should, instead, treat the costs of system upgrades as "external" and allow them to be passed through in increased rates.

B. Programming Costs of Vertically Integrated Systems and Programmers.

While generally allowing pass-throughs for increased programming costs, the Commisison has decided to prohibit such pass-throughs for programming services affiliated with multiple system owners. This prohibition is wholly unwarranted and will have the predictable effect of stifling investment in nationally distributed programming services that are owned in whole or in part by MSOs. For those services in which several large MSOs hold ownership interests, the effects would be particularly devastating, since an especially large number of systems would be unable to pass through any increased costs for such services.[31]

The Commission provides only the briefest of explanations for this drastic limitation on programming cost pass-throughs:

> Given the record that Congress established in examining the programming, sales and business practices of such affiliated cable services, we are concerned about abuse that might occur if we permit vertically integrated [illegible]

to itself, and pass through the price increase as a means of evading rate constraints. What Congress was concerned about was conduct by vertically integrated programmers and cable operators that had the purpose or effect of preventing or significantly hindering competition from other multichannel video programming distributors.[33] Nothing in the record suggests any concern or evidence that commonly owned programmers and operators would artificially manipulate the terms on which they deal with each other in order to evade rate regulation.

While such a concern might at least be plausible where a cable operator is not only the owner but also the principal customer or the only customer of a program service, it is completely groundless with respect to services that are widely distributed, at non-discriminatory rates, to a multitude of affiliated and unaffiliated cable operators. There is no reason to suspect that such programmers would raise rates to all customers above the profit-maximizing price -- in other words, would raise rates to a point where revenue losses resulting from a smaller number of purchases outweighed revenue gains from increased rates -- so that their affiliated cable operators might increase their cable rates.

The Commission has identified good reasons for allowing cable operators to pass through increased programming costs:

> [W]e are concerned that regulations of . . . rates, at least during the early stages of rate regulation, might inadveratently harm the continued ability of programmers to develop and produce programming. Appropriate increases at GNP-PI also would ignore the factor rate of increases in programming costs. Treatment of programming cost increases as external costs would assure programmers' continued ability to develop, and cable operators' ability to purchase programming.[34]

Prohibiting pass-throughs by cable operators of increased costs of programming in which they have an ownership interest would undermine these sound policy objectives and

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[33] See, e.g., 47 U.S.C. Sec. 628.

[34] Id., ¶ 251.

threaten the continued development and improvement of such programming, and this risk is in no way justified by the minimal likelihood that vertically integrated programmers will raise their prices excessively in order to enable their affiliated cable operators to evade rate regulation.[35] Therefore, the restriction on such pass-throughs should be eliminated.[36]

IV. The Range of Equipment Subject to "Actual Cost" Regulation Is Too Broad, and the "Reasonable Profit" That The Rules Allow With Respect to Equipment Charges is Too Small.

The Commission's rules erroneously subject virtually all equipment used by cable subscribers to "actual cost" regulation by adopting an unduly broad interpretation of what is "used to receive basic service." Moreover, in establishing standards for "actual cost" regulation, the Commission has established as a "reasonable profit" a rate of return that is utterly inadequate.

A. Congress Did Not Intend to Subject Virtually All Equipment to "Actual Cost" Regulation.

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[35] The Report and Order notes that "[t]he specific methodology to be used in calculating and allocating external costs will be prescribed in FCC forms." Report and Order, ¶ 254. To the extent that those forms clarify what costs may or may not qualify as external and how external costs pass-throughs are to be calculated, it will not be possible until they are released to know precisely what the rules require and allow. In the event that, when the forms are released, they appear to reflect interpretations of the rules that are unwarranted, NCTA reserves the right to supplement its petition for reconsideration.

[36] Similarly, there is no justification whatever for refusing to allow systems to pass through the initial costs of retransmission consent. The rules only allow <u>increases</u> in such costs after the first year. But the benchmark rates were calculated on the basis of rates and costs that did not reflect retransmission consent. These benchmark are supposed to reflect "competition" rates and ensure only a reasonable profit. To the extent that systems incur new costs not reflected in the benchmarks, a refusal to allow those costs to be passed through will quite obviously <u>prevent</u> systems from recovering a reasonable profit.

The Act's requirement that certain equipment be provided on the basis of "actual cost" was, throughout the legislative process, part of a general framework for regulating rates for basic service -- a framework which, as discussed in Part I, supra, was aimed at ensuring that a low-cost basic tier was available and affordable to the widest number of subscribers. The "actual cost" requirement was, from the outset, included solely in subsection 623(b), which pertains only to basic rate regulation. And, indeed, until the provision reached the Conference Committee, it applied only to equipment "necessary for subscribers to receive the basic service tier."[37]

Had that language not been changed -- from "necessary . . . to receive" to "used to receive" the basic tier -- there would have been no doubt that optional equipment available only to non-basic subscribers would not have been encompassed by the "actual cost" requirement. The Commission maintains, however, that the result of the change in language was to subject virtually all receiving equipment used by all subscribers to "actual cost" regulation.[38] According to the Commission, "this change in terminology was significant and was specifically intended to broaden the class of equipment subject to regulation on an actual cost basis."[39] We agree, but we believe that the intention was to broaden the class to include remote control devices and other ancillary equipment used by basic subscribers -- not to include all equipment used by all subscribers.

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37 See Conference Report, No. 102-862, 102d Cong., 2d Sess. 64 (1992).

38 The rules require that basic service be provided to all subscribers; thus, it is impossible for cable operators to limit the availability of receiving equipment with functions designed exclusively for the reception of pay-per-view and other advanced functions solely to subscribers who do not purchase -- and, therefore will not use the equipment (under the Commission's interpretation) to receive -- basic service.

39 Report and Order, ¶ 283.

As the Commission itself points out, "Congress expressed particular concern over the monthly rates charged for leased remotes."[40] Yet the statutory language, as initially drafted, failed to apply to the very equipment charges that most concerned Congress -- because remote control devices are never "necessary" to receive basic services. The change in statutory language ensured that all equipment used by basic-only subscribers would be provided on an "actual cost" basis - so that a low priced basic service tier would be available to subscribers who wanted only that their, even if they also chose to lease remote control devices. Had Congress intended the more sweeping change that the Commission proposes, it could easily have indicated that intention in a more direct and straightforward manner by directing that all equipment be regulated on the basis of actual cost and by removing the directive from a statutory provision that deals solely with basic rate regulation.

Both the language and the placement of the provision indicate a much more restricted intention to regulate equipment used by basic-only subscribers -- an intention that is thoroughly consistent with the Act's overall framework for rate regulation.[41] To

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40 Id., ¶ 302.

41 The Commission also notes that

> the statute specifically included addressable converter boxes needed to access video programming on a per program or per channel basis. The inclusion of such equipment additionally reflects Congress' desire that we broadly interpret the phrase 'equipment used to receive the basic service tier.

Report and Order, ¶ 283. In NCTA's comments in this proceeding, we explained why Congress included, under the umbrella of actual cost regulation, addressable equipment used by subscribers who, pursuant to the anti-buy-through provisions of the Act, chose to purchase basic and per-channel or pay-per-view services without purchasing any tier of non-basic "cable programming services:"

> What matters with respect to basic subscribers . . . is that basic service be available at a competitive rate. Applying Section 623(b)(3) to the rates charged to those subscribers will ensure that the entire package of service

regulate equipment used primarily to receive non-basic services would be to restrict and constrain the flexible development and marketing not only of such equipment but of such services at the very time when experimenting in the marketing of many new, advanced services is most critical.

B. The Commission Should Allow The Subsidization of Equipment, Installations and Additional Outlets by Non-Basic Subscribers.

The Commission's insistence on applying a unitary approach to basic and non-basic rate regulation subverts the statutory scheme for equipment regulation. Section

Section 623(c) contains no "actual cost" requirement with respect to equipment used in less than "actual cost" for installations, equipment or additional outlets -- should be allowed to recoup the difference in higher rates for non-basic service.

The Commission's rules allow systems to offer below-cost promotional rates for equipment installations and additional outlets -- but they do not allow systems to subsidize such offerings from anything other than the sale of per-channel or pay-per-view offerings. Thus, under the Commission's rules, a subscriber who chose to purchase six additional outlets for his large home to receive non-basic and premium tiers could not be charged more than actual cost for those outlets -- could not, in other words, be required to subsidize the actual- or below-cost provision of installation and additional outlets to basic subscribers and could not be required to subsidize the price of cable service for those who chose not to purchase optional equipment and additional outlets.

There is no public policy that supports such an outcome, and the Act does not require it. The Commission should reconsider its rules to allow the recoupment of costs for low-priced installations, equipment, and additional outlets by (1) ruling that only equipment, installation and additional outlets provided to basic-only subscribers are subject to "actual cost" regulation; (2) applying its benchmarks based on "competitive" systems only to basic rates; and (3) allowing systems to provide some equipment, installations, and additional outlets at rates below cost and others at rates above costs, so long as overall equipment costs do not exceed actual cost.

C. The Permissible Rate of Return on the Sale or Lease of Equipment Is Too Low.

Precisely how the Commission's rules for determining the "actual cost" of equipment will work in practice remains to be seen. But at least one aspect of the rules and formulas is, on its face, arbitrary and insupportable. Specifically, while the Commission properly includes a reasonable profit in what cable operators are entitled to recover, its determination that "[c]able operators . . . may incorporate a reasonable profit not to exceed 11.25 percent of the costs contained in the Equipment Basket"[43] is utterly unreasonable.

As the Commission notes, this is identical to the rate of return that it has presented "for the provision of regulated interstate access service by local exchange carriers."[44] Identical allowable rates of return would be appropriate only if the levels of risk incurred by cable operators and monopoly local exchange carrier were identical. The Commission, however, provides no evidence that the risk levels are identical and provides no other reason why the telcos rate of return is appropriate for cable operators.

Whatever the appropriate risk of reference for cable equipment and service, one thing that should be evident is that the risk level is -- and the rate of return should be -- considerably higher for cable operators than for local exchange carriers. In our comments in response to the forthcoming Further Notice of Proposed Rulemaking regarding cost-of-service standards, we intend to explain at length why this is so and to identify a more appropriate rate of return in connection with the provision of cable service. The Commission has indicated its intention both to conclude that proceeding and to complete any action on reconsideration before the rules take effect on October 1, 1993. After the Commission has had the benefit of comments in its cost of-services proceeding, we expect that it will adopt a considerably higher reasonable profit for cable operators in cost-of-service showings, and we urge and expect that, on reconsideration, the Commission will accordingly revise the allowable rate of return on cable equipment as well.

V. The Act Does Not Authorize Refunds With Respect to Basic Service Charges.

In Part I, supra, we showed that the provisions of 623(b) of the Act, which govern basic rate regulation, and the provisions of 623(c), which apply to regulation of rates for

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43 Id., ¶ 295 n.715 (emphasis added).

44 Id.

non-basic "cable programming services" were entirely different, reflecting an intention by Congress that basic and non-basic rates be subject to different substantive as well as procedural standards. One key difference between the two statutory frameworks is that Section 623(c)(1)(C) explicitly directs the Commission to provide for refunds to subscribers of "such portions of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable." Section 623(b) directs the Commission to establish regulations that ensure "that the rates for the basic service tier are reasonable," but it nowhere directs or authorizes the Commission or franchising authorities to provide for refunds of rates subsequently found not to be reasonable.

Nevertheless, in blurring the distinctions between the two regulatory frameworks and adopting a unitary approach to basic and non-basic rate regulation, the Commission has decided that refunds may be required with respect to basic as well as non-basic rates that are found to have been excessive. The Commission does

> not believe that the Cable Act's explicit reference to refund authority regarding cable programming service rates and the omission of similar language regarding basic cable rates bars refunds of unreasonable basic service tier rates. The absence of a requirement need not be construed as a prohibition.[45]

Sound principles of statutory construction, however, compel exactly the opposite conclusion. As the Supreme Court has ruled,

> [W]here Congress incudes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.[46]

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[45] Id., ¶ 141.

[46] Russello v. United States, 464 U.S. 16, 23 (1983), quoting United States v. Wong Kim Bo, 472 F.2d 720, 722 (5th Cir. 1972).

In other words, the explicit inclusion of refund authority in connection with the regulation of non-basic tiers and the omission of any such authority in connection with basic rate regulation must be construed to preclude the Commission from allowing franchising authorities to impose refunds where initial basic rates are found to be unreasonable. The Commission should, on reconsideration, revise its rules to remove such refund authority.

VI. Customer Service Requirements to Place a New Office Should be Treated As a Pass-Through.

In establishing rules regarding customer service, the FCC authorized franchising authorities to establish rules requiring customer service and bill payment locations to be conveniently located. 47 C.F.R. s 76.309(c)(1)(v). While NCTA does not object to this provision in general, we are concerned that requiring new customer service offices where there are none, especially in small system areas, could substantially increase the costs of providing cable service. Therefore, where the franchising authority requires an office where there is none, the costs of such office should be permitted to pass through as an external cost. We attach as exhibit A typical costs for renting and staffing an office and the additional costs, per subscriber, that such a requirement entails.

VII. The Commission Should Adopt a Minimum Size Accounting Unit Below Which An Operator is Not Required to Break Down Costs and Revenues.

Many small operators run their businesses with common operating areas and multiple head ends. It is desirable for these businesses to maintain standardized rates, particularly for items in the equipment basket, on a per system or per area, rather than on a per head end, basis. The Commission should establish a minimum size accounting unit below which the cable operator is not required to break down its costs and revenues for equipment or other purposes. Two alternatives should be allowed to operators: a size no systems will have additional accounting and administrative costs which are disproportionate to the size of the unit.

VIII. The Commission Should Grandfarther Existing Multiple Dwelling Unit Contracts.

There are many contracts between cable operators and multiple dwelling units and commercial proprietors that include bulk discount and special arrangements. These contracts are often a result of competition from alternative video distributors, i.e., SMATV and home dish distributiors. In addition, these contract prices reflect the unique circumstances in such non-residential type arrangements.

The Commission's Order requires rate uniformity. But to provide it in these context would required operators to breach contracts, some with many years still to run. Moreover, because many of these contracts were written in order to meet competition, abrogating these contracts in order to apply uniform pricing policy denies the franchised cable operator the right to compete against otherwise often non-franchised players.

Given this situation, the Commission should grandfarther existing commercial and MDU bulk billing agreements. After expiration of such agreements, the operator should apply a uniform pricing policy (subject to discounts derived from actual cost savings). But in such future agreements, should a cable operator be faced with a competitive challenge from a competing multichannnel distributor, the Commission should also permit the franchise cable operator to meet the competition.

CONCLUSION

For the foregoing reasons, the Commission's rules and regulatory framework go far beyond what the Act authorizes, contemplates and requires, and they do so in a way that makes the already harsh regulatory environment created by the Act unworkable and intolerable for cable operators. In this petition we identify and seek reconsideration of only the most severe and most undesirable of the rules' departure from the Act and from sound public policy. Such reconsideration is acutely necessary and wholly warranted, and should be granted.

Respectfully submitted,

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THE EFFECT OF "COMPETITION" ON RATES DIFFERS FOR LARGE AND SMALL CABLE SYSTEMS

Introduction and Summary

In its *Report and Order* released May 3, 1993,[1] the Commission set forth a methodology for regulating average jurisdictional cable subscriber revenues (hereafter, "rates") based on allowable "benchmarks". These benchmark rates were determined by the Commission through an econometric analysis that compared rates in regulated community areas to rates in "effectively competitive" community areas, holding constant several factors that influence rates. Under the assumptions of its methodology, the Commission determined that rates in "effectively competitive" community areas were, on average, 9.4% lower than rates in regulated community areas. This finding is incorporated in the *Report and Order's* benchmark tables and is the basis for the Commission's requirement that any system with rates above the applicable benchmark must reduce them either by 10 percent or to the benchmark level.

The Commission established different benchmark rate tables for different system sizes, measured by the number of system subscribers. Nevertheless, the Commission applied the 9.4 percent average competitive differential uniformly to all cable systems, regardless of system characteristics, such as system size. In effect, the Commission assumed that the competitive differential is uniform across all system sizes. The Commission made the same assumption in setting the rollback requirement. This assumption is not consistent with the facts. Analysis of the Commission's own data reveals that there is no difference between the rates of competitive systems and regulated systems with more than 5,000 subscribers. Systems with more than 5,000 subscribers account for 86 percent of all cable subscribers, but only about 16 percent of systems.

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1 See *Report and Order and Further Notice of Proposed Rulemaking*, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92-266, Adopted April 1, 1993, released May 3, 1993, hereafter *Report and Order*.

The use by the Commission of the invalid assumption that the competitive differential is uniform across size categories might be acceptable for purposes of regulating rates for basic cable service. The revenues from basic service comprise only a portion of the jurisdictional revenue requirements of a cable system, and therefore need not be compensatory. However, use of this incorrect assumption to regulate the overall jurisdictional revenues of cable systems is not acceptable if it results in rates that are not compensatory. If it could be demonstrated that the rates charged by effectively competitive systems with given characteristics were lower than the rates charged by regulated systems with the same characteristics, it might be reasonable to conclude that the benchmark rates were compensatory, because competitive systems might be presumed to be earning a reasonable return[2] If, however, there is no difference between the rates of effectively competitive systems and regulated systems, any reduction in the rates of regulated systems must be presumed non-compensatory because that would result in rates *below* competitive levels.

Analysis

This paper contains an analysis of the accuracy of the Commission's assumption that the average competitive adjustment applies uniformly to all systems, regardless of system size. The findings indicate that there is no statistical support for this assumption. In particular, we find that for systems with fewer than 5,000 subscribers, the competitive differential is greater than 9.4 percent. In contrast, for systems with more than 5,000 subscribers, the competitive differential is not statistically significantly different from zero—that is, there is no difference between the rates of competitive systems and regulated systems. This is true whether or not those systems with less than 30 percent penetration are regarded as "competitive".

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2 Even in this case, however, the presumption could be undercut by evidence that the competitive systems were engaged in temporary price wars or that the competitive systems were subsidized.

The Commission conducted a statistical analysis to determine whether there was a difference between the rates charged by effectively competitive systems and the rates charged by systems subject to regulation. For this purpose, the Commission surveyed 748 cable community units. Based on its survey, the Commission used data on 377 cable community units in performing its statistical analysis. This sample of 377 consisted of 110 effectively competitive community units (64 meeting the low penetration standard and 46 satisfying one of the overbuild standards) and 267 community units subject to regulation.

The Commission constructed a "rate" (actually, revenue) variable that was the composite price per subscriber-channel for up to three tiers of service, weighted by the number of subscribers to each tier and adjusted to excluded franchise fees and to include equipment and other regulated subscriber charges. The Commission then employed econometric techniques to explain the variation in this rate variable as a function of the number of regulated channels in use in the tiers of service examined, the number of satellite-delivered channels in the tiers of service examined, the number of households subscribing to the cable system, and a "dummy" variable for whether the community met one of the effective competition standards. The coefficient of the competition dummy variable is interpreted as the percentage difference between rates in communities subject to regulation and communities with effective competition. The Commission estimated a 9.4 percent difference[3] in the median[4] rate per channel between the two groups of communities[5]

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3 See, *Report and Order*, Appendix E, at 12. The Commission also found a 27.9 percent price difference between the random sample and the overbuild sample.

4 Differences are actually estimated at the mean of the distribution of the log of the rate variable which corresponds to the median of the distribution of rates. The estimated difference need not apply at any other point of comparison between the distribution of rates.

5 These estimates treat each *system* equally. In the Commission's estimates, systems with few subscribers have a weight equal to any of the largest systems in the country. Contrast estimates that treat each *subscriber* equally.

based on a statistical analysis of *all* "competitive" community units and *all* community units from its random sample.

Based on this result, the Commission constructed eight benchmark rate ta-

The Commission has made a similar error in claiming that its finding of a 9.4 percent difference in median rates for all systems in its random sample, relative to all systems in ts competitive sample, is statistically significant. The Commission applied the average 9.4 percent difference in the construction of eight tables based on different numbers of system subscribers ranging from 50 subscribers to 10,000 or more subscribers.[6] This application would be appropriate for these purposes only if rate differences may reasonably be assumed to be 9.4 percent for each of these eight size categories.

We have examined the accuracy of the Commission's statistical results within the same groups of cable systems (defined by number of subscribers) that were used by the Commission in its benchmark tables.[7] Generally speaking, for systems with fewer than about 5,000 subscribers,[8] the measured difference between "competitive" and random sample rates is greater than 9.4 percent, and the measured difference is usually statistically significant. In contrast, for systems with more than 5,000 subscribers, the measured difference between "competitive" and random sample rates is not statistically significantly different from zero.[9] *For these*

6 See, *Report and Order*, Appendix D, Attachment A.

7 The Commission recently released a diskette containing an updated version of the Cable Rate Survey Database. The updated version contains only the 419 records in the random and "competitive" samples, and includes the variables the Commission used in its final regression analysis. The total number of usable observations is 377. The Commission initially released a diskette of the updated database on June 8, 1993, but due to a data formatting problem these data do not enable a user to exactly replicate the Commission's regression reported in Appendix E of the *Report and Order*. A revised diskette that corrects this problem was released on June 10, 1993. We use the same regression techniques and functional specification as the FCC.

8 Systems with fewer than 5,000 subscribers would have benchmark rates similar to those in the first seven tables in *Report and Order*, Appendix D, Attachment A.

9 Again, the precise measured price difference depends on the sample.

larger systems, there is no significant rate difference even between overbuild systems and the random sample systems.

The following table divides the Commission's sample into two groups of systems: those with fewer than 5,000 subscribers and those with more than 5,000 subscribers. We find that among the smaller systems, the competitive systems (defined to include those with less than 30 percent penetration) had rates 17.7 percent less than regulated systems. *But among the larger systems with more than 5,000 subscribers, the competitive systems had rates that were actually almost 7 percent **higher** than the regulated systems.*[10] Even if the comparison is limited to overbuilds, which generally have rates lower than systems with less than 30 percent penetration, there is no statistically significant difference in the average rates of competitive and regulated systems for systems with more than 5,000 subscribers.

FCC Analysis of "Competitive" Effect Ignores Differences in System Size

System Size	No. of Systems in FCC Regression			Regression Result (including overbuilds and below 30%)		Regression Result (including overbuilds only)	
	Random	Overbuilds	Under 30%	Coefficient	t-statistic	Coefficient	t-statistic
Under 5000 subs	144	27	40	–0.177	–4.78	–0.434	-9.72
Over 5000 subs	123	19	24	0.067	1.44	–0.069	–1.25

Chart 2 presents a more detailed analysis, examining separately each of the Commission's eight system-size categories. Again, using the Commission's own analysis, we have examined the percentage difference in rates per channel between

10 If one were to postulate that the rates of competitive systems are *higher* than the rates of regulated systems for system with over 5,000 subscribers, then one could not reject this hypothesis at a significance level of 92.5 percent. The conceptual basis for such a hypothesis, presumably, would be unrealized economies of scale in the subsample of systems under 30 percent penetration.

the random sample and "competitive" systems (defined both according to the statute and, separately, to include overbuilds only) by system size. Chart 2 shows clearly that the competitive differential varies greatly by system size, and that for systems with over 5,000 subscribers, rates in the random sample are **not** statistically different from rates in the competitive sample.

We also conducted a statistical test to determine whether the parameters (the weights or coefficients given to each of the factors taken into account in the benchmark tables) of the FCC analysis hold equally well for all systems regardless of the number of subscribers or whether *different* parameters hold for larger systems than for smaller systems.[11] We find that the parameters for the FCC analysis are significantly different when smaller systems are examined separately from larger systems than when all system are examined together.[12] This analysis compels the conclusion that, for the measurement of differences in rates, it is more appropriate to examine large systems separately from small systems.

Conclusion

The inescapable conclusion from our review of the Commission's analysis is that its finding of significantly different rates per channel between "competitive" systems and the random sample of systems is attributable entirely to systems with relatively few subscribers. For larger systems, there appears to be no significant difference in rates, regardless of how "competitive" systems are defined.

The implications of this finding are as follows:

(1) If a proper adjustment for the effects of competition on rates were to be made, that adjustment would be zero for larger systems.

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11 The technical term for this test is a Chow test.

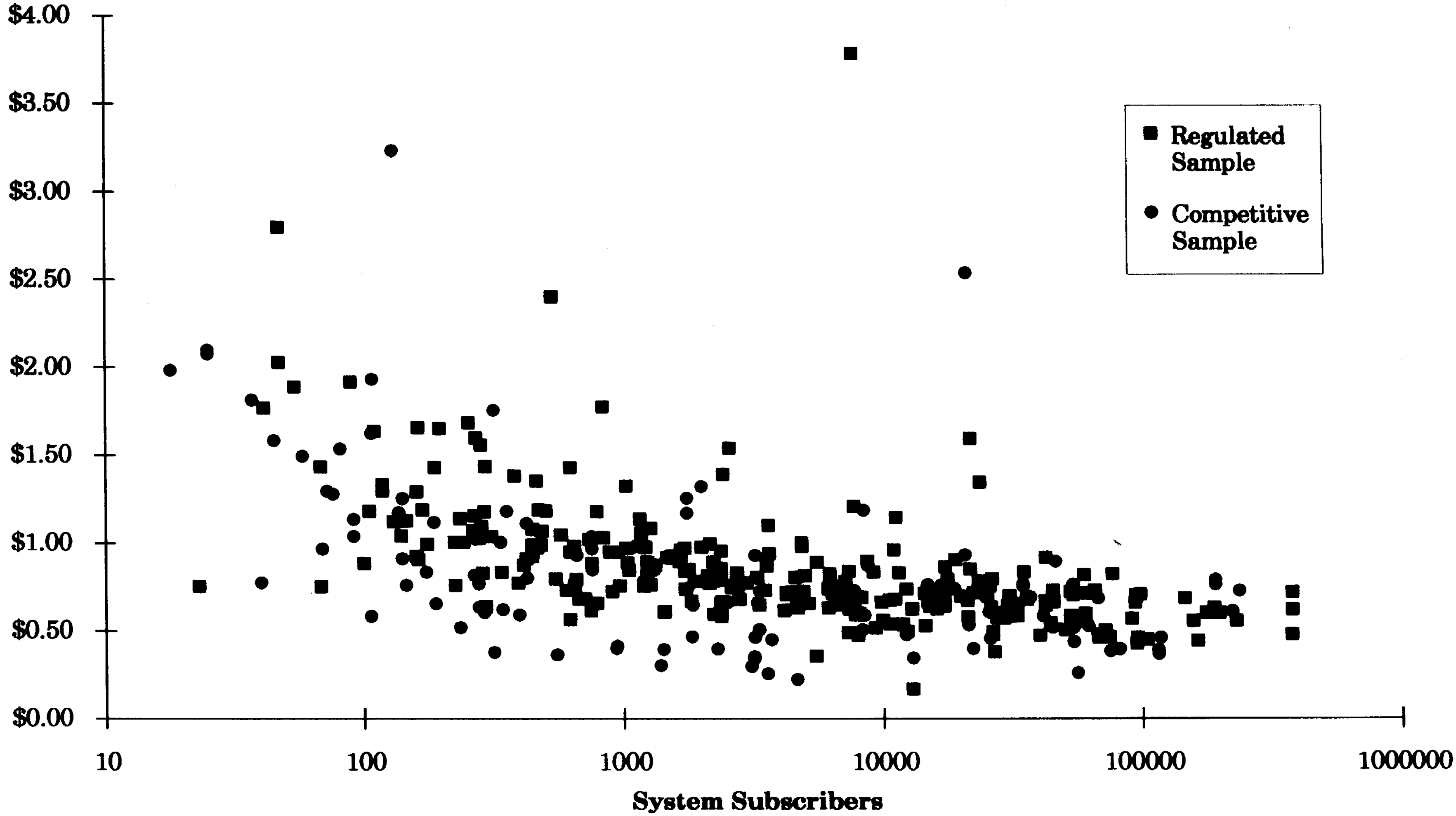
12 This finding is similar to the example of temperature differences between San Diego and Washington, DC. Differences in annual average belie the pattern of differences for individual months.

(2) Because of this, there is no statistical evidence that rates resulting in jurisdictional revenues below current levels would be compensatory for the larger systems.

(3) Further, under the FCC's benchmark methodology, even a zero competitive adjustment for larger systems would result in substantial rate and revenue reductions, because all systems above the median rate would be required to reduce their rates to the median.

Chart 1

Rate per Channel for Regulated Services and Equipment



ECONOMISTS INCORPORATED

Chart 2

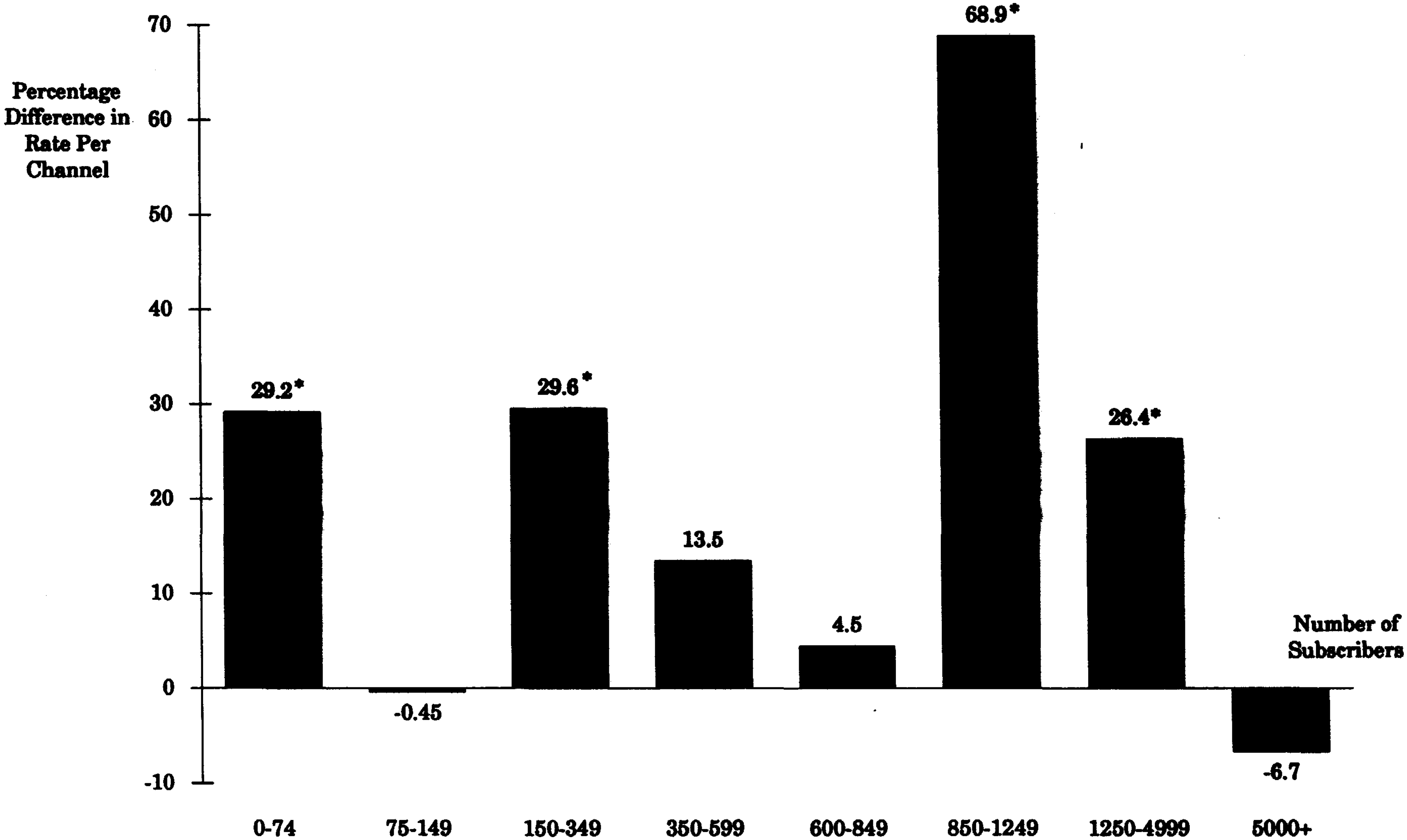
Sensitivity of FCC Specification to the Number of System Subscribers

Based on FCC data

FCC Subscriber Table	Subscriber Range		(LT30 + Overbuilds)			Overbuilds Only		
	Minimum	Maximum	Coefficient	T-statistic	P-value	Coefficient	T-statistic	P-value
50	0	74	-0.292	-2.042	0.066	-0.391	-1.26	0.296
100	75	149	0.045	0.246	0.809	-0.063	-0.33	0.748
250	150	349	-0.296	-3.537	0.001	-0.451	-4.66	0.000
500	350	599	-0.135	-1.262	0.225	-0.541	-3.19	0.008
750	600	849	-0.045	0.445	0.663			
1000	850	1249	-0.689	-6.410	0.000	-0.689	-6.41	0.000
1500	1250	4999	-0.264	-4.523	0.000	-0.486	-6.69	0.000
10000	5000		0.067	1.436	0.153	-0.069	-1.25	0.214

Chart 2a

Percentage Differences in Rate Per Channel Between FCC Random Sample and "Competitive" Systems Based on the Number of Subscribers



* Significantly greater than zero at 5% confidence interval.