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March 9, 1993

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RECEIVED

MAR 29 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

Re: MM Docket No. 92-266

Dear Ms. Searcy:

Transmitted herewith are an original and two copies of correspondence and enclosures submitted to the Offices of Commissioners Quello, Duggan, Barrett and the FCC's Mass Media Bureau, providing a corrected version of materials provided to them on March 3. Kindly associate these materials in the appropriate docket file.

Very truly yours,

*James E. Meyers*  
James E. Meyers  
Counsel for  
Encore Media Corporation

Enclosures

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List A B C D E

Summary of Discussion Points with FCC  
*Cable Act of 1992*  
Rate Regulation

*ENCORE*

March 3, 1993

Revised - March 9, 1993

## POLICY OF THE ACT ( SECTION 2 )

*Rely on the marketplace to the 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*Traditional terms such as "Basic Service" and "Premium Service" have been replaced by new terms "Basic Service Tier", "Cable Programming Services" and "Per Channel / Per Program Service"*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*

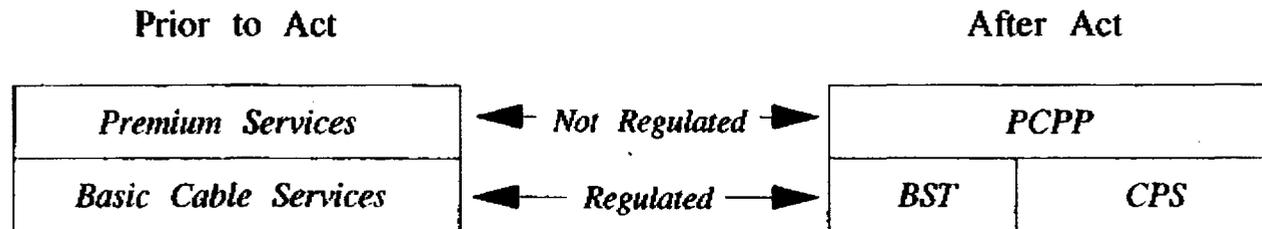
*"Per Channel / Per Program Service" (PCPP) -*

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 system by system, e.g.*

CNN may be BST on one system, CPS on another

HBO may be PCPP on one system, PCPP and 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",

*But system must plead case (hence tight regulation)*

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

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

Rates below Benchmark could be either "Reasonable" or "Unreasonable",

*But system does not have to prove case (hence benign regulation)*

*Establish a reference rate (Benchmark) for rate regulation*

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

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

*A "Buffer Zone" exists between "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*

## REASONS AGAINST "COMMODITY" BASED BENCHMARK

FCC should not Benchmark services without regard to type in CPS

*Operators are beginning to offer various small "interest group" 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 of newer, less recognized services  
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 CPS 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:  
CPS = Class A \$0.20/channel, Class B \$0.50/channel, Class C \$1.00/channel  
12 service CPS 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*

## REVISIONS TO ORIGINAL DOCUMENT

- Page 1* Change "to maximum extent" to "to the maximum extent" on line 1
- Page 2* Change "Service" to "Services" on line 5
- Page 3* Change "vary by system" to "vary system by system" on line 9  
Change "CPS on another" to "PCPP and CPS on another" on line 11  
Change "... any tier" to "'... any tier ...'" on line 12
- Page 4* Underline the word "tight" on line 3  
Underline the word "benign" on line 12
- Page 5* Change "System must" to "But system must" on line 5  
Change "plead case" to "plead case (hence tight regulation)" on line 5  
Change "are 'Reasonable'" to "could either be 'Reasonable' or  
'Unreasonable', " on line 8  
Add "But system does not have to prove case (hence benign regulation)"  
following line 8
- Page 8* Change "definitely not" to "not definitely" on line 13
- Page 9* Add "of newer, less recognized services" to the end of line 6

## 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

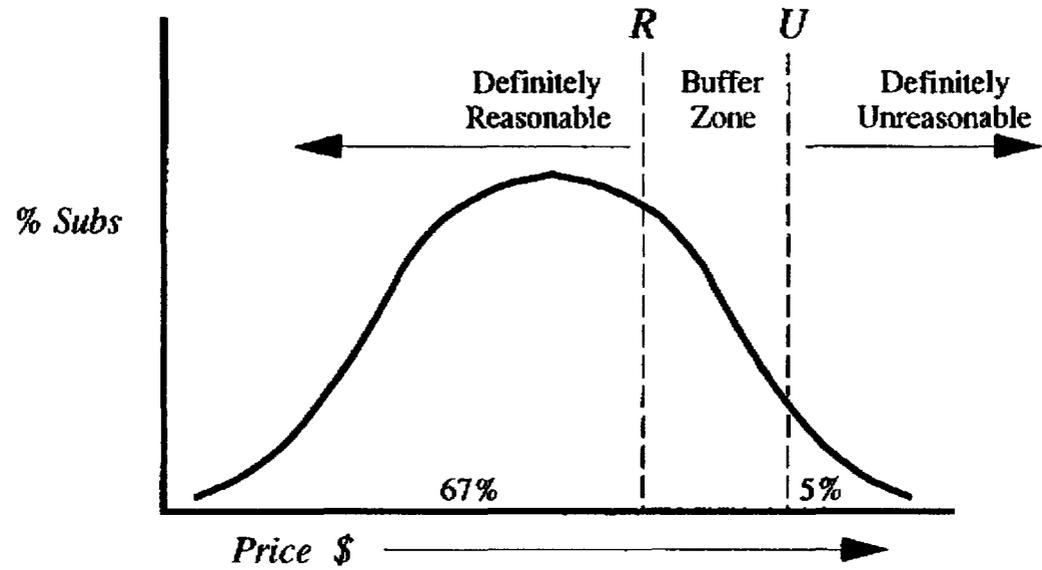
Multiplier = (U) / (R) = 1.2

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 not definitely unreasonable in its rates

# 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*

$$\text{Multiplier} = \frac{U}{R} \quad \text{Multiplier always} > 1.0$$