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

FEDERAL COMMUNICATIONS COMMISSION
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MM Docket 92-266

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

**COMMENTS BY THE CITY OF THOUSAND OAKS,
CALIFORNIA**

PART I.

City's Opening Statement (Background)

The City of Thousand Oaks, California (population 107,000) is located 40 miles northwest of downtown Los Angeles in a valley surrounded by the Santa Monica Mountains. The city is a "classic" cable market because many city residences cannot adequately receive broadcast television signals over the air (i.e. no line of sight from Mount Wilson.) Approximately 90 percent of some 40,000 city residences subscribe to cable TV to receive broadcast channels and satellite program services.

Cable TV has been a reality in Thousand Oaks since the mid-1960's. Two cable companies have traditionally served the community; but — as in most other TV markets — these companies serve different parts of the community and do not compete with each other. There are presently no other multichannel video providers in the community (i.e. no effective competition.)

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Over the past several years, the City has received comments from customers of both cable operators expressing frustration and dissatisfaction with their perceptions of de facto monopoly pricing and unresponsive customer service policies.

In its role as franchisor, the City Council has advocated Congress's return of rate regulation to local franchisors, together with the authority to impose upgraded technical quality and customer service standards. For example:

- On Nov. 7, 1989, the City Council adopted Resolution No. 89-275, urging Congress to revise the 1984 Cable Act and **"expressing general concern about the need for greater local government regulatory authority."**
- On Feb. 12, 1990, Mayor Alex Fiore testified at the Commission's field hearing in Los Angeles. In his statement, Mayor Fiore said, **"By recognizing the demonstrated need to return some measure of local control, Congress and this Commission can restore balance, reasonableness and consumer protection to the cable industry's delivery of basic cable television service."**
- City submitted comments to Commission's Notice of Inquiry, MM Docket 89-600 ("Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service), stating: **"Since the enactment of the Cable Act (1984), rates for basic service by Thousand Oak's primary cable provider increased approximately 61 percent. Some of the provider's ancillary charges, such as a reconnection charge, experienced an increase of 199 percent."**¹
- In 1991/92, the City Council and staff members corresponded and met with members of Congress, asking them to support the Cable Television Consumer Protection and Competition Act of 1992.

¹On April 1, 1993, the same operator's basic service rate will increase to \$21.50 compared with \$9.90 in January 1986 (and \$9.45 in January 1985); an increase of **117 percent** since the effective date of the 1984 Cable Act (Jan. 1, 1986.) The installation charge was \$25 in January 1986 and will be \$59.95 as of April 1, 1993, an increase of approximately **140 percent** since cable rate and price deregulation.

In summary, as a response to citizen demands, this city has advocated vigorously the right to check the monopoly pricing policies of cable companies not subject to effective competition.

Recognizing that only an efficient and pragmatic method of regulation will make this goal attainable, the City of Thousand Oaks respectfully offers the Commission its perspectives on relevant issues. The Thousand Oaks City Council urges the Commission to recognize that its paramount concern in crafting Cable Act implementation must be restoring the checks and balances of the free marketplace to the provision of cable TV services.

PART II.

City's Comments to Notice of Rulemaking, MM Docket 92-266.

The City of Thousand Oaks, California hereby submits the following comments in response to the Commission's Notice of Rulemaking MM Docket 92-266:

Article II., "Proposed Implementations," 3, b: "Regulation of the Basic Service Tier by Local Franchising Authorities and the Commission."

- In section ii., cc, "Filing of Franchise Authority Certification," on page 15, paragraph 21, the Commission asks, "Are there actions we should take to provide incentives for local entities regulating a single economic entity to coordinate their activities? Should such coordination be required as part of the certification process? We seek comment on the impact of franchising authorities' decisions to proceed independently on the Act's requirement that an operator's rate structure be uniform throughout a geographic area."

The City of Thousand Oaks offers the following comments:

Conclusions:

- *The City believes the Cable Act provides for basic tier rate regulation by the local franchisor in each area, according to regulations to be formulated by the Commission.*
- *The City believes the Commission should establish a benchmark formula which would identify a "reasonable" range of rates for the basic tier, with flexibility for each local franchisor to measure the operator's rate against the cost and revenue factors relevant to each specific franchise area.*

Background:

• **Differences between Franchise Areas (Served by a multi-franchise operator)**

In Thousand Oaks, a multi-franchise cable operator, Ventura County Cablevision (VCC) services the majority of cable households. (According to VCC, 31,963 City households were subscribers in December 1992. This number does not include households in non-incorporated adjacent areas.) VCC also is the sole cable provider to such entities as the cities of Camarillo, Fillmore, Moorpark, Ojai, and Santa Paula, and unincorporated areas, all located in Ventura County, as well as the adjacent communities of Westlake Village, Agoura Hills and Las Virgenes, located in Los Angeles County.

These franchise areas vary — in some cases by a wide margin— in such factors as:

- number of subscribers;
- miles of plant (both underground and aerial);
- operator's debt service (cost of capital) and goodwill (the premium paid by the operator over the franchise area's original cost to acquire the existing franchise, including the existing plant and equipment);
- the operator's investment to upgrade its cable delivery system (which should be considered based on actual implementation of new channel services, not mere expansion of capacity);
- cost of new program services (for additional channels); and

- requirements for PEG-channel support, including facilities and equipment.

In addition to these distinctions, adjacent franchise areas served by the same operator may also differ in "geographic" terms. As an example, we again cite the operations of Ventura County Cablevision (VCC) in Ventura and northwestern Los Angeles counties. Here VCC serves a number of communities which are topographically distinct from each other, separated by mountains, hills, valleys, rivers and agricultural fields.

VCC serves several of these communities, via microwave repeaters, from a single headend on Raznow Peak in Ventura County. However, other franchise areas, such as Camarillo and Ojai, are served by VCC via separate headends, due to their physical isolation. In other areas, VCC is rebuilding its coaxial plant with fiber-optic technology.

Because the cable operator employs separate headends, plants and technology configurations, at differing costs, to bring cable TV to different locations in Ventura County, we have considered how a "uniform rate structure," as is referred to in the Cable Act, could be applied to this multi-franchise system area.

- **Discussion of "Uniform Rate Structure" and "Geographic Area"**

As we see it, such a "uniform" rate structure should permit the operator to:

- recover its operational costs;
- make a "reasonable" profit; and
- protect consumers from "unreasonable" rates.

The City would like to propose that the term "uniform rate structure," as used in the Cable Act, be interpreted to refer to a "consistent" rate structure," rather than to "identical" rates for each franchise area served by a multi-franchise operator. With respect to the term, "geographic area," we believe this term could be interpreted to refer to a single franchise area in a system, if that franchise area is topographically separated from other system franchises, and/or its cost factors differ significantly from those of adjacent franchise areas. (The City agrees that the intent of Congress also means that cable companies cannot engage in price discrimination between overbuild and non-overbuild areas within the same franchise area.)

With respect to the Commission's idea for a coordinated rate-regulating mechanism for franchise areas served by a "single economic entity," given the differences we have discussed — in both the geographic and cost factors for each separate franchise area — we do not see how the intent of Congress can be implemented unless each franchisor is permitted to regulate independently.

Concerning the design for a regulation method, the City wishes to propose that the Commission consider establishing a **benchmark formula**, which local franchisors could use to regulate the basic tier. Such a formula would permit each franchisor to take into consideration operator revenue and rate-of-return on investment, together with cost-related factors, intrinsic to the specific franchise area.

In this way, franchisors of areas with different cost factors could each determine the reasonableness of a basic tier rate which reflected the costs and revenues derived from their franchise area. Such a rate would seek to allow the operator to recover its investment and cost of operation, for the particular franchise area, and realize a "reasonable" profit, while meeting all local franchise requirements. Rates applied according to a Commission-mandated formula would be "consistent," and thus "uniform," within each system area. Each franchise area's rate could vary from those of any of the other franchise areas in the system (i.e. served by the same operator) depending upon the factors intrinsic to that particular franchise.

- **Re: Certification of Franchisors**

According to the Commission's proposals, each local franchisor could apply for certification to regulate basic tier rates for their franchise area. Following certification, each regulator would request their franchised operators to make a showing that their current, or proposed, basic tier rate is "reasonable" and in compliance with both the Cable Act and the Commission's procedures.

We propose that each franchisor could then "test" the proposed rate, against a benchmark formula to be provided by the Commission. In doing this, each area franchisor would consider cost factors applicable to its particular franchise area, to determine whether the rate proposed is "reasonable" for that area's subscribers. If the proposed rate were found to be "unreasonable," according to the FCC's benchmark formula, then the

franchisor would adjust the rate for that franchise area accordingly, using the authorities granted by the Cable Act and the Commission.

As proposed above, each franchise area's rate would fall within a range determined to be "reasonable," according to the FCC's benchmark formula, that would allow franchisors to consider such variables as the operator's revenues derived from, and operational costs for, each individual franchise area.

- **Rates that Should be Subject to Regulation**

The City of Thousand Oaks also urges the Commission to permit franchisors to subject to basic tier rate regulation the operator's rates in effect at the time of enactment of the Cable Act on Oct. 5, 1992 — plus any rate increases enacted by cable operators since Cable Act enactment, and prior to the Commission's rate regulation formulation to occur on April 5, 1993.

With respect to the Commission's formulation of a rate regulation method to ensure a "uniform rate structure" within a "geographic area," the City could support a benchmark formula based upon (a) the rates of systems subject to effective competition; or, if such data is unavailable or insufficient, (b) a cost-of-service formula.

- **Franchisors' Need to Assess Operator's Profit Margin and Positive Cash Flow**

In either alternative, however, the City urges the Commission to consider how each franchisor will be able to accurately assess the revenues and returns operators are extracting from the franchise's operations. The existence of such factors as excess profit margins, or surplus positive cash flow well above the level needed for the operator to recover costs and make a "reasonable" profit, must be considered by the Commission and by local regulators, before operators can be permitted to apply to "justify" rates higher than the Commission's benchmark.

Accounting methods used by cable companies may not show "profits" and may tend to obscure both: (a) the company's operating margin, and (b) operating cash flow generated. The Commission, in crafting its benchmark formulas, must provide regulators with a way to assess what constitutes a "reasonable" profit for the operator, and the Commission must provide

regulators with the authority to appropriately request and obtain proprietary financial information from the operator.

- **Commission's Role as Mandated by Cable Act**

We believe the Commission must ensure that the intent of the Cable Act, which is to keep basic tier rates at a "reasonable" level, is not thwarted by operators' creative bookkeeping methods, which may fail to reflect the true nature of the operator's financial health. It is essential that excess profit margins be trimmed, as necessary, to assure that subscribers' rates do not rise to cover operator's "increased" expenses, while guaranteeing the operator monopoly-level profits.

As we see it, the Commission's goal is to allow the cable operator a "reasonable" profit — not a high profit, at the expense of individual subscribers. Excess profits could ensue from an operating cash flow which is significantly over and above the amount the operator needs to cover all capital costs associated with plant expansion and rebuild, as well as normal maintenance capital expenditures.

The regulatory scheme for basic tier rate regulation by local franchisors must be structured to allow each franchisor the full scope of its regulatory authority to protect its subscribers from assuming a disproportional share of the operator's costs and debt burden, while permitting excess profits over and above what would be deemed "reasonable" in accordance with the Cable Act.

Article II., 3, c: "Regulations Covering Rates of the Basic Service Tier."

- In section ii, "Discussion," on page 21, paragraph 32, the Commission states, "We solicit comment on the extent to which Congress intended a low priced basic service tier, and the extent to which our rate regulations should not effectively restrict a cable operator's discretion to provide programming on the basic service tier beyond the minimum statutory components. If our regulations produce low rates for the basic service tier, would this in turn require us to permit more flexibility in pricing for higher tiers? If so, would such pricing flexibility limit access by

subscribers to popular cable programming services that are bumped to the higher priced tiers?"

The City of Thousand Oaks offers the following comments:

Conclusions:

- *In Thousand Oaks, and we believe the situation also occurs frequently in other cable markets, basic tier subscribers pay more per channel than do subscribers to the higher tier. We believe that basic tier rates should be adjusted to equalize the cost burden on subscribers.*
- *For example, in a system offering 30 channels, with 15 basic tier channels and 15 cable programming services (satellite tier channels), subscribers should be able to purchase only the basic tier, at a cost of no more than one-half of the satellite tier "package" rate.*

Background:

The City of Thousand Oaks has franchise agreements with two cable operators — each serving a different segment of the community. As shown on the following page, each operator requires basic tier subscribers to pay a higher cost per channel, than subscribers who purchase both broadcast and satellite tiers.

For example, VCC basic tier subscribers pay up to 90.6¢ per channel, compared with satellite tier subscribers who pay 71.6¢ per channel. Falcon basic tier subscribers pay 95.7¢ per channel, compared with satellite tier subscribers who pay 65¢ per channel. This practice, in which cable operators seek to recover their operating expenses primarily from basic tier rates, may result in an underpricing of cable programming services — and an overpricing of basic tier services — because costs associated with the satellite tier may be subsidized by basic tier subscribers.

The City is concerned that, since all subscribers must purchase the basic tier before being able to buy the expanded basic (or "satellite," or "standard package" tier), the burden of paying for the cable system appears to fall disproportionately on basic tier subscribers, many of whom may be unable to afford to purchase a higher-priced tier.

Comparison of Basic and Expanded Basic Rates* per Channel for Thousand Oaks Subscribers

<u>Cable Provider</u>	<u>Rate for Basic Tier</u>	<u>Cost per Channel</u>	<u>Rate for Expanded** Basic Tier</u>	<u>Cost per Channel</u>
VCC	\$13.60*** (15**** Channels)	90.6 ¢ each	\$21.50 (30 Channels)	71.6¢ each
Falcon	\$16.28 (17 Channels)	95.7¢ each	\$20.28 (31 Channels)	65¢ each

Notes: *Rates shown above do not include franchise and/or copyright fees.

**Expanded Basic refers to a tier including broadcast channels and non-premium cable (satellite) programming services.

***Rate, effective April 1, 1993, represents an eleven percent increase during the past 12 months.

****One of VCC's basic tier channels, Channel 3, is now being used several hours per day to air commercials for the operator's pay-per-view movie service. Although KEYT's signal is subject to network non-duplication blackouts required by KABC-TV, Los Angeles, VCC's elected to further limit availability of KEYT in Thousand Oaks by using Channel 3 to air pay-movie promotions. These promotions sometimes block a portion of KEYT's original programming, which is not duplicated by KABC. A number of subscribers have complained to the City about the continued erosion of KEYT's signal. To date, the operator has refused requests from the Citizens' Advisory Cable TV Issues Committee and the City Council to remove pay-per-view commercials from the basic tier.

If Channel 3, now being used by VCC to air pay-per-view movie promotions is discounted as a basic tier source of entertainment, news and information, on the basic tier, subscribers are left with only 14 channels; at a pro-rata cost (based on rate effective April 1, 1993) of 92.5¢ each, compared with a 71.6¢ per channel cost for "expanded basic" subscribers.

In addition, in a "classic" cable market such as Thousand Oaks, subscribers may purchase cable television solely as a means to obtain over-the-air broadcast channels otherwise unobtainable due to the City's topographical restraints.

The City believes that such subscribers — already placed at an economic disadvantage by having to buy cable TV to receive broadcast channels — should not be further penalized by paying more per channel, than subscribers

who buy both the basic and satellite channels, or those who can afford to buy premium channels and pay-per-view services.

It is our conclusion that Congress acted to mandate "reasonable" rates for the basic service tier, in part to correct situations, such as the one described above, where "captive" cable subscribers, many of whom may be lower-income households, are forced to subsidize program tiers and satellite services, to which they have no access, by paying a higher per-channel cost than other subscribers.

• **Impacts of Basic Tier Rate Regulation on Programming Components of Basic Tier.**

The Commission seeks comment on the extent to which a low-priced basic tier may restrict operators to offering basic subscribers only mandated "minimum components," while limiting access by subscribers to popular cable programming services bumped to the higher priced tier."

In Thousand Oaks, subscribers have not been offered other than "minimum components" on the basic tier. In this community, basic tier subscribers receive local broadcast television signals, plus two access channels: a City of Thousand Oaks government channel (TOTV — Channel 10); and a combined public and a combined educational access, leased access, local origination channel (Channel 8.)

In this community, basic tier subscribers are not offered "popular cable programming services," such as CNN, ESPN and MTV. Also, Ventura County Cablevision, the community's primary operator, elected to supplant a portion of the local signal of a popular TV broadcast station, KEYT-TV, Santa Barbara (Channel 3) — containing original, non-duplicated programming, with the airing of repetitive, commercials for its pay-per-view movie services. (See above table for additional comments.)

We would ask the Commission to compare basic tier cable TV service in Thousand Oaks, a "captive" cable community, with that provided to localities in the San Fernando Valley portions of the City and County of Los Angeles. Households in those areas generally have unrestricted reception of broadcast television signals from Mount Wilson and, unlike some Thousand Oaks households, do not need to subscribe to cable to obtain adequate TV reception.

In those areas, cable operators commonly offer "popular cable programming services," such as CNN, ESPN and MTV, as part of the basic tier because, without offering satellite channels, they would not be able to market cable TV . Some basic tier rates in the San Fernando Valley are also lower than basic rates in the "captive" community of Thousand Oaks.

The City would therefore propose that it is the nature of the marketplace, not pricing considerations, which motivates cable operators to either include "popular cable programming services" in the basic tier, or limit basic tier customers to only the mandated "minimum components," (local broadcast television signals and PEG-access cable channels.)

It is the City's position that — as cable franchisors in a "classic" (i.e. "captive") cable market — we have a special responsibility to protect the interests of consumers who must purchase cable TV simply to gain access to broadcast television.

At the present time, basic tier subscribers in Thousand Oaks pay more per channel than higher tier subscribers. The City would like to see a basic tier rate regulation mechanism which would result in basic tier subscribers paying the same price per channel as those subscribers buying higher tiers of service. This is also more equitable if basic tier subscribers are permitted to purchase premium and pay services, without subscribing to the expanded basic tier.

While the City recognizes the Commission's mandate to balance the competing interests of all parties, we urge that primary consideration be given to protecting basic tier subscribers — particularly those in "captive" cable markets — from paying more per channel than those paid by subscribers to the higher tiers.

In section ii, "Discussion," on page 21, footnote 61, the Commission states, "We solicit comment on whether Congress intended that we should give primary weight to the goal of protecting subscribers of any cable system from rates higher than those that would be charged if the system were subject to effective competition." and "We further solicit comment on the extent to which we should design our regulations to produce rates

for the basic service tier that are generally lower than those in effect in the cable industry for the lowest service tier at the time of enactment of the Cable Act of 1992. Should we seek to do so, we solicit comment on the balancing of the statutory factors for the basic service tier that would accomplish this result."

The City of Thousand Oaks offers the following comments:

Conclusions:

- *The City believes the 1992 Cable Act unequivocally mandates the Commission to give precedence and priority to implementing the "Commission Obligation to Subscribers," as set forth in Section 623 (6), (b), (1),*

"to ensure that the rates for the basic tier are reasonable . . . to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such system were subject to effective competition."

and

- *That the need to measure rates of systems subject to effective competition is the Commission's primary and overarching goal, not merely one of seven procedural factors to consider in reaching that goal.*

Background:

The City takes exception to the Commission's "tentative conclusion" (as stated in footnote 61) that the Cable Act does not "per se require" that basic tier rates for a system not subject to effective competition be lower than basic tier rates for a system that is subject to such competition. The City also takes issue with the Commission's finding that in the Cable Act, the mandate to consider "the rates for cable systems, if any, that are subject to effective competition" [Section 623, (6), (b), (2), (C), (i).] is only one of seven factors to be considered, in formulating a rate regulation mechanism, or in arriving at a "reasonable" rate.

The City notes that Section 623, (6), (b), (1) of the Cable Act, which precedes and prefaces the above-noted section, appears to establish an unequivocal objective which the Commission is to implement, and to which any procedures formulated to achieve that objective would be secondary and subordinate.

- **Section 623, (6), (b), (1) reads as follows:**

"COMMISSION OBLIGATION TO SUBSCRIBERS. — The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such system were subject to effective competition."

Were the Commission to have direct access to the opinions of Thousand Oaks cable subscribers — in this community where cable operators are not subject to effective competition, and where many households subscribe to cable TV as a necessity — we believe the Commission would find that these subscribers consider themselves to be severely disadvantaged by having to patronize a monopoly enterprise simply to give their household access to broadcast TV signals.

We believe there is little ambiguity on the part of these cable subscribers in desiring that their cable rates be no higher than those of subscribers in communities subject to effective competition. Many local citizens have communicated these sentiments to members of Congress, as have subscribers from around the country. It was to provide consumers a weapon against monopoly rents and prices that the Congress overrode the President's veto on Oct. 5, 1992 to enact cable re-regulation.

While the Commission must protect and consider the interests of all parties in these matters, we urge that the Commission acknowledge its fundamental and unequivocal "Obligation to Subscribers," as stated in Section 623, (6), (b), (1) of the Cable Act of 1992.

- **Addressing whether the Commission should give primary weight to the consideration of rates for systems subject to effective competition.**

The City would like to address the Commission's "tentative conclusion" that consideration of "rates for cable systems that are subject to effective competition" is only one of several factors that should be given equal weight in determining what constitutes a "reasonable" rate for the basic tier.

We believe this conclusion is false because, under the "Statutory Requirements" listed on page 19 of the Notice of Rulemaking, many factors listed would be based on operations of systems not subject to effective competition. Effective competition, where it currently exists in the cable industry, operates much as a "price cap," since competition obviously limits how high an operator can price its product without losing customers to a lower-priced competitor.

We note the Commission, on page 30, paragraph 51, discusses the "price cap" concept and states, "Under a price cap, companies have an incentive to reduce costs and operate efficiently."

We propose that the reverse is also true: without a price cap (or price cap-like mechanism, such as effective competition) companies have no incentive to reduce costs and operate efficiently. Thus, to examine the operations of a system not subject to effective competition, and to weight the value of that information on an equal basis with data from a system subject to effective competition, could skew the analysis of that data and unduly endorse or validate the non-competitive operation of a monopoly enterprise.

We believe that, in order to formulate a fair and objective benchmark for basic tier rate regulation, the Commission must first examine the operations of cable systems subject to the forces of free market competition, or, if sufficient data of that kind is not available, from the construction of a statistical model for such a system.

- **Addressing which basic tier rates should be subject to regulation.**

The Commission also asks the extent to which regulations should be designed to produce rates for the basic service tier that are lower than those in effect at the time of enactment of the Cable Act. The City of Thousand Oaks believes that rates of systems subject to effective competition, as of Oct. 5, 1992, should be assessed as the primary consideration in formulating a rate regulation procedure.

Subsequently, the rates in effect on Oct. 5, 1992 by systems not subject to effective competition — plus any rate increases instituted by operators after enactment, but prior to the Commission's formulation of rate regulation procedures on April 5, 1993 — plus all future rate increases, until such time as there is effective competition, should be subject to rate regulation, by a certified local franchisor, in accordance with the terms of the Cable Act and the Commission's policies.

• **Operators' Rate Increases Since Enactment of the 1992 Cable Act.**

Of great concern to the City of Thousand Oaks, are the eleven percent (for cable programming services) and five percent (for the basic tier) rate increases, respectively, which have been implemented after the effective date of the Cable Act by the City's two, non-competitive cable TV franchisees. The City has grave doubts about the necessity for implementing such increases at this time and fears that cable companies are trying to score one more rate increase "under the wire" before the Commission's basic tier rate regulation and cable programming services pricing policies and procedures are implemented.

This City urges the Commission to create a rate regulation mechanism which will oblige cable operators to fully justify, explain and defend their rate increases, both those in effect at the time of enactment of the Cable Act, and any increases implemented since Oct. 5, 1992, and to enable franchisors, and the Commission for cable programming services, to subject these rates and increases to appropriate regulatory procedures, including the ability to audit the operators' records in order to verify the accuracy of their rate representations.

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- In section ii, "Discussion," on page 24, paragraph 37, the Commission states, "We solicit comment on whether we should permit individual system adjustment to otherwise widely applicable benchmarks and what measures should and could be established to permit such adjustments."

The City of Thousand Oaks offers the following comments:

Conclusions:

- *The City urges the Commission to adopt a benchmark formula for local franchisors to use in their roles as certified rate regulators for the basic cable tier. The City's first preference would be for a benchmark scheme based on the rates of systems subject to effective competition. However, if sufficient data is neither available nor sufficient for the Commission's purposes, the City urges the Commission to adopt a benchmark formula based on the cost-of-service standard.*

Background:

As discussed above (under Article II, 3, b) in comments to section ii., cc, "Filing of Franchise Authority Certification", we believe that a benchmark formula should be established by the Commission. Such a formula would take into account such variables as:

- the operator's debt service for the individual franchise (including goodwill premium and debt-to-equity ratio);
- the operator's profit margin or positive cash flow;
- its costs to provide service to the franchise area;
- the operator's obligations to the franchise, as provided for in the franchise agreement; and
- a proportionate share of system-wide expenses which benefit all franchises.

This formula could then be used by local franchisors to regulating the basic tier rates of cable operators serving their franchise area. We believe that a benchmark formula, that represents a "reasonable" range of rates, depending upon the factors relevant to that franchise area, would most accurately implement the Cable Act's intent for local rate regulation.

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- In section ii, "Discussion," on page 26, paragraph 40, the Commission states, "We also solicit comment on whether we should consider adopting alternative approaches to determining the reasonableness of rates for the

basic service tier, from among which either the cable system or the regulatory authority might have some discretion to choose."

The City of Thousand Oaks offers the following comments:

Conclusions:

- *The Commission should designate a single rate regulatory mechanism which would serve to keep basic tier rates at a "reasonable" level and which could be straightforwardly implemented by local franchisors.*
- *Due to the complexities involved in selecting a pragmatic and efficient regulatory method, the City urges the Commission to use its judgment and discretion to select a single method, and not to confuse the new regulatory environment by offering, promoting or permitting alternative schemes, some of which might possibly be subject to manipulation or evasion by operators seeking to invalidate regulation of their operations.*

Background:

Should the Commission not be able to acquire enough data to construct a benchmark based on the rates, costs and returns of cable companies subject to effective competition, this City would encourage the Commission to establish a cost-of-service benchmark. Under Appendix B, "Cost of Service Standards," the Commission describes various cost components which could be considered in designing a "cost-of-service" benchmark. The City would like to address those components which are particularly relevant to our situation.

- **What should the Commission permit and not permit operators to include in their rate base, for the purpose of formulating a cost-of-service benchmark for the regulation of the basic tier of cable service.**

Rate Base: In Thousand Oaks, two cable operators serving different segments of the community were required by their respective franchise agreements to upgrade their cable delivery systems to 400 megaHertz (54 channels) Both operators missed initial rebuild completion deadlines;

however, the City worked with each over a period of two years to monitor rebuild completion.

Subsequently, while publicizing the amount of their investment in the community, both cable operators have declined to activate the additional channel capacity provided by the rebuild.

In addition, the City has been advised by one operator that no timetable for activation of expanded system capacity can be presented, because the operator is in the process of rebuilding other of its system franchise areas with fiber-optic technology.

Thousand Oaks's rebuild was completed in traditional coaxial cable. The cable company has now begun to rebuild adjacent franchise areas in fiber and has prepared a notice to subscribers, system-wide, which appears to indicate that no major channel additions will occur until after a fiber rebuild is completed throughout the system! **This situation is analogous to a contractor building a road for the City that no one can drive on!**

In Thousand Oaks, the primary cable operator appears to have spent millions of the community's subscriber dollars to complete a rebuild of the coaxial cable TV delivery system for the community. However, the company indicated its unwillingness to purchase additional microwave equipment in order to activate the additional capacity of the upgraded plant. To date, our citizens have derived no benefits from the rebuild of the community's cable systems because the operators have refused to activate additional capacity, and the primary operator has indicated it will not activate this capacity until the system is rebuilt a second time in fiber!

The City of Thousand Oaks asks the Commission not to reward cable companies for rebuilds, which result solely in excess and unused system capacity, by allowing them to accrue financial credit. In the case of Thousand Oaks, the City doubts that the operators' "compliance" with the City's rebuild requirements, has satisfied both the "letter" and the "spirit" of their commitments to the community.

The City urges the Commission not to permit cable companies to include in their rate base, investment for rebuilds to add channel capacity, as plant held for future use, until the channels are in service.

Goodwill: The Thousand Oaks community has a high cable penetration rate, as previously stated, and a relatively high median income. In general, cable households purchase the higher cable tier, plus premium channels, and pay services, which were introduced by VCC in mid-1992.

The City believes that its high penetration rate, and its dependence on cable for receipt of broadcast TV channels, may have contributed to the high purchase price — and the goodwill premium — which VCC paid to acquire the system from Storer Cable in 1986. The City believes that Thousand Oaks may be termed a “cash cow” for its cable franchisees, which may have taken more out of the community in revenue, than they have returned to subscribers in terms of service and product.

The City urges the Commission not to permit cable companies to include goodwill premiums, which may have been affected by the expectation of monopoly profits, to be factored into the rate base for use in constructing a cost-of-service benchmark, as a means to determine a “reasonable” rate for the basic tier.

Alternatively, if the Commission found that some portion of goodwill were to be included in the rate base, the City believes that this expense should be amortized, in accordance with generally accepted accounting procedures (GAAP), over a period of 40 years. Also, in general, we believe the Commission should require cable companies to use such procedures in preparing their income statement and balance sheet.

Customer Equipment: In Thousand Oaks, a “classic” cable market, operators have collected rents for equipment components, such as converter boxes, additional outlets, remote control devices and other equipment, over an extended period of time, to amounts which far exceed the operator’s original cost of the equipment, plus maintenance and replacement, many times over.

In addition, as described above, after complying with a franchise requirement to rebuild its cable delivery system to 400 megaHertz, the City’s primary cable provider, Ventura County Cablevision (VCC) advised the City that it could not afford to purchase additional microwave equipment which would make it possible to activate the additional system capacity and expand the channel offerings (for the basic and expanded basic tiers) from approximately 30 channels to 54.

However, the operator appears to have subsequently made a significant investment to purchase new, addressable converter boxes in order to launch a pay-per-view movie service.

While pay-per-view options provide an additional service for subscribers, according to the City's sources, pay services are a major source of new revenue for cable systems. In view of that potential revenue, therefore, the City believes it would unfairly burden Thousand Oaks subscribers to have to subsidize the purchase of special pay-per-view converters, and asks that the Commission not allow the cost of such equipment in the operator's rate base for purposes of calculating a cost-of-service benchmark.

Operating Expense: On page 90, paragraph 17 of Appendix B, the Commission states, "For multi-franchise operators, allowable costs may be directly attributable to a particular service within a franchise area or apportioned on the basis of relative numbers of subscribers or households passed, relative plant investment, or actual use factors (e.g. maintenance trips.) We seek comment on whether cable systems' property records are sufficiently detailed to support apportionment based on plant investment and what actual use factors are widely available."

The City offers the following comments:

While we are unable to speak in general regarding what "use factors" are widely available, the City's experience with VCC, a multi-franchise operator serving communities in Ventura County, and adjacent communities, has given us a perspective we wish to share with the Commission.

VCC chose to implement pay-per-view services in some, but not all, of its franchise areas. VCC has also elected to rebuild some of its franchise areas in fiber, but not others. With respect to costs, we believe that certain franchises within VCC's system may have been subject to significant goodwill purchase premiums, and that the costs attendant to these purchases may be passed on to the system's subscribers outside the specific franchise areas.

We believe that the costs attributable to the operations of one franchise area should be passed on to the resident subscribers of that area, who derive benefit from the cable company's operations; including rebuilds (once implemented,) service improvements and other factors. We believe it is contrary to the intent of the Cable Act, i.e. that basic tier rates be "reasonable"

in each franchise area, if subscribers in one area are obliged to subsidize the benefits being implemented in another area, until and unless they too derive benefit from the services or improvements.

Design of Rates: As stated above in pages 9 and 10, in Thousand Oaks, basic tier customers of the City's two cable operators pay **63 percent and 80 percent more**, respectively, to purchase the basic tier than higher-tier subscribers pay for the expanded basic, or satellite, tier.

Accordingly, the City encourages the Commission to calculate costs for the basic tier, under a cost of service benchmark plan, as direct channel costs, minus advertising revenues, plus an allocation of other costs; described as the second alternative on page 90, paragraph 18 of Appendix B.

Article II., "Proposed Implementations," 3, d: "Regulation of rates for equipment."

- In section ii, "Discussion," on page 38, paragraph 67, the Commission states, "cable operators may wish to sell equipment to their customers" and "we ask whether customers purchasing on time from the cable operator should be permitted to change their minds and purchase equipment from an alternative source."

The City of Thousand Oaks offers the following comments:

Conclusions:

- *The City urges the Commission to give cable subscribers the widest possible latitude to purchase cable equipment from outside vendors, or from the cable company, at the operator's cost.*

Background:

In Thousand Oaks, the primary operator, after a several years' period of not charging subscribers for the first converter box, has reinstated a

monthly charge of \$1.50 for a standard converter. The company also assesses monthly charges for:

- each additional outlet — \$4.00 per month;
- FM service — \$4.00 per month;
- addressable converter — 2.00 per month;
- remote control unit — \$3.50 per month.

Many cable subscribers have paid operators many times over for the cost of the equipment, including its maintenance and replacement.

We urge the Commission to require operators to fully inform cable subscribers, of their right and ability to purchase cable equipment from commercial vendors, at the earliest appropriate time.

Article II., 3, g: "Implementation and Enforcement."

- In section ii, "Discussion," on page 44, paragraph 83, the Commission states, "We also seek comment on whether, depending on the ratemaking methodology adopted, certain price changes caused by factors outside the operator's control, e.g. increases in taxes or programming costs, should not be deemed price "increases" subject to the notice requirement, and should be permitted to be passed through without prior regulatory review."

The City of Thousand Oaks offers the following comments:

Conclusions:

• *In order not to confound the expectations of cable subscribers that the Cable Act has empowered local franchisors, through the Commission's implementation procedures, to ensure that basic tier rates — and subsequent rate increases — are reasonable, the City urges the Commission to require that all future rate increases — even those which concur with rises in the CPI or other cost indexes — be subject to review by the local franchising authority. We believe such a policy would be in the*

best interests of cable subscribers who look to local government to protect their interests.

Background:

In the City's comments to the Commission's Notice of Inquiry, MM Docket 89-600, the City stated, "With the return of local rate regulation, the Commission should permit automatic rate increases equal to, but not greater than, the regional Consumer Price Index for basic cable rates."

However, the City now believes that the 1992 Cable Act has created expectations for local subscribers that all future basic tier rate increases be subject to rate regulation, and the City asks that the Commission allow local franchisors to review all proposed increases against the Commission's benchmark formula.

Another reason for requiring rate review of proposed rate increases equal to the CPI is that cable revenue from a franchise area may have increased to provide the operator with a higher level of profit or positive cash flow, which would make it unnecessary for them to raise their rates to account for an increase in costs due to an upward adjustment of the CPI.

For these reasons, the City asks that the Commission not permit operators to pass through any increase in the basic tier cable rate without submitting the proposed rate to the regulator for review, in accordance with the intent of the Cable Act, and the Commission's implementing policies.

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- In section ii, "Discussion," on page 44, paragraph 84, the Commission states, "We ask whether we should require the operator, for its initial filing and any subsequently proposed rate increase, to show that its submission complies with Section 623 and our implementing regulations."

The City of Thousand Oaks offers the following comments:

The City asks that the Commission require the operator, for its initial filing and any subsequently proposed rate increases, to show that its submission complies with Section 623 and the Commission's implementing regulations. We totally agree with the Commission's finding that, "placing the burden of demonstrating compliance on the operator" would expedite decision-making, "as the operator possesses the factual information necessary for such a demonstration."

However, the City asks that implementing regulations ensure that franchisors are authorized to request the necessary proprietary financial information from operators, sufficient to verify their "demonstration" of compliance with the Act and the Commission's regulations.

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- In section ii, "Discussion," on page 44, paragraph 85, the Commission states, "We also ask interested parties to comment on what oversight procedures franchising authorities may need to ensure compliance with the Cable Act?"

The City of Thousand Oaks offers the following comments:

In order to use a benchmark formula, to be established by the Commission, to determine whether the cable operator's basic tier rate is "reasonable," each local franchisor should have access to the cable operator's proprietary financial information which shows, not only the costs to operate the particular franchise, but also the amount of positive cash flow generated by the franchise.

This information should include, but not be limited to, the purchase price paid by the operator to buy the franchise, and information on the amount of debt service the operator is carrying to finance the purchase. In some systems, where one of several local franchises may have been purchased at a premium price, subscribers in adjacent or neighboring franchise areas may be subsidizing the debt service or investment payback for that other franchise area.