considering the potential consumer welfare gain by using any administrative system other than the most simplistic approach. The key to an expeditious and rational system is to set practical price caps. Northland believes the Commission should consider a two-step process.

Northland recommends that if the cable operator's planned rate increase for a community is below the applicable price cap (and its tax allowances), the operator need only notify its subscribers and the certified franchising authority 30 days in advance of the rate increase, and the rate would go into effect automatically. The second step would be necessary only if the planned rate increase exceeds the price cap (and its tax allowances). At such time, the cable operator would notify its subscribers and the certified franchising authority 60 days before the planned rate increase is to take effect. If the rate is not rejected within that time, it would go into effect automatically. If the franchising authority challenges or questions the planned rate increase, it must notify the cable operator and the

Commission within 30 days of the operator's initial notification. This would allow no unnecessary delaying tactics. The Commission then would have 60 days to make a ruling in case the certified franchise authority rejected the rate increase. If the Commission does not act within 60 days of such notification, the rate would go into effect automatically. This system would minimize irresponsible delays for political purposes. The operator would be assured that the rate would be accepted or rejected in a period not exceeding 90 days.

Northland believes the above-described system could work with a minimum of delay and paperwork, and still provide consumers protection from unreasonable rate increases. We emphasize that the key is in the setting of price caps and automatic pass throughs such as taxes. If the price caps represent adequate rates, the procedure can be simplified to a great degree.

It is imperative that the Commission be the final decision-maker on all rate issues, especially for systems under 1,000 subscribers. The prime reason for the Commission to be the final forum is to give more information and expertise to the Commission, which will be valuable in its process of continually adjusting price caps each year. Furthermore, recourse to the courts would mean unreasonable delays and legal expenses that would essentially be infeasible for an MSO of Northland's size.

VII. Conclusion.

Northland's limited resources and the short time available to prepare these materials preclude us from responding fully to even the points raised in these Comments, much less to articulate a response to

each of the issues covered in the NPRM. We fear the ever-increasing complexity of governmental regulation and the attendant legal and other professional expenses will have the effect of driving small businesses from the marketplace. Such a result would be an unfortunate and, we hope, unintended result of the 1992 Act. As the Commission refines its regulatory approach, we hope there will be additional opportunity afforded for meaningful comment by all interested parties, not just those with the financial wherewithal to retain a battery of lawyers, accountants, economists and other professional staff.

Respectfully submitted,

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