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March 15, 1993

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MAR 15 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:

This is submitted to you in duplicate to report that on the afternoon of March 12, 1993, and too late in the afternoon to have reported to you then, that representatives of Encore Media Corporation met with Commissioner Duggan and with Mr. Robert Pepper and Ms. Florence Setzer of the Office of Plans and Policy. Encore's remarks with Commissioner Duggan were limited to its comments and points previously made in its meeting with Commissioner Duggan's office of March 3, 1993, and a refinement to the concept of classes of video programming for establishing benchmarks instead of so-called "commodity benchmarks".

[redacted]

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

ENCORE's proposal is to set forth an objective methodology for the Commission to derive a functional relationship between the benchmark used for regulating BST and the benchmark used for regulating CPS and to put forth the rationale and a workable approach for grouping video programming services into different classes when using a benchmark approach.

Multiplier Derivation

1. Gather basic cable pricing data from all representative systems.

2. Separate systems into two groups, those facing effective competition and those with no effective competition. Use the former as a guide in determining the benchmark for BST for the latter group. It is important that pricing data for competing cable systems be used only for those that have withstood the test of time and both systems are economically sustainable. Newly engaged competing "overbuild" systems may be charging rates to mortally wound one another and the rates may not be economically viable. I know of one community where both competing systems have been there for at least 10 years and the systems are fully built. The community is Allentown, PA and the two competing systems are Service Electric and Twin County Cable. I am sure that there are others like that.

3. Choose different criteria which may have a significant but independent impact on the cost of the cable system on a per subscriber basis. Some possible criteria for a matrix formula may be (1) number of activated channels, (2) number of basic subscribers, (3) penetration to homes passed, (4) density of the system in homes per mile, and (5) ratio of overhead to underground construction, etc.

4. Choose a <u>mean</u> system which has the mean values on all chosen criteria.

5. <u>Normalize</u> all system basic cable pricing data to that of the <u>mean</u> system using appropriate economic considerations and plot a histogram of the number of systems versus the normalized rate to derive the adjusted basic pricing distribution curve for the cable industry.

6. By a combination of economic analysis and policy consideration, Commission picks a <u>percentage</u> (R) of normalized systems below which the normalized rates are deemed to be "definitely reasonable" and a percentage (U) of the normalized

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

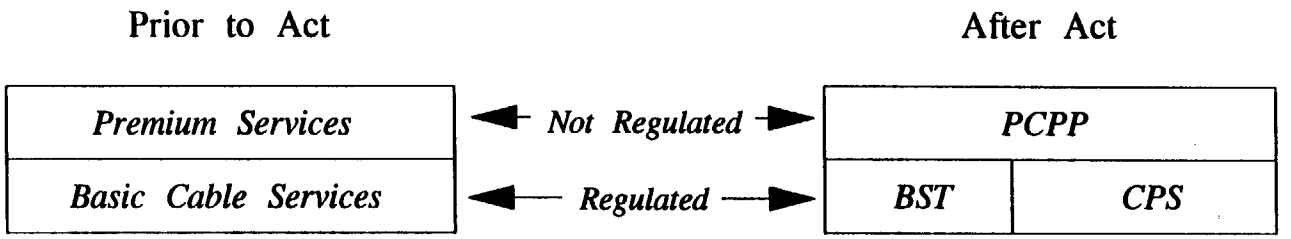
"Per Channel / Per Program Service" (PCPP) -

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 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"

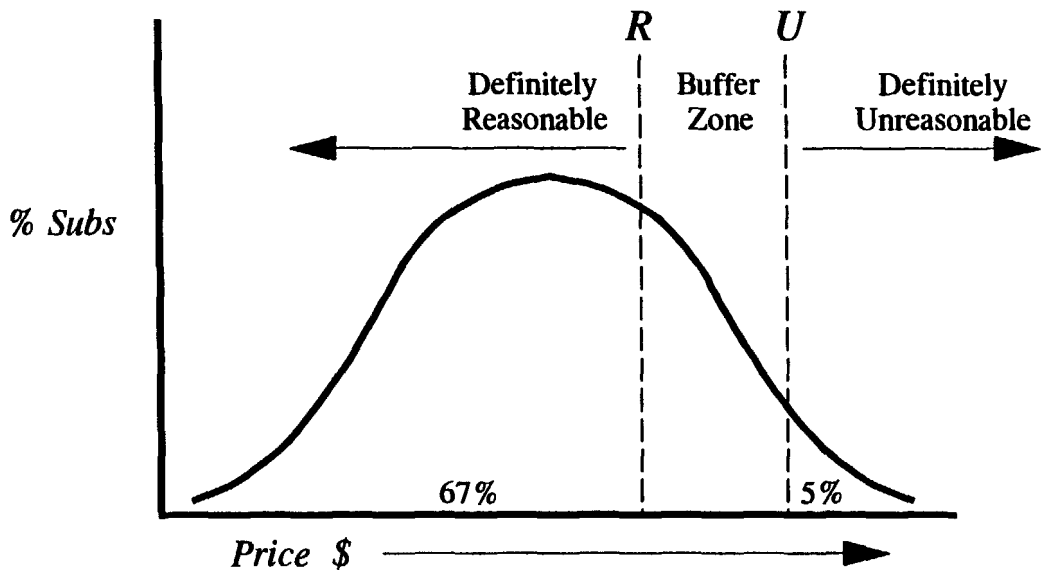
Construct Normalized Distribution of current prices for cable service

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 not definitely unreasonable in its rates

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 begign 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