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

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In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

TO: The Commission

REPLY COMMENTS OF THE CITY OF OWENSBORO, KENTUCKY

Introduction

The City of Owensboro, Kentucky ("City") hereby files its reply comments to the above captioned proceeding. The City of Owensboro, with a population of 56,000, has had cable television service since 1971. Numerous complaints from local residents regarding high rates have been lodged with the City. The City intends to assert its rate regulatory authority. Therefore, the City is particularly interested in the methodology to be utilized for basic and tier rates, policies related to regulation, and issues that affect subscriber bills.

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Reply Comments

The City of Owensboro supports the comments submitted to the FCC by: the National Association of Telecommunications Officers and Advisors; National League of Cities; United States Conference of Mayors; and the National Association of Counties. The City believes that these comments reflect the municipal government interest in these matters. A key to achieving "reasonable" rates for the basic tier of cable service is finding whether current rates are reasonable and if not, reducing the rate to a "reasonable level." Similarly, tier rates found to be "unreasonable" should be reduced. See Section 623(c)(3). The methodology to achieve this should take into account the legislative policy. As indicated in Section 2, (b) "... (4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and (5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers." This policy would not be met if the FCC limited regulation to future rate increases and did not reflect the historical and economic factors in an unregulated environment that lead to the rates in today's cable market.

The City supports the use of a "benchmark" rate methodology which would not pose an undue regulatory burden for the City and should provide the cable industry and investors with a reliable mechanism for current and future planning purposes. The principal component of the benchmark rate structure should be the rates charged by cable system subject to effective competition. These systems, which provide subscribers with a real choice in a competitive market, provide the best means for arriving at what is a reasonable rate in a competitive market. To re-regulate markets, whose companies enjoy monopoly power, the best

criteria would be the rates in existing competitive markets. Thus, what is reasonable in a competitive market would be reasonable in a noncompetitive market.

The secondary choice for a benchmark methodology is a "cost based" benchmark which would be based on normative costs for the cable industry. This would achieve a reasonable standard since it would limit the cable operator to cost plus a reasonable rate of return. It is the "normative cost" component of regulatory structure which would lessen the administrative tasks of the City.

In Cities such as Owensboro, which has a historical record of multiple rate increases, the FCC should consider adjusting such rates for prior rates of inflation. If a system had major capital improvements, this could be taken into account through regionalized, normative measures.

As with a historical component of a benchmark system, the City supports the development of a methodology that incorporates differences in basic cable system information. For example, the number of active cable channels received by subscribers should be a major component of what is determined to be a reasonable rate. The City supports such factors as can be easily determined.

Once the benchmark methodology has been ruled upon, the City strongly asserts that a cable operator with rates above specified benchmarks should be required to reduce basic and tier rates. Cable operators with rates below benchmarks rate should be subject to annual price caps so that system subscribers, even though limited in number, do not face automatic, substantial increases.

Periodic revisions of the benchmark methodology should be conducted by the FCC to

ensure that rates for basic service remain reasonable and cable service rates are not unreasonable.

Regulation of equipment is a particularly important component of any rate regulation scheme as rate burdens can be shifted from basic service to unbundled equipment. The Cable Act of 1992 requires that the rates for installation and equipment be based on "actual costs." See Section 623(b)(3)(A). Such unbundling will not only impact rates for subscribers, but should assist in meeting the Congressional goal of promoting competition in subscriber technology.

A benchmark rate could be established for installation and actual costs could be utilized for equipment (e.g., price of converters).

Similarly, the cost for additional outlets should include the actual cost of the equipment and installation. No charge should be included for the basic and tier programming services as they do not represent an additional cost to the operator. The City believes that such regulation should provide a ceiling and that the operator should be able to discount or waive installation fees or actual cost structures for equipment. Further, the FCC should ensure that new charges are not affixed on equipment that was previously provided free of charge.

Of particular concern to the City is the identification of costs related to franchise requirements. See Section 623(b)(4). This requirement should be reviewed in the context of the regulatory structure for basic rates. Section 623(b)(c)(vi) indicates that basic rates include amounts required to satisfy franchise requirements to support PEG channels, use of the channels,

or other services as required in the franchise. The FCC should ensure that customers are not billed twice for this.

The City is concerned that the methodology utilized does not overlook how the itemized franchise fee is incorporated in the total bill. The City is concerned that many cable operators may receive an additional three (3) percent to five (5) percent increase simply by adding this amount to a bill which had previously included the franchise fee as a component of the bill (whether itemized or not). The Cable Act of 1984 specified that franchise fees already incorporated in the rates were not to be added to the subscriber's bill, while any increase in the franchise fee could be added. The FCC should look to the Cable Act of 1984, prior to the 1992 amendment, for guidance on the issue. See Section 622(c).

Regarding the implementation of City rate regulation, the City supports a postcard certification process for granting rate authority to City governments. Providing flexibility to cities for the process of reviewing rates would be consistent with normal differences in operating procedures among cities. A most important component of the process, is ensuring a reasonable period of time for the City to review relevant material and take action. In such a review, the City believes it is incumbent upon the cable operator to bear the burden of demonstrating that their rate is reasonable. During the process, the City should have the authority to request information necessary to the decision-making process and to enforce a rate decision, including ordering rate reductions.

For tier regulation, the City concurs with FCC that the City should be permitted to conduct an initial review of rate complaints. Such a review would entail application of the benchmark methodology to tier rates. The City strongly believes that in the case of a complaint being filed and upheld, actual rebates should be provided to subscribers for the appropriate period. Complaints, by a subscriber or City, should be filed on a simple form.

Conclusion

For the foregoing reasons, the City of Owensboro respectfully asks that the Commission:

(1) Implement a benchmark methodology for the regulation of rates;

(2) Implement a cost based structure for equipment and additional outlets;

(3) Implement itemization of franchise costs which do not double bill consumers;

(4) Implement a regulatory structure that allows cities to obtain necessary information and provide for a reasonable time frame for action.

Respectfully submitted,

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