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Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

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SUMMARY

Time Warner supports the Commission's notion of a "backstop" approach to ensure that cable operators with costs that exceed the benchmarks have an opportunity to charge prices to cover these costs and earn a reasonable return on their investment. However, while the Commission states its intention not to replicate traditional Title II regulation, the Notice of Proposed Rulemaking sets out proposals that do just that. This is a crucial mistake. Traditional public utility rate-of-return regulation creates disincentives for firms to act efficiently, as repeatedly recognized by this Commission and evidenced by its pronounced movement away from this type of regulatory approach.

Moreover, traditional rate-of-return regulation is inherently complex, costly, and time-consuming to implement. Given that cost-of-service regulation is only to apply for those few cable operators that elect to justify prices that exceed the benchmark, there is no reason to force this type of regulation, or for that matter, any "streamlined" approach that the Commission may adopt, on the entire cable industry. Rather, cost-of-service regulation, and its associated requirements, should be reserved solely for those cable operators that wish to employ it.

The Commission understandably lacks sufficient information and knowledge about the cable industry to make informed decisions in this short timeframe on the myriad number of issues that it confronts in its Notice of Proposed Rulemaking. Accordingly, the

Commission should adopt a viable alternative to traditional cost-of-service showings. In these comments, Time Warner describes such a viable alternative that would permit case-by-case adjustments to the benchmark prices where they are necessary to allow recovery of particular costs. Such showings would, for example, entail presentations demonstrating that a particular system has particular cost characteristics that warrant above-benchmark prices. Broadly averaged or industry-wide requirements, on the other hand, are not appropriate. Not only would such requirements be contrary to the very purpose of the "backstop" approach, but, as a practical matter, heterogeneity of the cable industry will not permit such broad averaging.

It would be inconsistent with the basic statutory objective of the 1992 Cable Act to burden the industry, local regulators, and the Commission with a cumbersome, inflexible, permanent, and pervasive system of cable regulation. Accordingly, Time Warner urges the Commission to adopt the proposals contained herein.

Time Warner also encourages the Commission to adopt, for use on an optional basis, equipment cost standards. The Commission should institute a separate rulemaking proceeding to consider that issue.

Time Warner opposes the Commission's proposal to promulgate productivity adjustments beyond those inherent in the price cap formula.

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To: The Commission

COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

Time Warner Entertainment Company, L.P. ("Time Warner"), by its attorneys, hereby submits its comments in response to the Commission's 16 July 1993 Notice of Proposed Rulemaking concerning "cost-of-service" regulation of cable television prices.[1]

[1] These comments are submitted without prejudice to Time Warner's continuing contention that the price regulation provisions of the 1992 Cable Act are unconstitutional. Time Warner's contentions in this regard are now pending before the United States District Court for the District of Columbia in Time Warner Entertainment Co. v. FCC, No. 92-2494 (TPJ).

INTRODUCTION

In its 3 May 1993 Report and Order in MM Docket No. 92-266, FCC 93-177, 58 Fed. Reg. 20736 (21 May 1993) (the "Rate Order"), the Commission has already determined that the primary means of cable price regulation should be a benchmark system based on averaged industry price data rather than cost data. If the flaws in the currently proposed benchmark scheme (identified and addressed at length in the petitions for reconsideration of the Rate Order) are corrected, that scheme should provide the framework for regulation of the vast majority of cable system prices.

A regulatory scheme based on average prices needs, however, a "backstop" mechanism to ensure that cable systems with costs above those of the assumed "average" cable system have the opportunity to charge prices high enough to cover those costs and earn a reasonable return for their investors. This backstop is all the more important because of the Commission's original mistake in adopting a tier-neutral regulatory framework. This proceeding primarily concerns the Commission's proposal to model the "backstop" method of price regulation on traditional public utility rate-of-return regulation.

The most basic point of these comments is that the Commission must not try to force all or any part of cable television price regulation under the 1992 Cable Act into a rigid framework based on the flawed and outmoded methods and procedures of traditional public utility regulation. Traditional rate-of-

return regulation has been the object of extensive scholarly and governmental criticism, and tremendous energy has been devoted to devising ways to modify or eliminate it in virtually every industry subject to public utility regulation. Cable is not a public utility and cable price regulation is expressly intended to be a temporary, transitional undertaking, not a permanent fixture: If the 1992 Cable Act achieves the results intended by its drafters, cable price regulation will be on the way out before the sort of comprehensive scheme envisioned in this Notice could even be constructed. The Commission should not build a skyscraper when a tent is all that is required.

Rather than making fundamental changes in the entire industry's accounting systems and business practices just to accommodate the protective "backstop" behind benchmark price regulation, the Commission should make resort to public utility-style cost-of-service showings a permissible but optional last resort. To minimize the need for anyone to resort to that option, the Commission should work first on refining its benchmarks to minimize the number of cable systems for which prices based on the FCC benchmarks are not fairly compensatory.

Where an operator concludes, despite such refinements, that the Commission's benchmark prices do not produce a fairly compensatory result, the Commission should allow resort to flexible and non-exclusive showings in support of upward adjustments to the benchmark prices to reflect particular high-cost conditions faced by a given system. Where such a showing

can be made -- for example, by recalculating the regressions underlying the FCC benchmarks to produce a different but reasonable benchmark figure, or by showing that the system faces above-average costs of a particular kind -- the adjustment to prices should be allowed without undertaking a full-scale analysis of all of that system's costs.

Through data collected in such individual showings and from sample data collected from the industry, it should be possible in the future for the Commission to identify and quantify high cost factors and to devise relatively simple mechanisms for adjusting the benchmark calculations to permit recovery of those costs. This approach will make it unnecessary to impose the substantial costs and burdens of rate of return regulation on cable operators electing to price their services according to the benchmarks.

I. IN FRAMING THE PARAMETERS OF COST-BASED REGULATION OF CABLE PRICES, THE COMMISSION SHOULD PAY PARTICULAR ATTENTION TO THE PURPOSE AND ROLE OF SUCH REGULATION

As the Notice itself seems to recognize (at ¶ 9), the statutory scheme of the 1992 Cable Act embodies the intention that cable price regulation be implemented as a relatively short-term, transitional mechanism to make up for what Congress apparently saw as inadequate short-term competitive pressure on cable prices. The primary point of the 1992 Cable Act was to put in place structural and behavioral measures intended to stimulate marketplace forces and eliminate altogether the perceived need

for price regulation.[2] It would be inconsistent with the basic statutory objective of the 1992 Cable Act to burden the industry, local regulators, and the Commission with a cumbersome, inflexible, permanent, and pervasive system of cable price regulation. All regulation imposes direct and indirect costs. Direct costs include, for example, compliance costs such as the preparation of entirely new accounting systems for all cable operators. Indirect costs are imposed due to the skewed incentives that regulation provides. It would be especially inappropriate to compel the entire cable industry to adopt business practices and conventions typical only of public utilities under the guise of accelerating competitive marketplace forces.

Congress has generally forbidden regulation of cable systems as public utilities, 47 U.S.C. § 541(c), and specifically forbade imposition of cost-of-service regulation on the entire cable industry.[3] Recognizing these limits, Notice at n.16, the Commission therefore adopted a system of "competitive benchmarks" as its primary means for measuring the reasonableness of cable

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[2] S. Rep. No. 102-92, 102d Cong., 1st Sess. 11 (1991). Time Warner, of course, does not agree that such measures were or are necessary. In fact, the Commission has characterized program access as the nucleus of the 1992 Cable Act. Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-trafficking Provisions, MM Docket No. 92-264, FCC 93-332, at ¶ 168 (released July 23, 1993).

[3] See H.R. Rep. No. 102-628 (102d Cong., 2d Sess.) 83 (1992).

prices. The system of benchmark prices adopted by the Commission is based on an attempt to define industry average prices; it does not take into account either the costs of any particular cable system or the returns required to enable that system to attract necessary capital.

This Notice arises from the constitutional[4] and statutory[5] necessity to assess the reasonableness of prices for systems whose costs are above the averages assumed in the benchmarks and for which prices above the benchmark averages are therefore reasonable. The Commission properly envisions "cost-of-service" showings as the exception rather than the norm, "a 'backstop' for the benchmark approach to rate regulation", Notice at ¶ 7. The Notice then proceeds, however, to propose an elaborate, rigid, and far-reaching scheme of regulation modeled largely on traditional public utility rate-of-return regulation. In its discussion of accounting systems (Notice at ¶¶ 57-58) and depreciation rates (Notice at ¶¶ 25-29), for example, the Commission goes so far as to propose imposition of very substantial burdens not only on those cable systems for which cost-based showings are made but on all 11,000 cable systems.

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[4] The constitutional limitations on regulation of cable television prices arise from both the Fifth Amendment prohibition of confiscatory regulated rates and from the First Amendment limitations on governmental intrusion into matters of editorial discretion.

[5] Sections 3(b)(2)(C) and (c)(2) of the 1992 Cable Act, 47 U.S.C. §§ 543(b)(2)(C) and (c)(2), direct the Commission to take into account cable operators' need to recover their costs, including a reasonable return.

These proposals would have the cost-of-service tail wag the benchmark dog. They would convert cable price regulation from a temporary, transitional mechanism into a permanent impediment to the efficient development of a competitive market.

The Notice proposes to subject all cable systems -- whether or not they choose to justify their prices on a "cost-of-service" basis -- to costs and burdens of a scheme of regulation designed and hitherto used exclusively for traditional public utility ratemaking. This proposal, which impermissibly ignores the fundamental statutory mandate that "[a]ny cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service", 47 U.S.C. § 541(c), is apparently based on the assumption that price regulation that accounts for a cable system's costs must take the form of traditional public utility rate-of-return regulation. That assumption is unfounded, and it leads in the Notice to proposals that are, at once, unduly rigid and impermissibly imprecise.

As described in detail in the accompanying paper prepared by National Economic Research Associates,[6] traditional rate-of-return regulation produces incentives and effects that cause firms so regulated to behave in ways quite different from firms regulated by competitive forces. If the Commission makes traditional public utility regulation the only or primary backstop mechanism, it will create a real danger that all cable

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[6] Lewis J. Perl, Paul S. Brandon, John H. Landon, Anna P. Della Valle, "A Proposal for Backstop Regulation for Cable Television Prices," August 24, 1993.

systems will suffer from the adverse incentives of public utility regulation just because of the potential for regulation on a rate-of-return basis for some systems.

If the benchmarks are properly configured, there should be a relatively small number of instances in which operators will be willing to assume the considerable risks and burdens of a cost-of-service showing. Those systems that do so will be systems that are unusual in some way. That important fact should govern all of the Commission's deliberations in this proceeding: The objective should be to provide fair and efficient opportunities for individual operators to demonstrate that a particular, unusual cost situation justifies prices above the benchmarks without imposing undue burdens on those operators, the industry at large, regulators, and the public. While such demonstrations might well take the form -- and use the nomenclature -- of traditional public utility rate-of-return ratemaking, other forms of presentations should be affirmatively encouraged as more efficient alternatives.

Cable price regulation based on costs must necessarily commence and develop in a flexible, ad hoc manner. The Commission should certainly allow cable operators to rely on traditional concepts of utility rate regulation to demonstrate the reasonableness of their prices, but it must not require cable operators to do so. Rather, traditional utility ratemaking formulas should simply be one, nonexclusive means for an operator to show, based on some or all of its costs, that its prices are

reasonable. Time Warner does not argue that the Commission should refrain from any standards for cable cost showings but, rather, contends that, at least at the outset, such standards must be limited and flexible.

In addition to the above-mentioned policy reasons, there are also constitutional reasons for allowing cable operators to proceed on an ad hoc basis. It is well understood that regulation of the price of speech can directly affect its content. See Riley v. National Federation of the Blind, 487 U.S. 781, 789 n. 5 (1988) (statute regulating the price a speaker may charge "directly affects that speech", and thus is content-based). Such content-based regulation violates fundamental First Amendment freedoms. Accordingly, in setting forth a regulatory scheme that affects the price of speech, the Commission must be extremely cautious to minimize the impact on speech.

In the case of cost-of-service regulation, it is important that the Commission avoid establishing rate regulations that, in effect, stifle speech. A rule disallowing cable operators from including programming expenses in the ratebase or from earning a mark-up does just that. As the Commission has recognized, permitting a profit or mark-up on programming expenses could "create incentives for cable operators to provide programming." Notice at n. 24. So, it is not surprising that by disallowing a mark-up or profit on these expenses, disincentives from investing in programming are created. These disincentives, even if unintended, can directly affect the type of programming offered.

Because there is a positive correlation between the amount of money spent on programming and its quality,[7] any rate regulatory scheme that creates disincentives to invest in programming necessarily affects the quality of the program service. And, government regulation unnecessarily affecting the quality of programming infringes upon the First Amendment rights of cable operators and viewers, while also undermining other important public policy goals. Thus, aside from other constraints or considerations, the Commission must be especially sensitive to the manner in which it frames its price regulations to reduce to the extent possible the statutue's impediments on constitutionally protected speech.

The opportunity to create a flexible regulatory structure for cable prices that avoids the substantial and well-recognized shortcomings of traditional public utility rate regulation while providing adequate protection to cable customers and operators is one that the Commission should embrace with enthusiasm: The public interest in an efficient, progressive, and competitive video marketplace cannot otherwise be achieved. Time Warner respectfully urges the Commission to recognize and acknowledge that regulation of cable television prices based on costs requires a fresh start and the gradual acquisition over time of a

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[7] Request for Waiver of the Prime Time Access Rule, § 73.658(k) of the Commission's Rules, by Station WFTV, Orlando, Fla., 50 FCC 2d 826, 897 (1975) (Dissenting statement of Commissioner Glen O. Robinson); OPP Working Paper No. 26, "Broadcast Television in a Multichannel Marketplace," DA 91-817 (released June 27, 1991).

body of data and experience through which methods and procedures suited to the particular circumstances of the cable television industry can be developed and refined, to the extent necessary, through an ad hoc, case-by-case, process.

II. THE COMMISSION SHOULD NOT IMPORT THE COSTS, INEFFICIENCIES, AND DISTORTIONS OF PUBLIC UTILITY-STYLE RATE OF RETURN REGULATION INTO THE CABLE INDUSTRY

The stated goal of the Commission's price regulation scheme for cable is to simulate competitive market forces. Competitive markets are generally viewed as desirable because they are believed to be more economically efficient than other market structures. Economic efficiency is therefore a necessary goal of price regulation under the Cable Act. This, too, appears to be recognized by the Commission in the Notice (at ¶ 9).

Conventional public utility regulation has been the object of a great amount of study and scholarship over the last several decades. Some of the highlights of that learning are described in the accompanying paper by National Economic Research Associates ("NERA") and summarized below. A key insight from that learning is that conventional cost-of-service public utility regulation has a considerable tendency to produce inefficient outcomes. Counteracting those tendencies is an enormously expensive and time-consuming undertaking. Therefore, while the Commission should certainly permit full cost-of-service showings where necessary, it should encourage alternative mechanisms for adjustment of the benchmark prices to reflect particular costs or conditions.

A. Traditional Rate-of-Return Regulation Creates Incentives for Regulated Firms to Engage in Economically Inefficient Behavior

Criticism of traditional utility regulation often proceeds from the simple insight that a firm running a cost-plus business has little incentive to minimize its costs. Much of the apparatus of public utility regulation is devoted to overcoming this problem. In the process, regulation itself ends up diminishing the regulated firm's incentives to cut costs because efficiencies are used to reduce rates and ratebase, not to reward the regulated firm for its efficient performance. As noted in the accompanying NERA paper (at Sections II(A) through II(D)), these incentives may produce particular inefficiencies, such as distorting capital investment, -- at least in the case of traditional utilities -- creating opportunities for predation through cross-subsidies.

As awareness of the potential incentives to inefficiency inherent in traditional cost-of-service regulation has grown, regulators have devoted enormous resources to trying to counteract them. These efforts have been superimposed on the already difficult tasks of scrutinizing expenses, defining a ratebase, and estimating the utility's cost of capital.

B. Rate-of-Return Public Utility Regulation Is Inherently Complex, Costly, and Time Consuming

As the NERA paper illustrates (in Section III), the principal inquiries in public utility ratemaking are very

difficult.[8] For example, regulators face the challenge of estimating the regulated firm's cost of capital. The goal is to ensure that the firm has the opportunity to pay its investors for the risk they assumed by committing their capital to the firm.

Apparently recognizing the difficulties associated with this issue, the Notice (at ¶ 46) proposes a shortcut: an industry-wide rate of return. As the NERA paper shows, the risks associated with investments in cable companies are high in comparison to the Standard & Poors 400 and even vary widely among cable companies. These variations apply both to debt and equity capital. An attempt at an industry average (as to rates-of-return or capital structure) would produce results that would apply to few -- if any -- actual cable franchises.

Thus, this is an area where shortcuts simply will not work: A cable system making a cost-of-service showing should be permitted to demonstrate the rate of return appropriate to the particular operations for which prices are being reviewed.

Another key point of controversy in traditional utility ratemaking is the allocation of common costs. Based on what it knows now, the Commission is simply in no position to sort out regulated from unregulated costs in a business that generally has

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[8] As the NERA paper notes, the difficulties associated with traditional public utility regulation are not limited to the industries regulated by the Commission. For example, electric utility regulation has presented very similar, difficult problems associated with resolving the same issues that the Commission would have to resolve here if it mandated resort by any cable system to full cost-of-service regulation.

not experienced this kind of regulation; therefore, the Commission should not attempt to do so.

C. The Trend in Governmental Price Regulation is to Move Away From the Rate of Return, Cost-of-Service, Model

In the telephone industry and other regulated public utility industries, the regulators have embarked on a number of efforts (summarized in Section IV of the NERA paper) to find and implement substitutes for it. That experience confirms that the Commission should not embrace traditional cost-of-service regulation as its sole or principal "backstop" regulatory mechanism for cable prices.

III. THE COMMISSION SHOULD PERMIT CASE-BY-CASE ADJUSTMENTS TO THE BENCHMARK PRICES WHERE THEY ARE NECESSARY TO ALLOW RECOVERY OF PARTICULAR COSTS

Given the shortcomings of traditional public utility rate-of-return regulation, the issues in the Notice are most constructively addressed by discussing potentially viable alternatives to the kind of cost-of-service regulation proposed in the Notice.

A. The Commission Should Permit Adjustments to the Benchmark Prices Based on Cost Showings Limited to Demonstrations of Particular High Cost Circumstances

The Notice (at ¶ 72) invites comment on the general idea of allowing cost-based add-ons to the benchmarks based on particular high-cost factors or circumstances faced by a particular system. Time Warner believes that this proposal has the greatest promise for accommodating the benchmarks to those particular factors or circumstances without burdensome,

intrusive, and expensive regulatory proceedings. The Commission should begin by permitting cable operators to make any showings of this kind that they deem justifiable. Such showings would, for example, entail presentations demonstrating that a particular system has particular cost characteristics (such as high construction costs due to unusual terrain or building codes, high labor costs, etc.) that warrant above-benchmark prices. Over time, the Commission may accumulate sufficient information further to abbreviate or routinize such showings.

A related proposal appears in Paragraph 73 of the Notice, where the Commission proposes efforts to identify and generalize certain high-cost factors that turn out to be recurrent. Here, again, there is currently no feasible mechanism for considering showings concerning such factors other than to do so on an ad hoc, case-by-case basis, and the Commission should certainly permit and consider such showings on that basis. After some experience with such showings, the Commission may well be able to devise factors of general application to which operators could resort in lieu of making individualized demonstrations.

Time Warner also welcomes the proposal (Notice at ¶ 75) to allow adjustments to the benchmarks to cover costs of prospective capital improvements. This proposal is consistent with the vital national interest (recognized in Paragraph 9 of the Notice) in ensuring that cable systems fulfill their role in developing the telecommunications infrastructure. Here, again, the Commission should acknowledge the conceptual validity of such an approach

and leave the details to case-by-case experience, at least until the Commission has sufficient experience with such showings to draw meaningful conclusions about them.

B. Cable Systems Should Have the Opportunity to Base Their Prices on Properly Recalculated Benchmarks

The accompanying NERA paper (at Sections V and VI) sets out at length a particular example of a backstop mechanism that would not require the Commission and the cable system to assume the costs and disadvantages of traditional rate of return regulation.

The essence of the NERA proposal is an econometric recalculation of the FCC benchmark to reflect additional factors that make the costs of certain cable systems higher than those of others. The operator would thus be given an opportunity to show the validity of its prices. Examples of the factors that might be involved in such an analysis are included in the NERA paper. The Commission's staff, guided by conventional econometric analysis, would assess the operator's presentation. With experience, review and approval of such showings should produce little burden on the FCC.

IV. "BACKSTOP" REGULATION OF CABLE PRICES SHOULD BE FOCUSED, OPERATOR-SPECIFIC, AND FAIR

Certain general principles should guide the Commission throughout the full range of cost-based showings -- from simple, cost-based add-ons to the FCC benchmarks to and including full showings of all of a system's costs of service -- that Time Warner contends should make up the "backstop" to benchmark price

regulation. These principles arise from the common need to have a "backstop" system of price regulation that meets the needs of a variety of cable systems.

A. The Burdens and Effects of Cost-of-Service Regulation Should be Borne Only by Those Who Choose to Rely on Such Regulation to Defend Their Prices

The first of these principles is that the substance and procedures of the secondary ("backstop") regulatory regime should not intrude into or burden the vast majority of systems for which prices are regulated by the primary (benchmark) method. In other words, the Commission should not adopt regulations that impose unnecessary costs. The systems regulated by benchmarks should not be required, for example, to adopt accounting methods, depreciation rates, or performance measures, or to keep books, that would be useful, if at all, only in the context of a full cost-of-service proceeding. Given the undesirable side-effects of rate-of-return-type regulation, any potential exposure to those effects should be contained within the small number of systems that actually undertake to make full cost-of-service showings. Cable operators undertaking full cost-of-service defenses to justify above benchmark rates will obviously have to bear the burden of demonstrating, for example, that necessary accounting adjustments have been properly performed.

B. Broadly Averaged and Industry-Wide Approaches Are Not Appropriate for the Regulatory "Backstop"

The second fundamental principle that must be observed is the necessity for individualized showings and analyses tailored to the particular circumstances of a particular system.

Given that the whole purpose of a secondary, "backstop" level of price regulation is to allow systems that do not fit within the average on which the benchmarks are based to have an opportunity to justify prices based on their atypical circumstances, the Commission cannot employ any sort of broad averaging in cost-of-service proceedings. These systems will be, by definition, outside the average. And, unlike the telephone industry, the cable television industry has developed and evolved into a very heterogeneous and diverse collection of firms; deviations from the average are likely to be considerable in some cases, and the "backstop" system of price regulation must meet the needs of a wide variety of systems.

C. No Valid Public Interest Would Be Served by Imposing Disadvantages or Penalties on Systems that Elect to Defend Cost-Based Prices

If the benchmarks are adequately defined, cable operators are highly unlikely to assume the burden, expense, and risk of a cost-of-service proceeding unless there is a substantial basis for them to believe that prices above the benchmarks can, in fact, be shown to be reasonable. Thus, if the benchmarks are reasonable, cost showings in support of higher prices should be permitted without any artificial limit.

The Notice (at ¶ 18) suggests that the Commission might refuse to allow cost-based prices above current price levels without some sort of additional "special showing." This proposal is based on the stated assumption that cable operators' prices

before the onset of regulation must have been fully compensatory on current basis.

For a variety of reasons, including promotional pricing, discounted installations, a disinclination to charge for converter boxes, etc., cable operators' prices for what has become regulated service have been like the prices of many other firms in competitive businesses. Thus, in an unregulated environment, the level of particular service element's prices may not have been set at cost. With the onset of regulation, operators who have the sophistication to understand and apply the Rate Order rules will reprice and reconfigure their service offerings. However, there are likely to be numerous instances where unbundling, retiering, and repricing leave some prices that are noncompensatory. The effectiveness of the rate freeze has also prevented cable operators from adjusting current prices to reflect cost increases and other factors. For these and other reasons the Commission cannot properly assume that pre-regulation prices are compensatory.

The Rate Order appears to contemplate the opportunity for offering cost-based justifications to demonstrate the reasonableness of increases in the benchmark prices beyond those permitted under the price cap. A prohibition on using cost-based methods to justify prices higher than those then being charged by the operator would disallow all increases above price-cap levels. That is clearly not what the Commission intends.