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Bruce Collins
Vice President and General Counsel

July 30, 1993

AUG 3 1993
FCC MAIL BRANCH

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

Re: C-SPAN's Comments in MM Docket 93-215

Dear Ms. Searcy:

Enclosed are one original and 9 copies of National Cable Satellite Corporation's (d/b/a C-SPAN) comments in the above-referenced docket as required by Sec. 1.419 of the Commission's rules.

If you have any question about this petition please contact me at (202) 626-7950.

Sincerely,

Enclosures

400 North Capitol St. NW
Suite 650
Washington, DC 20001
202 • 737 • 3220

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AUG - 4 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 93-215
	)	
Rate Regulation	)	

AUG 3 1993

FCC MAIL BRANCH

To: The Commission

COMMENTS
of the
NATIONAL CABLE SATELLITE CORPORATION (C-SPAN AND C-SPAN 2)

The National Cable Satellite Corporation ("NCSC") respectfully submits its comments in the above-referenced proceeding. NCSC is a non-stock, non-profit corporation created by the cable television industry and is the producer and exclusive distributor of two full-time satellite delivered public affairs programming services, C-SPAN and C-SPAN 2. Each service is available via cable television systems and other distributors and is devoted entirely to information and public affairs programming, including the live gavel-to-gavel coverage of the proceedings of both the U.S. House of Representatives (on C-SPAN) and the U.S. Senate (on C-SPAN 2), and a variety of other events at public forums around the country and the world.

In this proceeding, the Commission is seeking comment on its proposed rules governing cost-of-service showings submitted by

cable operators seeking to justify rates above levels determined by the benchmark and price cap system. The benchmark and price cap system was established in Report and Order and Further Notice of Proposed Rule Making in MM Docket No. 92-266, FCC 93-177, 58 FR 29736 (May 21, 1993) ("Report and Order"). NCSC's comments in the instant proceeding are closely related to its petition for reconsideration of the Report and Order's rule limiting the pass-through of a cable operator's increased programming costs to the level of inflation if those increases come from a programmer "affiliated" with cable operators.[1] In its still-pending petition NCSC acknowledged that while it is properly classified as an affiliated programmer for program access purposes, it is not so properly classified for rate regulation purposes, and urged an appropriate amendment of the Commission's rules. In this proceeding, NCSC makes the point again--that for rate regulation purposes, NCSC's C-SPAN and C-SPAN 2 services are not properly classified as affiliated programmers.

NCSC's specific concern is the Commission's proposal to regulate transactions between cable operators and their affiliated businesses, including transactions concerning programming. The proposal includes the possibility that new affiliate transaction requirements would either replace, or be set up as as an alternative to its inflation limitation on pass-through of programming costs incurred with respect to affiliated

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[1] Report and Order, para. 252.

programmers.[2] NCSC takes no position as to whether the Commission should adopt its proposed affiliate transaction rules either to replace or complement the pass-through limitation because NCSC is not affiliated with cable operators in the same sense that the proposed rules contemplate. The nature of NCSC's relationship with its affiliated cable systems means that it has no experience in such relationships that would be useful to the Commission as it fashions rules intended to identify and regulate cross-subsidy-like transactions. Indeed, NCSC's dearth of experience on such matters is at the heart of these comments.

However, NCSC does urge the Commission, regardless of its final decision on affiliate transactions, to recognize the unique corporate structure and other characteristics of NCSC by exempting it from the definition of affiliated programmer as the term is used in this proceeding. As NCSC stated in its petition for reconsideration of the Report and Order, it is a non-stock, non-profit corporation with tax-exempt status.[3] As such, it is both impossible and illegal for NCSC or its cable operator affiliates to abuse the pass-through of programming costs in the fashion feared by Congress and the Commission. As a non-stock

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[2] Para. 67, fn 70.

[3] NCSC is organized as a non-profit corporation under District of Columbia law, and is exempt from the payment of federal taxes pursuant to I.R.C. Sec. 501(c)(3).

entity, NCSC can not be said to have private owners who might benefit from an increase in value of their ownership share of the corporation as a result of an increase in the fees NCSC would charge cable operators. Without shares of stock, NCSC lacks a method of transferring ownership or value even it wanted to do so. As a non-profit corporation, NCSC is limited by state law from transferring income or assets to its members, directors or officers.[4] As a tax-exempt organization NCSC risks losing that beneficial status if its operations result in unreasonable private inurement or private benefit to any person. Clearly, NCSC, or any similarly structured cable programmer, is not the target at which the proposed transaction rules are aimed.

NCSC remains concerned whether the affiliate transaction rules are substituted for, or established as an alternative to the programming cost pass-through limitation. Either approach would likely subject NCSC and its affiliates to pointless and costly record keeping and reporting requirements. The solution is simply to write the transaction rules, if at all, with an exemption of non-stock, non-profit programming services from the definition of affiliated programmer. The exemption should not be made specific to NCSC because the future will almost certainly see the emergence of other non-stock, non-profit cable

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[4] D.C. Code, Sec. 29-501 et seq.

programmers on either a national or regional basis. NCSC urges the Commission to fill this potential crack into which C-SPAN and C-SPAN 2 would otherwise fall.

Respectfully submitted

NATIONAL CABLE SATELLITE
CORPORATION

By: Bruce D. Collins
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V.P. & General Counsel

Its Attorney

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July 30, 1993

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