potentially lose a significant source of revenue, as a practical matter, they could also be subject to lawsuits for breach of contract.

C. Negative Option/Evasion [¶119-121, ¶127]

Continental was a pioneer in the creation of low priced basic service tiers, beginning in the early 1980's. Each of Continental's systems offers these tiers, at monthly prices of $9.95 or less, as a lifeline option. In recent months, a number of operators have reconfigured their offerings to offer the option of low cost basic service, yet have been met with derisive press reports suggesting an intent to evade Congressional directives. We submit that the launching of "broadcast basic" service is of substantial benefit to the public, consistent with the 1992 Act, and should be encouraged by FCC rules.

The language and clear thrust of the 1992 Cable Act is to separate the costs of basic (broadcast and PEG) service from the costs of tiered services; to offer regulated basic and optional tiers; and to isolate the cost of optional tiers (and the rights fees they entail) from the cost of basic. The command in Section 623(b)(7), that cable operators "shall provide" a minimum broadcast basic comes close to requiring the unbundling of tiers from basic.

Although the Act leaves it to an operator's discretion to carry signals other than broadcast and PEG channels on the basic service, its clear preference is for low cost basic and optional satellite tiers. Operators who chose to comply with the Act's preference should be protected from efforts to force cable networks down onto basic. These efforts may be expected from three directions: (1) mistaken application of the "negative option" and "evasion" provisions; (2) efforts by franchising authorities to dictate that certain cable networks be carried on basic; (3) efforts by programmers to force certain cable networks to be carried on basic.

(1) Negative Option/Evasion

Section 623(f) of the 1992 Act restricts "negative option" marketing. It states:

> A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

The restriction was explained on the Senate floor as a reaction to the initial roll-out of "Encore," a new mini-pay service, where existing subscribers were to be billed for the new service if, after a free trial and several notices, they did not reject the service. In response to that effort, some state enforcement authorities took the position that the cable industry crossed into unfair trade practices with such trial offers. But some of these authorities also challenged the unbundling of tiers, converters and program guides from "basic" if the operator did not automatically downgrade and remarket customers to retain the new options.

An example is the State of Wisconsin, which is currently pressing for a state trade practice regulation requiring an operator to automatically downgrade customers to the lowest level of service if the operator launches such a service.[18/] The theory is that until an operator launches a low cost basic service, or basic without converter, or basic without guides, one cannot presume that the subscriber paying for expanded service really "affirmatively" wants it. But requiring an operator to automatically downgrade silent customers and remarket them to their present level of service creates two formidable consequences. First, a firestorm of subscriber outrage. No one familiar with the outcry of subscribers after syndex blackouts would force an operator to disconnect virtually all of its subscribers from cable networks and impose the cost of remarketing them all. Second, such a rule would serve as a powerful disincentive to providing customers a choice of <u>any</u> lower cost service.

<u>18</u>/ In re Trade Practices of Tele-Communications, Inc., Docket 2294 (Wisc. Dept. of Agriculture, Trade & Consumer Protection).

Such extreme interpretations are not intended by the 1992 Cable Act. The Conference Report emphasizes "this provision is not intended to apply to changes in the mix of programming services that are included in various tiers of cable service," which we understand to include what the Report calls "the regulated basic tier." The Commission should clarify that: (1) the creation of broadcast basic, and the consequential movement of cable networks into a "tier" is not a negative option as to current subscribers to those channels; (2) the change or addition of channels to a tier is not a negative option as to current subscribers to those tiers; (3) the change of name of an existing tier is not a negative option; and (4) the "unbundling" of equipment from services, such as allowing subscribers to discontinue payment for an optional converter, is not a negative option to subscribers who fail to turn in their converters. Without such rulings, rearrangement and additions to programming will be paralyzed by subscriber inertia.

None of those changes -- changes in the mix of tiers, unbundling among tiers or unbundling tiers from equipment -- derogates from the fundamental goal of negative option restraints. That goal is to protect customers from charges for unsolicited services. In each of the examples, the customers have already ordered the services <u>before</u> new options become available, and they should be presumed satisfied until they elect to vary their service. By contrast, subscriber assent (either oral or written) would be required before billing for a new premium service or satellite tier not previously ordered by the subscriber. As the Commission has noted, systemwide upgrades of equipment do not require subscriber assent.

"Revenue neutrality" is an appropriate limitation on most tier charges, if properly applied. If an operator launches a $10 basic service in a system previously offering only $19 "expanded" basic, all customers may be kept as "expanded tier" subscribers if the tier rate is kept at $9, until and unless they elect to downgrade or elect not to pay any future increases in tier rates. "Revenue neutrality" is a bit more difficult to measure when equipment is repriced. For example, the 1992 price for a remote capable converter might be 0, and for a handheld remote $4.00. The 1993 price might be $3.50 (converter)/$0.50 (handheld remote). From the operator's point of view, the change is neutral. To a customer with <u>both</u> converter and remote, the reallocation is also neutral. But to a customer with only a converter, the reallocation would constitute a price increase. On the other hand, customers with a converter who previously declined the operator's $4.00 per month remote charge, could avail themselves of remote service for as little as $0.50 per month. In such circumstances, "neutrality" should be measured against a subscriber who receives all of the affected services or equipment, or alternatively by whether the cable operator realizes the same revenues under the new price configuration.

Revenue neutrality is not required when adding to services. As we have recommended, tier prices should be free from price caps and subject only to bad actor complaints. With respect to basic, it should not be regarded as a "negative option" to add services and raise the price. Otherwise, as the Commission notes, the launch of new services would be paralyzed by the veto of a few customers.

(2) Franchises

The second source of pressure to force cable networks onto basic are franchising authorities themselves. Some pre-1984 franchises specified that particular cable networks should be carried on basic, but those networks were retiered under rate deregulation. Some post-1984 franchises seek to evade the Act's prohibition of requirements for particular video services. They specify that basic shall be a minimum of say, 40 channels, thus compelling operators to maintain costly cable networks on basic. Efforts to enforce such clauses impose minimum "buy through" requirements inconsistent with the 1992 Act and defeat the purpose of the 1992 Act to provide low cost basic service. These clauses should be deemed preempted and void.

(3) Affiliation Agreements

The third source of pressure to force cable networks onto basic is some programmers. Several popular programmers only offer affiliation agreements in which the operator is charged a penalty for carrying the service on an optional tier. The contract might require an operator to pay a license fee for every basic subscriber as if he or she were a satellite tier subscriber, regardless of whether the service is only available to satellite tier subscribers. Alternatively, the contract will assess a penalty -- e.g., .10 cents per subscriber -- if it is placed on a tier with less than 80% penetration.

Enforcement of such clauses will frustrate the development of broadcast basic, yet few operators have contractual rights to terminate affiliation agreements until a later anniversary. The Commission should declare that its regulations implementing the 1992 Cable Act are force majeure, and permit operators to terminate (and renegotiate) such clauses.

None of this evades rate regulation. Any new low cost basic would need to meet Commission rate benchmarks or otherwise be defensible under FCC rate standards. A decrease in the number of channels on a satellite tier could be treated as a rate event, triggering a right for dissatisfied subscribers to appeal tier rates to the Commission. But the flexibility to tier signals is essential to maintaining a low cost basic service.

D. Small System Exemption [¶128-133]

Continental endorses the small system exemption recommended by the Community Antenna Television Association (CATA). That exemption should be equally available to small systems affiliated with MSOs. Such systems face the same need to recover costs from a small subscriber base. Although one Representative asked the Conference to exclude MSOs from any small system exemption, the Conference did not do so. 138 Cong. Rec. H 6526 (July 23, 1992). It is not for the Commission to undo that decision.

E. Reports on Average Prices [¶136-139]

The NPRM accurately notes that comprehensive annual rate reporting could be extremely burdensome for the Commission and the cable industry. Nonetheless, it would be inadvisable for the Commission to rely on trade publications, which are based on voluntary compliance and often incomplete reporting. The Commission should itself collect data directly from cable operators, but should restrict the breadth of its inquiry and the number of systems involved.

It is not necessary for the Commission to secure data from the entire cable industry to develop a statistically reliable report on cable rates. A statistically significant random sample should provide adequate information on every variety of cable system. All requests should be combined onto a single form, which may be returned either on a system basis (where the rate structure is uniform) or a franchise basis (where it is not). The only special effort that might be required would be to include a sufficient number of systems currently meeting the statutory definition of "effective competition."

A detailed response to the Commission's proposal is contained in Appendix A.

F. <u>Effective Date [¶142]</u>

Sections 623(b)(2) and (c)(1)(h) of the 1992 Act require that the Commission establish regulations to implement its rate regulation provisions within 180 days of the Act's enactment. The Commission has tentatively concluded that while it is required to adopt implementing rules by April 3, 1993, all implementing steps do not have to be completed by that date. This approach is consistent with the FCC's approach for implementing major policy and rule changes for other services. It has adopted comparable phase-in rules in <u>Transport Rate Structure and Pricing</u>, 71 R.R.2d 567 (1992) (two year interim period). Since this rate regulation proceeding involves similarly complex implementation issues, the Commission should follow its own precedent and provide a six month period for implementation of the rules.

During the interim period, operators would be free to conform to the new rules (on a revenue neutral basis), by unbundling as required, and/or by reallocating charges. For example, operators who have used remote control revenues and additional outlet revenues to subsidize and maintain low cost basic rates could eliminate the subsidy without delay or penalty.

VI. LINE ITEMIZATION SHOULD SEPARATE FRANCHISE FEES AND COSTS FROM THE CHARGE FOR CABLE SERVICE [¶175]

Section 622(c) of the Act permits operators to itemize franchise fees, PEG access costs and other fees on subscribers' bills. Although both the House and Senate Bills contained this provision, the Conference Committee adopted the Senate version.

In the NPRM, the Commission proposes to adopt the interpretation of the provision contained in the unadopted House Report. The House Report provides that operators' costs and fees associated with the franchise may be itemized, but only by "burying" them as part of the grand total of the cable service bill.[19/] Adoption of this interpretation is improper in view of the plain language of the statute which clearly permits operators to itemize on a separate line of the subscriber bill fees and costs which Congress specified. To adopt an unauthoritative interpretation[20/] of the provision contravenes the most

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19/ The House Report considered the example of an operator who charges $28.50 for basic cable service and pays $1.50 in franchise fees. The Report directed the operator to invoice the subscriber $30.00, not $28.50 plus $1.50. House Report at 86.

20/ See Norman J. Singer, Sutherland Statutory Construction §11.08 (4th ed. 1985)(In order to have a completed "act,"

[Footnote cont'd.]

fundamental principle of statutory construction. A statute which is clear and unambiguous on its face need not and cannot be interpreted -- only statutes which are of doubtful meaning are subject to the process of statutory construction.[21/] Section 622(c) presents no ambiguity relating to an operator's ability to itemize. Itemization is clearly understood from comparable billing used by telephone and electric utilities, as shown in Appendix G.

Moreover, obscuring the fees in the "total" bill defeats the very accountability Congress hoped to achieve on the part of local governments. In introducing the Senate Amendment providing for line itemization, Senator Lott called for an "openness in billing" that would identify for subscribers "hidden, unidentified" fees or taxes that the operator must pay and which are often passed on to subscribers.[22/] Senator Lott

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[Footnote cont'd.]

both houses of the legislature adopt the solution agreed upon by the conference committee.) In this instance, the Conference Committee did not adopt the House version of the provision or the Report accompanying it.

21/ See 2A Norman J. Singer, Sutherland Statutory Construction §45.02 at 5 (5th ed. 1992)(emphasis added); see also ACLU v. FCC, 823 F.2d 1554, 1567 (D.C. Cir. 1987); cert. denied, 485 U.S. 959 (1988) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.").

22/ See 138 Cong. Rec. S569 (1992).

recounted the cities' history of extracting fees and other payments:

> [L]ook at the history, the record of the cities and municipalities in this area... [I]t is one of the things that led us to the problems we had before 1984. There are many horror stories of how the rates were set, how the franchises were granted. In one instance, ... the applicant had to promise to plant 20,000 trees in order to win the local cable franchise. Do we want that? In several cities ... [they] extracted early upfront payments of several million dollars in anticipated franchise fees from the local cable companies. That is no way to be doing this business.

Id.

Clearly, burying these identified costs and fees in a "total" defeats the subscriber education benefit Congress intended.

Undue emphasis on the grand total creates practical difficulties as well. Many operators provide service over multiple local jurisdictions. Medium and large size systems routinely cross city, county, township and private community boundaries, each with separate franchise fees and distinct PEG access and other requirements. For example, Continental Cablevision of Ohio, serving the greater Dayton metropolitan area is franchised in 58 different communities despite the fact that the system is managed and operated on an integrated basis of 160,000 subscribers. Marketing the service in the area mass media becomes nearly impossible because operators cannot afford to tailor each advertisement to each community of a system where individual community sizes may range from less than 200 subscribers to over 60,000. Broadcast "spots" would become lengthy programs and the marketing would be completely diluted. Accordingly, for this purpose cable service must be permitted to be advertised as, for example, "$20 plus franchise fees and taxes." Once advertised, the system CSR explaining the service and the subsequent subscriber bill would provide the appropriate pricing schedule for the individual jurisdiction.

In reconciling Section 622(c) with Section 623 on rate regulation, the Commission should clarify that for the purpose of line itemization, operators may identify costs for "other services required by the franchise". This is appropriate because Section 623(b)(2)(C)(vi) of the Act directs the Commission to take into account such costs in prescribing rate regulation. These costs are significant. Apart from PEG access support, an operator's franchise may require provision of local origination facilities and staffing, an institutional network, specialized municipal video services, and voice and data transmissions. For example, in Fairborn, Ohio, a 9,000 subscriber community, Continental has provided a $200,000 institutional network connecting some 20 institutions, agreed to build plant and assist in municipal video arraignments and provide voice and data capability for municipal use. These costs may far exceed most PEG access requirements and directly impact subscriber rates. Accordingly, subscribers should be afforded the opportunity to see what they are paying for.

Efforts to hide the fees, charges, costs, and other assessments imposed by franchising authorities is nothing more than an effort to cover-up taxes from constituents and force cable operators to shoulder the public blame for their cost. The Commission should clearly declare that line itemization includes the right to bill the subscriber for the amount at issue in a format such as this:

Cable Service	X	
Franchise Fee to City (and other municipally required payments)	Y	
Total You Pay	Z	(= X plus Y)

This format is identical to telephone and power bills. <u>See</u> Appendix G.

Often times local franchising authorities insist that such directly imposed franchise costs <u>not</u> be disclosed to subscribers. For example, Continental's license in Newton, Massachusetts, prohibits the company from itemizing required support payments for a public access corporation. The Commission should declare that the right of line itemization is for the public purpose of political accountability of local governments, and may not be waived.

VII. <u>LEASED COMMERCIAL ACCESS [¶146-170]</u>

As the Commission suggests in its Notice, its commercial use regulations must balance competing directives in the Act. The rules should promote competition and diversity, but they must also serve overriding statutory purposes:

(1) The price, terms and conditions for commercial access use must be "at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system." 47 U.S.C. §532(c)(1);

(2) The rules must be faithful to the central purpose of Title VI to "minimize unnecessary regulation that would impose an undue economic burden on cable systems." 47 U.S.C. §521;

(3) The rules must rely on the marketplace "to the maximum extent feasible." 1992 Cable Act §2(b)(1)-(2);

(4) The rules must serve Congress' clearly expressed policy preference that intervention to protect consumer interests is not necessary where effective competition exists. <u>Id</u>.

These central purposes and policies must serve as a touchstone for the regulations the Commission adopts.

A. <u>Leased Channel Rates</u>

As a preliminary matter, Commission regulations governing rates, as well as terms and conditions of access should not apply where effective competition exists. The intent of Congress is clear that marketplace forces should be relied upon where a competitive market exists. The 1992 Cable Act's definition of effective competition ensures that a true market for commercial leased channels will develop where the standard in the definition is met. To impose costly regulatory "solutions" under such circumstances will only add to the costs of cable companies and place commensurate pressures on rates.

Where effective competition is not present, regulation of leased access rates will be required. Unfortunately, none of the specific rate setting methodologies proposed by the Commission will fulfill the intent of Congress. The proposed benchmark and cost of service based standards, because they focus on costs, are inconsistent with the FCC's statutory obligation to adopt rules that rely on the marketplace to the maximum extent feasible, and assure that the financial condition and market development of cable systems is not adversely affected.

The NPRM fails to properly appreciate that the statutory directive is to determine the "maximum reasonable rate" for commercial leased access. The Commission must recognize that if the rates are based upon averages, those programmers who contribute the most financially to cable systems will migrate to leased access channels. This will contribute nothing to diversity, will have an adverse effect on revenue, and would fundamentally restructure the premium television business which Congress intended to leave deregulated.[23/] To combat this problem, the Commission should set leased access rates at the highest net fee collected for a similar class of channels within the previous calendar year.[24/] For example, a premium lessee would be compared to the premium programmers generating the highest net to the cable operator. This approach would apply where a full channel is leased for a reasonably long term basis (i.e. at least one year).[25/]

With respect to rates for non-profit 501(c)(3) organizations, nothing in the 1992 Cable or Communications Act authorizes the Commission to establish any special subsidized rate. The 1984 Cable Act's legislative history simply noted that a cable operator may favor select programmers at its discretion, not that a discount is required in any particular case. H. Rep. 98-934 at 51. Any concern that educational or non-profit groups will not have adequate access to cable facilities ignores the

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23/ The NPRM raises this migration issue as a potential problem, but does not seem to take it seriously. The economics are so clear and compelling, that the issue must be addressed now.

24/ To allow operators to protect their business as technology advances and new service alternatives, it may be necessary to modify this formula to guarantee the operator some additional share of leased access revenue.

25/ Where only part of a channel is utilized, or the lease is for a shorter term, the cable operator would be entitled to charge a premium.

ample availability of PEG access and non-commercial must carry rights which already consume valuable channel space with no compensation. If 501(c)(3)'s need access but do not wish to pay the market based rate, they should use access channels like other noncommercial users.

Similarly, nothing in the 1992 Cable Act authorizes the Commission to require that cable operators provide billing and collection services.[26/] Moreover, in establishing a rate mechanism applicable where such services are provided by an operator, the Commission must rely upon marketplace forces to the maximum extent possible. As the Commission observed in its NPRM, a competitive market already exists for billing and collection services provided by telephone companies. Detariffing of Billing and Collection Services, 102 FCC 2d 1150 (1986), recon. denied, 1 FCC Rcd. 445 (1986). This finding is equally applicable to the billing and collection services that could be provided by cable companies. Where such a marketplace exists, Congress intended the Commission to rely upon it.

B. Terms and Conditions of Use

As previously noted, the Commission, in establishing regulations concerning the terms and conditions of access, must

26/ The legislative history to the 1984 Act specifically stated that such services were not required to be provided. H. Rep. 98-934 at 52.

assure that such use "will not adversely affect the operation, financial condition or market development of the cable system." 47 U.S.C. §532(c)(1). In the complex environment in which cable companies operate today, with competing demands on channel capacity and location caused by PEG access and must carry requirements, operators must be given flexibility in negotiating terms and conditions with commercial lessees.

Specifically, the 1992 Act does not authorize the Commission to guarantee a commercial lessee a channel on the basic service. Instead, the 1992 Act provides the cable operator with the discretion to decide whether to include any commercial leased access channel as part of the basic tier of service.[27/] Similarly, tier location, channel position, time scheduling, and access to system addressability should be left to negotiation between the cable operator and lessee. By statute, commercial use must be for video programming only. Sec. 612(b)(5). The expedited complaint procedures and remedies provided for in the 1992 Act can be pursued by any lessee that believes the cable operator is in violation of its obligations under the statute.

The Commission is not authorized to compel cable companies to make any technical or production facilities

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27/ 47 U.S.C. §5(b)(7). This section specifies the minimum content of basic service, and gives the cable operator discretion whether to add additional programming. *See* Conference Report at 60.

available to lessees. A competitive market for such services exists, and the Commission should not involve itself. Commercial lessees must be required by the regulations to deliver a baseband signal to the cable company's headend processors. Again, even for satellite delivered programming, there are many vendors available with whom a lessee can negotiate for downlink services, if the lessee does not wish to purchase its own earth station. There is simply no reason for the Commission to involve itself in any of these issues.

With respect to the technical quality of leased access programming, cable operators should be permitted to require a higher quality than what is accepted for PEG. Otherwise, operators may be forced to increase technical standards for PEG thereby restricting the retransmission of such programming. Commercial access program technical quality should be comparable to the technical quality of programming provided by the cable operator on the same service tier on which the leased programming is aired.

Cable operators must be given discretion to require advance payment from commercial lessees, or at the operator's discretion, some other form of security such as a bond or deposit. If a prospective programmer cannot satisfy such a minimal requirement of prepayment, it would be inconsistent with the Commission's duty to assure that no adverse financial impact be incurred by the operator, to require the cable company to bear the financial risk of airing leased programming without the posting of suitable security.[28/] Such an approach would be tantamount to having movie theatres bill patrons after they have left the theatres.

With regard to the treatment of entities affiliated with the cable operator that lease channel capacity, nothing in the 1992 Cable Act changes the 1984 Act's policy that more favorable rates, terms and conditions can be applied to the affiliated entity. The 1992 Act amends Section 612 of the Communications Act, which specifically applies to the designation of channel capacity for commercial use[29/] by "unaffiliated" persons. 47 U.S.C. §532(b)(2). Moreover, the statute directs any court reviewing an access complaint to disregard "any price, term, or condition established between an operator and an affiliate for comparable services." Id. §532(d). Thus, the statute by its terms does not authorize the Commission to establish rates, terms and conditions for access based upon transactions with an affiliate.

28/ This point is detailed in our Comments in MM Docket 92-258.

29/ The term "commercial use" is defined by the statute as "video programming whether or not for profit." Id. §532(b)(5).

C. Resolution of Complaints

To expedite the resolution of complaints as directed by Congress, the Commission should specify that the cable television special relief procedures shall be available to complainants. 47 C.F.R. §76.7.[30/] Without this avenue of relief, the statute directs complainants to federal district court, with Commission processes only available "upon a showing of prior adjudicated violations". Thus, access to FCC special relief procedures to resolve initial complaints will significantly facilitate the expeditious resolution of disputes. In fact, the special relief provisions of the Commission's cable television rules provide authority for the Commission to direct expedited pleading cycles where necessary.[31/]

30/ The special relief process is also the most effective and efficient means for the Commission to monitor the effectiveness of the implementation of this section. By monitoring complaints on a regular basis, the Commission can quickly determine whether there are implementation problems, and if so, what the specific problems are. It is premature to adopt an elaborate reporting system, which would only add to the regulatory burdens and costs of cable companies imposed by the 1992 Act.

31/ The normal 30 day response time to a special relief petition should not be routinely altered, and the proposal to set a 10 or 15 day response time should be rejected. In most cases it will take at least a week for a petition to reach the proper individual in a cable company. At that point, facts must be reviewed and a response prepared. Under most scenarios, 30 days is the minimally acceptable response time.

With respect to the requirement that cable operators' prices, terms and conditions be presumed reasonable absent clear and convincing evidence to the contrary, the following procedure will be consistent with Congress' intent: If in response to a complaint a cable company demonstrates that the rate charged for access does not exceed the highest net fee collected for a similar class of channels within the previous calendar year, the cable company would have met its standard of proof under the statute.

The Commission should require that any access complaint be filed within 60 days after the occurrence of the action underlying the complaint. Cable operators can be expected to receive many proposals seeking leased access, which do not conclude in agreement. Bona fide applicants who feel they have legitimate complaints should be required to seek relief promptly. Otherwise, as the Commission observes, cable companies could be subject to numerous complaints after the factual record has become stale. Moreover, as more time passes, the availability of capacity will change and the status quo will be inevitably altered, thus complicating the nature and form of relief that will be deemed appropriate if a violation of the statute is established.

Because the special relief procedures already provide for expedited consideration of complaints, the Commission should not issue oral rulings. Given the availability of the expedited process, there is absolutely no justification for requiring access prior to a Commission decision. However, if such pre-decision access is permitted, the lessee must abide by the cable operator's price, terms and conditions until a ruling is received. Any other approach would be contrary to the statutory requirement that the cable operator's price, terms and conditions be deemed reasonable absent clear and convincing evidence to the contrary. Moreover, the cable operator has ongoing costs to pay, and is unlikely to avoid responsibility if it loses at the FCC, while an access user could disappear. The access user can readily obtain a refund from the operator of any overcharges identified by the Commission.

The parties should be permitted to mutually choose to proceed by Alternative Dispute Resolution procedures. Because the procedure is voluntary, the parties could opt to utilize it at any time. Local franchising authorities are preempted by the Act from resolving leased access disputes. 47 U.S.C. §532(b)(2), (c)(4)(A)(iii).

D. Access By Minority and Educational Programmers

The Commission seeks comment concerning what amount of programming must be dedicated to minority viewpoints or to educational or instructional programming to satisfy the "substantially all" standard set forth in Section 612(i)(2) of the Communications Act. 47 C.F.R. §532(i)(2). Programmers that devote 75 percent of their programming on a weekly basis should be deemed to satisfy the standard.

CONCLUSION

Continental urges the Commission to adopt regulations consistent with the foregoing Comments.

Respectfully submitted,

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