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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 3, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: MM Docket No. 92-266 and MM Docket No. 92-262

Dear Ms. Searcy:

Transmitted herewith in accordance with the provisions of Section 1.1206 of the FCC Rules, are an original and four copies of this notification that on this date representatives of Encore Media Corporation met with Chairman James H. Quello, Robert Corn-Revere, Maureen O'Connell (of the Chairman's staff); a representative of the Office of Commissioner Andrew C. Barrett (Robert E. Branson); a representative of the Office of Commissioner Ervin S. Duggan (John C. Hollar); and a representative of the Office of the Mass Media Bureau (William H. Johnson).

The purpose of the meeting was to discuss matters already addressed in Encore Media Corporation's comments in the above-referenced proceedings and in the attached materials.

This submission is provided to you in quadruplicate in order that you may place appropriate copies in both dockets.

Should you require anything further, please contact the undersigned.

Very truly yours,

James E. Meyers

James E. Meyers
Counsel for
Encore Media Corporation

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Enclosures
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Summary of Discussion Points with FCC

Cable Act of 1992

Rate Regulation

ENCORE

March 3, 1993

POLICY OF THE ACT (SECTION 2)

Rely on the marketplace to maximum extent feasible to promote availability of a diversity of video programming through cable television and other video distribution media

Ensure that cable operators continue to expand capacity and programming available, whenever economically viable

Ensure that consumer interests are protected and market power is balanced among operators, programmers and consumers, until cable systems are operating under actual or effective competition

DEFINITIONS (SECTION 3)

For purposes of rate regulation, cable service(s) are classified by usage rather than content

Traditional terms such as "Basic Service" and "Premium Service" have been replaced by new terms "Basic Service Tier", "Cable Programming Service" and "Per Channel / Per Program Service"

"Basic Service Tier" (BST) -

Required for access to any other tier of service

Must contain minimum complement [(b)(7)(A)] . . .

Plus any additional services that operator chooses to carry

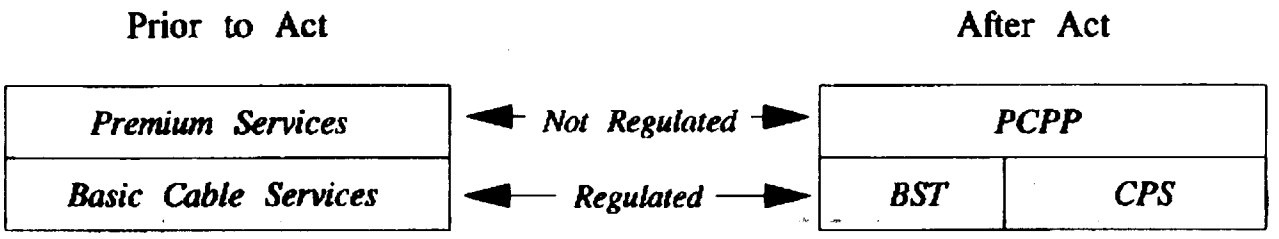
"Per Channel / Per Program Service" (PCPP) -

Video Programming offered to subscribers on an "a la carte" basis

"Cable Programming Services" (CPS) -

Any video programming / equipment other than BST or PCPP

IMPLICATIONS OF DEFINITIONS



- Video programming service now defined by system usage

  Operators can offer video programming in three different ways

  As additional service included in BST

  As PCPP service on an a la carte basis

  As part of a CPS tier, with at least 1 other service

  Tiers must contain at least 2 services, otherwise single service would be PCPP

  Extent of regulation of a programming service may vary by system, e.g.

  CNN may be BST on one system, CPS on another
  HBO may be PCPP on one system, CPS on another

- Tier(s) are only BST or CPS but not PCPP [(b)(8)(A)] . . . any tier

DEDUCED CONGRESSIONAL INTENT OF THE ACT

Three areas of focus, FCC to define, regulate and enforce

Franchising authorities to ensure lowest possible rate for BST

Through tight regulatory guidelines established by FCC, in the absence of effective competition

Operators encouraged to move to PCPP services

Even in absence of effective competition, PCPP not rate regulated

Lowers barrier to foster success of PCPP offerings

Anti Buy Through provisions

Separately billed equipment for PCPP regulated "at cost"

CPS regulations designed to "weed out" egregious rate behavior

"Bad Actor" provision applies to CPS, but standard of regulation is more benign than standard for regulation of BST

STANDARDS FOR RATE REGULATION OF BST (Reasonableness) & CPS (Unreasonableness)

For Benchmark Standards to be broadly applicable for all systems . . .

Benchmark for BST must be set to be "Definitely Reasonable"

System rates below Benchmark are "Definitely Reasonable"

System rates above Benchmark still could be "Reasonable"

System must plead case

Benchmark for CPS must be set to be "Definitely Unreasonable"

Rates above Benchmark are "Definitely Unreasonable" (possible rollback)

Rates below Benchmark are "Reasonable"

Establish a reference rate (Benchmark) for rate regulation

Regulation of BST should be more stringent, however same core formula could be used with mutliplier to regulate CPS

Multiplier is based on ratio of "Unreasonableness of CPS" to "Reasonableness of BST" as determined by FCC

A "Buffer Zone" exists bewteen "Definite Reasonableness" and "Definite Unreasonableness"

STANDARDS FOR RATE REGULATION OF BST & CPS

Developing different Benchmarks for "Reasonableness" & "Unreasonableness"

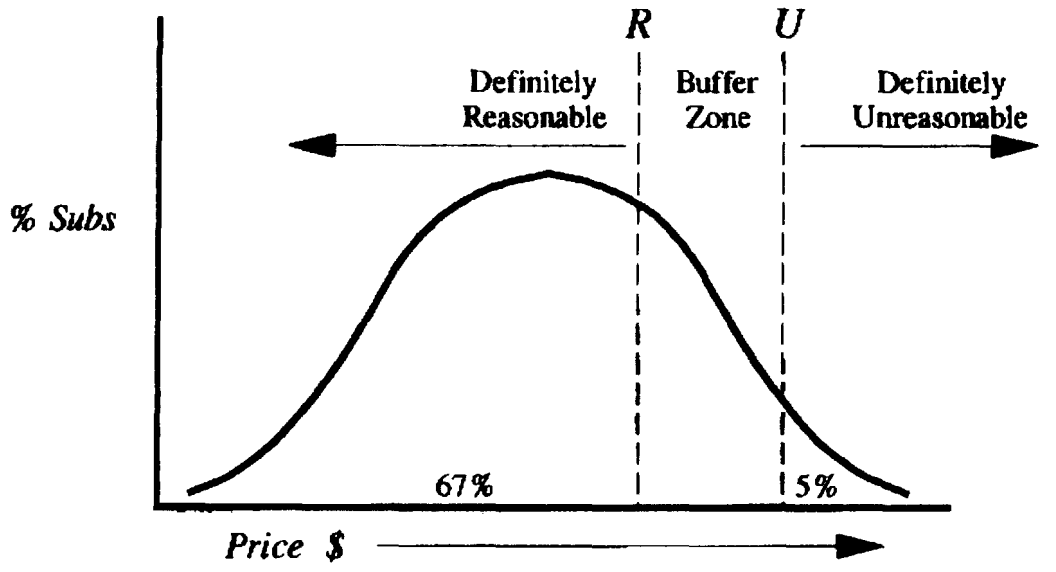
Construct Normalized Distribution of current prices for cable service

Set "Definite Reasonable" bound (e.g. 67%) for cable systems that have prices for BST at or below this bound "R"

Set "Definite Unreasonable" bound (e.g. 5%) for cable systems that have prices for CPS at or above this bound "U"

Systems with prices between "R" and "U" are in the "Buffer Zone" and thier prices may be reasonable or unreasonable

STANDARDS FOR RATE REGULATION OF BST & CPS



Multiplier maintains Buffer Zone, yet BST and CPS both regulated

Should FCC elect "Per Channel" Benchmark approach, same complement of services in CPS must have a higher benchmark than if they are in BST, . . . by a multiplier

$$\textit{Multiplier} = \frac{U}{R} \qquad \textit{Multiplier always} > 1.0$$

STANDARDS FOR RATE REGULATION OF BST & CPS

EXAMPLE

Reference price from curve for "Reasonableness" (R) = $10.00
Reference price from curve for "Unreasonableness" (U) = $12.00
Multiplier = (U) / (R) = 1.2

Benchmark would apply for same complement of services offered in different ways by different operators, per the Act

System A - Offers Channels 1 - 20 as part of BST for $11.00
FCC has set Benchmark for BST at $0.50 per channel
Benchmark for "Reasonableness" is $10.00 for System A
Exceeds reference rate but still may be reasonable

System B - Offers Channels 1 - 20 as part of CPS for $11.00
FCC has set Benchmark for BST at $0.50 per channel
Benchmark X Multiplier of 1.2 sets "Unreasonableness" at $12.00
System B is definitely not unreasonable in its rates

REASONS AGAINST "COMMODITY" BASED BENCHMARK

FCC should not Benchmark services without regard to type in CPS

Cable Operators are beginning to offer various "small interest" tiers

Offers public more choices and diversity without bundling a large tier which helps to satisfy Congressional Intent

New cable programming services need strong "locomotive"

Enhances customer acceptance

Locomotive can be traditional PCPP services like ENCORE

"Commodity" approach prevents use of high priced service in tiers

High priced services like ENCORE help growth of newer services

REASONS FOR USING "CLASS" BASED BENCHMARK

Benchmark would be established for various "classes" of programming with appropriate benchmark rates for each class

Accounts for usage of different "classes" of services in BST and CPS

"Commodity" Based Benchmark Example: CPS = $0.50 per service
12 service BST would have $6.00 reference rate for "unreasonableness"
A $1.00 service probably would not be added to CPS because of cost

"Class" Based Benchmark Example:
Class A $0.20 / channel, Class B $0.50 / channel, Class C $1.00 / channel
12 service BST of 5 Cs + 2 Bs + 5 As has $7.00 reference rate
A $1.00 service can now be added to CPS as "locomotive"

Multiplier for use in CPS regulation versus BST would still apply