EX PARTE OR LATE FILED

RECEIVED

APR 2 5 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

DOCKET FILE COPY ORIGINAL

OFFICE OF
THE CHAIRMAN

April 20, 1994

92-266

The Honorable John T. Doolittle
U. S. House of Representatives
1524 Longworth House Office Building
Washington, D.C. 20515-0504

Dear Congressman Doolittle:

Thank you for your recent letter expressing concern about the regulatory burdens imposed on operators of small cable television systems under the Commission's rate regulations.

The Cable Television Consumer Protection and Competition Act of 1992 specifically requires the Commission to:

> design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

When the Commission adopted its initial rate rules in April of 1993, it incorporated several provisions that were designed to relieve the administrative burdens the rules had created for small systems. The Commission came to recognize, however, that further consideration of this problem was needed. Consequently a Further Notice of Proposed Rulemaking was issued to solicit comment on how the rules might be improved in their application to small systems and an administrative stay of the rules was issued until that review could be completed.

On February 22, 1994, new rules were adopted for the industry as a whole and for small systems in particular. The Commission concluded that some immediate additional relief for smaller systems was warranted and that further proceedings would be needed to finally fit the rules to the circumstances of small systems. I have enclosed several releases that describe the changes that the Commission has adopted.

The changes are of two types. First, there is relief that is purely administrative in nature, i.e., is designed to address the paperwork burdens that the rules created. Under these revised rules certain systems may avoid the need to engage in complex calculations to develop reasonable rate level justifications. Other systems are permitted to average the necessary financial data on a company wide basis so that individual calculations are not needed to develop the required "at cost" equipment and installation charges for each franchise area.

No. of Copies rec'd 2 copies
List ABCDE

Second, the general requirement that the industry reduce rates by the so-called competitive differential (the estimated difference in rates between competitive and noncompetitive systems) does not apply to certain small system operators. For this purpose a small system operator is defined as having 15,000 or fewer subscribers on a company wide basis. These systems, during a transitional period while further cost studies are undertaken, will not have to reduce rates by the new 17% differential. In addition, small systems and the industry generally will not have to reduce rates below the "benchmark" level established in the rules during this transitional study period. They may, however, be required to forego certain inflation based adjustments during this period.

I recognize that the operators of small cable systems had hoped for either a total exemption from the rules or for much more drastic relief. The Commission, however, has had to strike a balance that is sensitive to the special situations of these systems yet still protects their subscribers. These subscribers need the protection of the Cable Act and our rules just as much as subscribers to large systems.

Sincerely,

Reed E. Hundt
Chairman

Enclosures

NEWS
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

News media information 202 / 632-5050
Recorded listing of releases and texts
202 / 632-0002

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

EXECUTIVE SUMMARY

February 22, 1994
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992;
Report and Order and Further Notice of Proposed Rulemaking
MM Docket No. 93-215

The Commission today announces its adoption of interim rules to govern cost of service proceedings initiated by cable operators. The Commission anticipates that most cable operators will set rates by applying the revised competitive differential approach announced today, rather than through the cost of service approach. It recognizes, however, that the cost of service approach may be appropriate for some operators. The interim cost of service rules are carefully designed to ensure that subscribers are charged reasonable rates, and that cable operators have both the opportunity for adequate recovery, and incentives to upgrade their systems and introduce new services and capabilities.

Cost of service proceedings may be elected by cable operators facing unusually high costs. Those operators will have their rates based on their allowable costs, in a proceeding based on principles similar to those that govern cost-based rate regulation of telephone companies. Under this methodology, cable operators may recover, through the rates they charge for regulated cable service, their normal operating expenses and a reasonable return on investment.

Requirements Governing Ratebase

Used and Useful, Prudent Investment Standards: To be included as part of "plant in service," the largest component of the ratebase, plant must be used and useful in the provision of regulated cable service, and must be the result of prudent investment. Under these standards, the plant must directly benefit the subscriber and may not include imprudent, fraudulent, or extravagant outlays.

Modified Original Cost Valuation: Plant in service will generally be valued at its cost at the time it was originally used to provide regulated cable service. In order to permit a

simplified method of cost valuation in the case of systems that were acquired by the current operator, plant may be valued at the book cost of tangible assets and allowable intangible assets at the time of acquisition.

Excess Acquisition Costs: Acquisition costs above book value are presumptively excluded from the ratebase. The Commission believes that, in most cases, excess acquisition costs such as "goodwill" represent the value of the monopoly rents the acquirer hoped to earn during the period when the cable system was effectively an unregulated monopoly. These monopoly rents would not be recoverable from customers where effective competition exists, the touchstone for rate regulation under the Cable Act. The Commission also recognizes that there may be situations where operators could make a cost-based showing to rebut a presumption of excluded acquisition costs. The Commission will consider such showings under certain circumstances.

Additions to Original and Book Costs: Some costs incurred after original costs and some intangible, above-book costs may be allowed. For example, cable operators may have incurred start-up losses in the early years of operating their systems. The Commission will permit reasonable start-up losses to be added to original costs recoverable by the operator, limited to losses actually incurred during a two-year start-up period and amortized over a period no longer than fifteen years. Certain other intangible acquisition costs above book value, including costs of obtaining franchise rights and some start-up organizational costs such as costs of customer lists, will also be allowed. Other intangible acquisition costs will be presumptively disallowed. Carriers may challenge this presumption, however, by showing a direct relationship between the costs incurred and benefits to customers.

Plant Under Construction: Valuation of "plant under construction" will use a traditional capitalization method. Under this approach, plant under construction is excluded from the ratebase. The operator capitalizes an allowance for funds used during construction (AFUDC) by including it in the cost of construction. When plant is placed into service, the regulated portion of the cost of construction, including AFUDC, is included in the ratebase and recovered through depreciation.

Cash Working Capital: The Commission expects to allow operators flexibility in choosing a method of determining the costs of funding day-to-day operations, as embodied in cash working capital. Because cable operators generally bill for regulated services in advance, the Commission will presume zero cash working capital. Operators may use one of several methods for overcoming this presumption, including the Simplified Method for telephone carriers in Section 65.820(e) of the Commission's

Rules.

Other Costs - Excess Capacity, Cost Overruns, and Premature Abandonment: A cable operator may include in the ratebase excess capacity that will be used for regulated cable service within one year. Cost overruns are presumptively disallowed, but operators may overcome this presumption by showing that the costs were prudently incurred. Costs associated with premature abandonment of plant are recoverable as operating expenses, amortized over a term equal to the remainder of the original expected life.

Permitted Expenses

Operating Expenses. The Commission adopts standards that will permit operators to recover the ordinary operating expenses incurred in the provision of regulated cable services.

Depreciation. The Commission will not prescribe cable system depreciation rates, but will evaluate the reasonableness of depreciation rates submitted by cable operators.

Taxes. Corporations may include an allowance for income taxes at the statutory rates in their cost of service showings. Subchapter S corporations, partnerships, and sole proprietorships may also include an allowance for taxes based on earnings retained in the regulated firm.

Rate of Return

The Commission establishes an interim industry-wide rate of return of 11.25% for presumptive use in cable cost of service proceedings. It solicits comment on whether this interim rate should be made permanent.

Rate Development and Cost Support

Accounting Requirements: The Commission adopts a summary list of accounts, and requires cable system operators to support their cost of service studies with a report of their revenues, expenses, and investments pursuant to that list of accounts. The Commission also decides to establish, after further steps described in the Further Notice, a uniform system of accounts for cable operators. The uniform system of accounts will apply only to operators that elect to set rates based on a cost of service showing. A uniform system of accounts will ensure that operators accurately and consistently record their revenues, operating expenses, depreciation expenses, and investment. In reaching this decision, the Commission notes that accounting records will serve as the principle source of information on cable operators that elect cost of service regulation and a uniform system will, therefore, help keep variations in accounting practices from unduly complicating cost of service proceedings.

Cost Allocation Requirements: The Commission adopts cost allocation rules that require cable operators to assign or allocate all costs and revenues identified in the summary level accounting form either to the equipment basket or to one of five service cost categories: basic service activities, cable programming service activities, other programming service activities, other cable activities, and noncable activities. To the extent possible, costs must be directly assigned to the category for which the cost is incurred. Where direct assignment is not possible, cable operators shall use allocation standards incorporated in current Section 76.924(e)(f) of the Commission's rules.

Affiliated Transactions: To keep cable system operators from engaging in improper cross-subsidization, the Commission adopts rules governing transactions between cable operators and their affiliates.

Procedural Requirements

Threshold Requirements for a Cost of Service Showing: There are no threshold requirements limiting the cable systems eligible for a cost of service showing, except for the two-year filing interval described below.

Historic Test Year: Cost of service showings shall be based on a historic test year, adjusted for known and measurable changes that will occur during the period when the proposed rates will be in effect. The test year should be the last normal accounting period. In the case of new systems for which no historic data is available, a projected test year may be used; the assumptions on which the projected test year are based will be subject to careful scrutiny.

Cost of Service Filing Interval: After rates are set under a cost of service approach, cable operators may not file a new cost of service showing to justify new rates for two years absent a showing of special circumstances.

Cost of Service Form: The Commission adopts a form to be used by cable operators making cost of service showings. The Commission states that this form will be made available electronically as soon as possible.

Hardship Showing: In individual cases, the Commission will consider the need for special rate relief for a cable operator that demonstrates that the rates set by a cost of service proceeding would constitute confiscation of investment and that some higher rate would not represent exploitation of customers. The operator would be required to show that unless it could charge a higher rate it would be unable to maintain the credit necessary to operate and would be unable to attract investment.

The operator would also be required to show that its proposed rates are reasonable by comparing them to the rates charged by similar systems. In considering whether to grant such a request, the Commission will consider the overall financial condition of the cable operator and other factors, such as whether there is a realistic threat of termination of service.

Small Systems

The Commission adopts an abbreviated cost of service form for use by small systems, to reduce the administrative burdens of cost showings for small system operators. The information must be certified by the operator as correct subject to audit by the Commission. The Commission solicits comments on the possibility of exempting small systems from uniform system of accounts requirements.

Streamlined Cost Showing for Upgrades

The Commission adopts a streamlined cost showing for upgrades. Under this showing, operators would be permitted to adjust capped rates by the amount of the net change in costs on account of the upgrade. Operators must reflect in rates any savings associated with upgrades and must apply cost allocation rules applicable to cost showings generally.

The Incentive Upgrade Plan

The Commission announces an experimental incentive plan that provides subscribers with assurances that rates for current regulated services will not be increased to pay for upgrades that are not needed to provide their current services and provides cable operators with incentives to upgrade their systems and offer new services. Specifically, operators will be given substantial rate flexibility for some established period of time in setting rates for new services. Operators that elect to operate under this plan will commit to maintaining rates for their current regulated services, including the basic service tier, at their current level. Operators also will commit to maintaining at least the same level and quality of service, including the program quality of their current regulated services.

Operators must seek Commission approval before setting rates for new services pursuant to the plan. New service tiers comprised of new programming as well as new functions that can be used with existing tiers are eligible for this plan as long as they are available and chargeable on an unbundled basis from existing services.

The plan seeks to give cable operators a strong incentive to invest in their networks and increase the services they offer to

customers. This incentive is generated by giving the operator broad flexibility in setting the rates for these added services and capabilities. If the operator invests wisely and introduces services that meet customer needs, it gains the opportunity to achieve higher profits. The plan is intended to help achieve the Cable Act's goals of setting rates similar to those in competitive markets. As in competitive markets, customers are protected from monopoly rates for established services, but entrepreneurs who successfully introduce new products or improve the efficiency of their operations are rewarded through higher profits.

The Commission will entertain requests from operators seeking to use the plan on an experimental basis, and seeks comment on whether the plan should be made permanent. The Commission will accept proposals from operators as of the effective date of its cost rules.

Further Notice of Proposed Rulemaking

Pending completion of cable system cost studies and the development of experience through the case-by-case evaluation of complaints, the Commission is adopting the current rules on an interim basis. The Commission seeks comment on whether the rules should be adopted as permanent.

Among other issues, the Commission seeks comment on whether 11.25% is an appropriate rate of return and on whether it should adopt an average cost schedule approach for small systems, and possibly for larger systems as well. The Commission delegates authority to the Cable Services Bureau to obtain detailed cost information from cable operators to help examine this approach. The Commission also seeks further data, analysis, and comment on whether to include a productivity factor in addition to an inflation factor in the benchmark/price cap formula. Based on the current record, the Commission proposes a 2% productivity factor.

The uniform system of accounts proposed by the Commission in the Further Notice is derived in part from the system currently used by the Commission for telephone companies (see Part 32 of the Commission's rules), but the Commission seeks to simplify those rules and adapt them to the cable industry. The Commission requests that industry groups work with Commission staff to develop a proposed uniform system of accounts, with a view towards completion of a tentative proposal within 180 days. The Commission will then solicit comments from interested parties on the proposed uniform system of accounts before adopting a final version.

NEWS
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

News media information 202 / 632-5050
Recorded listing of releases and texts
202 / 632-0002

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Circ. 1974).

February 22, 1994

EXECUTIVE SUMMARY

February 22, 1994
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992;
Report and Order and Further Notice of Proposed Rulemaking
MM Docket No. 93-266

The Commission today adopted a Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket 92-266, Implementation of the Rate Regulation Provisions of the Cable Act of 1992. The Second Order on Reconsideration modifies, among other things, the Commission's previous benchmark approach for determining initial rates of regulated cable systems. The Commission's revised rules will better ensure that consumers are offered regulated services at reasonable rates, and will provide incentives for cable operators to launch new program services and invest in advanced technology. The modified rate regulations will apply to regulated rates in effect on and after the effective date of the new rules; regulated rates in effect before that date will continue to be governed by the old benchmark system.

The Revised Competitive Differential

The Commission's revised competitive differential is based on a strengthening of its statistical and economic model for estimating the difference between rates charged by noncompetitive systems and systems subject to "effective competition," as that term is defined in the 1992 Cable Act. The Commission's model is based on a survey of industry rates conducted by Commission staff in the winter of 1992. The competitive differential represents the Commission's best determination of the average amount by which the rates charged by a cable operator not subject to effective competition exceed "reasonable" rates.

In response to comments made by petitioners on reconsideration, and upon further analysis by the staff, the Commission significantly improved its statistical analysis of the 1992 survey results. This effort has resulted in a revised

(over)

benchmark formula that is both more accurate and more sophisticated. The revised benchmark formula will be used to help estimate the competitive differential and to determine which noncompetitive systems are covered by the phased implementation program described above.

In addition, the Commission revised its economic analysis to better evaluate the record evidence concerning the rates charged by the three types of systems Congress deemed subject to effective competition (i.e., systems with penetration rates of less than 30 percent, systems that face actual competition, and systems operated by municipalities). In the Rate Order adopted in this docket last April, the Commission computed the competitive differential by simply averaging the data for all of the systems that meet this statutory definition. On reconsideration, the Commission determined that the 1992 Cable Act required it to "take into account" the rates charged by the three different types of effectively competitive systems in determining reasonable rates, but did not require it to use the methodology adopted last spring. In addition, the Commission determined that its previous methodology understated the competitive diferential by weighing systems on the basis of the number of systems, rather than by evaluating which type of system best illustrates a competitive price.

Under the revised approach for determining the competitive differential, the Commission computed, and considered, the competitive differential for each of the three types of systems deemed subject to effective competition. After analyzing the various characteristics of the three types of effectively competitive systems, and exercising its expertise and discretion, the Commission determined that the best estimate of the average competitive differential is 17 percent.

The Commission will issue forms upon release of the Order for use in applying the revised competitive differential to rates of regulated cable systems. It also will help operators apply the revised benchmark formula by making Cable Service Bureau staff available to answer questions and by distribution of a computerized spread sheet.

Further Competitive Rate Rollbacks

Under the Commission's revised benchmark regulations, noncompetitive cable systems that have become subject to regulation will be required to set their rates at a level equal to their September 30, 1992 rates minus a revised competitive

(over)

differential of 17 percent. Cable operators who seek to charge rates higher than those produced by applying the competitive differential may elect to invoke cost of service procedures the Commission also adopts today in a separate action.

Although all noncompetitive systems will potentially be subject to the new competitive differential, the Commission has adopted a phased implementation program which will give it more time to evaluate whether certain noncompetitive systems have lower than average competitive differentials. These systems include noncompetitive systems with relatively low prices (defined as systems whose rates would be below the benchmark after subtracting the 17 percent competitive differential from their September 30, 1992 rates or reducing their rates to the new benchmark level). The phased implementation program will also apply to systems owned by small operators (defined for this purpose as operators serving a total subscriber base of 15,000 or fewer subscribers and that are not owned or controlled by larger companies).

While the Commission collects additional cost and price data about the low priced and small operator systems, such systems will not be required to reduce their regulated rates immediately by the full competitive differential. Rather, implementation of the full differential will be stayed pending completion of the Commission's cost inquiry. At the same time, to protect consumers while the cost studies are being conducted, a system subject to phased implementation will be required to calculate the extent to which its rate reduction falls short of 17 percent. This reduction "deficit" will then be offset against any inflation adjustment pending completion of the cost studies.

The Price Cap Governing Cable Service Rates

Calculation of External Costs. In addition to revising the benchmark formula and the competitive differential used in setting initial regulated cable rates, the Commission adopted rules to simplify the calculations used to adjust those rates for inflation and external costs in the future. Under current rules, operators may adjust their regulated rates annually by inflation and up to quarterly by the net change in external costs. Any change in external costs must also be measured against inflation and adjusted for the corrected inflation rate. To simplify these rate adjustments, the Commission has separated the inflation adjustment from the external cost adjustment. This refinement will reduce the administrative burden associated with seeking a rate increase. A form to be released with the Order will set forth the specific steps for making these calculations.

Copyright and Pole Attachment Fees. The Commission also determined to treat increases in compulsory copyright fees incurred by carrying distant broadcast signals as external costs in a fashion parallel to increases in the contractual costs for nonbroadcast programming. The Commission will not, however, accord external cost treatment to pole attachment fees.

"A La Carte" Packages

The Commission also revised its regulatory treatment of packages of "a la carte" channels. In its April 1993 Rate Order, the Commission exempted from rate regulation the price of packages of "a la carte" channels if certain conditions were met. On reconsideration, however, the Commission determined that its rules governing the provision of "a la carte" channels in a package should be refined to better ensure that the marketing of channels in this fashion is designed to enhance subscriber choice rather than evade rate regulation. When assessing the appropriate regulatory treatment of "a la carte" packages, the Commission will consider certain factors, among other considerations, that would suggest that packages should not qualify for non-regulated treatment, including : whether the introduction of the package avoids a rate reduction that otherwise would have been required under the Commission's rules; whether an entire regulated tier has been eliminated and turned into an "a la carte" package; whether a significant number or percentage of the "a la carte" channels were removed from a regulated service tier; whether the package price is deeply discounted when compared to the price of an individual channel; and whether the subscriber must pay significant equipment or other charges to purchase an individual channel in the package. In addition, the Commission will consider factors that will reflect in favor of non regulated treatment such as whether the channels in the package have traditionally been offered on an "a la carte" basis or whether the subscriber is able to select the channels that comprise the "a la carte" package. " A la carte" packages which are found to evade rate regulation rather than enhance subscriber choice will be treated as regulated tiers, and operators engaging in such practices may be subject to forfeitures or other sanctions. This process will be conducted on a case-by-case basis.

Small Systems

The Commission also lifted the stay of rate regulation for small cable systems, which were defined as all systems serving 1,000 or fewer subscribers. Thus, as of the effective date of the Commission's new rules, noncompetitive, small systems will be

(over)

subject to rate regulation. (The Commission will entertain requests for extensions of time to comply if operators of small systems meet certain showings requirements). To reduce the regulatory burdens, particularly the equipment cost calculations, that rate regulation imposes on small systems, the Commission also adopts two types of administrative relief for small systems.

First, the Commission suspended, pending development of average equipment cost schedules, the requirement for unbundling equipment and installation charges, and permitted a simple across-the-board reduction in each individual regulated rate separately billed by the operator. This relief allows operators of such systems to reduce their overall rates and the rate for each regulated component (programming or service) by the revised competitive differential, without the need to complete a Form 393 or to prepare a cost-of-service showing. This administrative relief is available to independently owned small systems and small systems owned by small operators. The Commission defined a small operator for purposes of obtaining administrative relief as an operator that has 250,000 or fewer total subscribers, owns only systems with fewer than 10,000 subscribers each, and has an average system size of 1,000 or fewer subscribers.

Second, the Commission decided to permit larger operators of small systems to use the average equipment costs of its small systems in setting rates in individual franchise areas. The Commission defined a larger operator of small systems as one that owns more than one cable system, one of which has 1,000 or fewer subscribers, and is not a small operator as defined above.

The Commission also determined that it would later provide additional administrative relief for small systems by developing an average equipment cost schedule that can be used by all small systems to unbundle their equipment and installation revenues and rates. The cost schedule will be based on industry-wide figures derived from the Commission's cost survey (to be conducted over the next twelve to eighteen months.) Such a schedule will ultimately be made available for use by all operators as part of the Commission's efforts to simplify its procedures.

Adjustments to Capped Rates for Addition and Deletion of Channels

In the Fourth Report and Order, the Commission also adopted a methodology for determining rates when channels are added to or deleted from regulated tiers. This methodology is similar to the third alternative proposed in the Third Further NPRM.

(over)

In order to determine rates following the addition or deletion of channels, each operator, after applying the revised competitive differential, will adjust its per channel rates to reflect the proportionate decrease in per channel rates captured by the Commission's rate survey, based on the total number of regulated channels. Under this approach, cable system operators must pass on to subscribers the efficiencies and economies of scale that arise as operators add channels to their systems.

The Commission also will treat programming costs as external costs, to be calculated under the methodology described in the Rate Order as modified by our Reconsideration Orders. Thus, operators may recover the full amount of programming expenses associated with added channels. This will help promote the growth and diversity of cable programming to the benefit of subscribers, cable operators, and programmers. Operators may also recover a mark-up on their programming expenses.

The Commission stated that its methodology will provide a ready way for operators to determine rates when new programming services are added to regulated offerings and will not be unduly burdensome for subscribers, operators, and regulators. It is also fully consistent with the revised approach to setting initial regulated rates, can be used for deletions of channels and moving channels among regulated tiers as well as for channel additions, and protects subscribers on one tier from having their rates raised by changes on other tiers. Cable operators will use an FCC Form, to be released with the text of the Commission decision, to adjust capped rates when channels are added to or deleted from regulated tiers, and to make external cost and inflation adjustments.

Adjusting Capped Rates for Cable Systems Carrying More Than 100 Channels

Finally, in the Fifth Notice of Proposed Rulemaking, the Commission seeks comment on whether it should establish a benchmark methodology for adjusting capped rates when a cable system carries more than 100 regulated channels, and if so, what that methodology should be.

NEWS
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

News media information 202 / 632-5050
Recorded listing of releases and texts
202 / 632-0002

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Circ. 1974)

Executive Summary

THIRD ORDER ON RECONSIDERATION IN CABLE RATE REGULATION AND TIER BUY-THROUGH PROCEEDINGS
(MM DOCKET NOS. 92-266 AND 92-262)

Today the Commission adopted a Third Order on Reconsideration in MM Docket Nos. 92-266 (Rate Regulation) and 92-262 (Tier Buy-Through Provisions), Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992.

This notice summarizes the actions taken in the Third Order on Reconsideration.

1. The 1992 Cable Act provides for regulation of cable services where a cable system does not face "effective competition," and the Act provides three specific tests for determining which systems face effective competition. The second test finds effective competition where there is at least one alternative multichannel service provider that reaches at least 50% of the households in the franchise area, and at least 15% of the households in the franchise area subscribe to such alternative service(s).

The item adopted today affirms the Commission's rules for determining the presence of effective competition, as adopted on April 1, 1993, in the following ways:

* the subscribership of competing multichannel distributors will be considered on a cumulative basis to determine if it exceeds 15%, but only the subscribers to multichannel providers that offer programming to at least 50% of the households in the franchise area will be included in this cumulative measurement;

* Satellite Master Antenna Television Systems (SMATV) and Satellite Television Receive Only (TVRO) subscribership in an area may both be counted, generally, toward meeting the 15% test, since satellite service is generally available from at least of these complementary sources; and

2. This Order clarifies that, for purposes of all three parts of the 1992 Cable Act's definition of effective competition, housing units that are used solely for seasonal, occasional or recreational use should not be counted. Therefore, a system will not be exempted from rate regulation as a "low penetration" system if the reason for the low penetration rate is that a large number of the households are unoccupied.

3. With regard to the 1992 Cable Act's requirement that cable operators have a rate structure that is uniform throughout the cable system's geographic area, the Order reaches the following decisions:

* cable operators may offer nonpredatory bulk discounts to multiple dwelling units (MDUs) if those discounts are offered on a uniform basis to buildings of the same size with contracts of similar duration. Rates cannot be negotiated individually with MDUs;

* cable operators' existing contracts with MDUs are grandfathered to the extent they are in compliance with rate regulation; and

* the uniform rate structure requirement applies to all franchise areas, regardless of whether the cable system is exempt from rate regulation because of the presence of effective competition. Therefore, a cable operator charging competitive rates where it is subject to effective competition is prohibited from charging higher rates elsewhere.

4. The tier buy-through provision of the 1992 Cable Act prohibits cable operators from requiring subscribers to purchase anything other than the basic service tier in order to obtain access to programming offered on a per-channel or per-program basis. The Order affirms that this provision applies to all cable systems, including those that are not subject to rate regulation.

5. This Order takes the following actions with regard to the process of certifying local franchising authorities to regulate cable service:

* it affirms the Commission's decision that, at this time and in most circumstances, it will not assert jurisdiction over basic cable service where franchising authorities have chosen not to regulate rates;

* it affirms the Commission's determination that franchising authorities seeking to have the Commission regulate basic rates must demonstrate that proceeds from their franchise fees will not cover the costs of rate regulation;

* it allows franchising authorities to voluntarily withdraw their certifications if they determine that rate regulation is no longer in the best interest of local cable subscribers and they have received no consideration in exchange for their decision to decertify;

* it affirms the Commission's jurisdiction over basic rates when a franchising authority's certification is denied for lack of legal authority or for failure to adopt regulations consistent with the Commission's rate rules; and

* it allows a franchising authority to cure any nonconformance with the Commission's rules that does not involve a substantial or material regulatory conflict before the Commission revokes its certification and assumes jurisdiction.

6. The Order takes the following actions with regard to franchising authorities' basic rate regulation:

* establishes procedures whereby the Commission will make cost determinations for the basic service tier, when requested by local franchising authorities, in an effort to assist franchising authorities whose limited resources may preclude conducting cost-of-service proceedings;

* affirms franchising authorities' right to order cable companies to provide refunds upon a determination that basic tier rates are unreasonable;

* clarifies that franchising authorities may delegate their rate regulation responsibilities to a local commission or other subordinate entity, if so authorized by state and/or local law;

* affirms the Commission's decision that cable operators may not enter into settlement agreements with franchising authorities outside the scope of the Commission's rate regulations, but states that the parties may stipulate to any facts for which there is a basis in the record;

* clarifies that franchising authorities are entitled to request information from the cable operator, including proprietary information, that is reasonably necessary to support assertions made by the cable operator on Form 393 as well as those made in a cost-of-service showing, but modifies the Commission's position on the confidentiality of such proprietary information by determining that state and local laws will govern such issues;

* clarifies that, to the extent that franchise fees are calculated as a percentage of gross revenues, franchising authorities must promptly return overpayments of franchise fees to cable operators that result from the cable operator's newly-diminished gross revenues after refunds (or allow cable operators to deduct such overpayments from future payments);

* reminds franchising authorities that they may impose forfeitures and fines for violations of their rules, orders, or decisions, including the failure to file requested information, if permitted under state or local law; and

* modifies the Commission's rules to require that cable operators comply with franchising authorities' requests for information, as well as those made by the Commission.

7. The Order takes the following actions with regard to Form 393 (filed by cable operators with their local franchising authority once that authority has certified to regulate cable service, and with the Commission in response to a subscriber complaint):

* informs franchising authorities that, if a cable operator fails to file a Form 393, they may deem the operator in default, find that the operator's rates are unreasonable, and order appropriate relief, such as a refund and a prospective rate reduction;

* informs franchising authorities that they may order a cable operator to file supplemental information if the cable operator's form is facially incomplete or lacks supporting information, and the franchising authority's deadline to rule on the reasonableness of the rates will be suspended pending the receipt of the additional information;

* prohibits filings on anything but an official FCC Form 393 or a photocopy, orders cable operators that have filed on a non-FCC form with the Commission to refile on an official form within 14 days after the effective date of this Order, and entitles the franchising authority to similarly order a refiling by a cable operator that has filed on a non-FCC form within 14 days from the effective date of this Order; and

* reminds franchising authorities that they have the discretion to resolve questions or ambiguities regarding the application of the rate-setting process to individual circumstances and that, if challenged on appeal, the Commission will defer to the franchising authority's decision if supported by a reasonable basis.

8. The Order continues to require that, when advertising rates, cable operators disclose costs and fees, but cable operators advertising for multiple systems on a regional basis may advertise a range of actual total prices, without delineating the specific fees for each area.

9. Identifies certain cable operator practices as possible evasions or violations of the Commission's rate regulations and tier buy-through prohibition, such as:

* moving groups of programming offered in tiered packages to a la carte;

* collapsing multiple tiers of service into the basic tier;

* charging for services previously provided without extra charge

* charging for services previously provided without extra charge (e.g. routine services, program guides) unless the value of that service, as now reflected in the new charges, was taken out of their basic rate number when calculating the reduction necessary to establish reasonable rates.

* assessing downgrade charges for service packages that were added without a subscriber's explicit consent.

10. The order recognizes that the 1992 Cable Act provides that the Commission and the states have concurrent jurisdiction to regulate cable operators' negative option billing practices and that the 1992 Cable Act does not preempt the states from regulating those practices under state consumer protection laws.

11. The Order makes the following determinations with regard to equipment and installation:

* the rate-setting process already reflects promotional costs and seasonal maintenance costs; therefore, rates may not be raised to reflect such costs; and

* no special schedule for calculation of charges for home wiring is needed when that wiring is offered for sale to subscribers upon termination of cable service.

Action by the Commission February 22, 1994, by Third Order on Reconsideration (FCC 94-___). Chairman Hundt, [etc.]

-FCC-

News Media Contact: Karen Watson or Susan Sallet at (202) 632-5050
Cable Services Bureau contacts: Amy J. Zoslov at (202) 416-0808 and Julia Buchanan at (202) 416-1170.

JOHN T. DOOLITTLE
4TH DISTRICT, CALIFORNIA

COMMITTEES:
AGRICULTURE
NATURAL RESOURCES

Congress of the United States
House of Representatives

REPUBLICAN RESEARCH COMMITTEE
TASK FORCES
CRIME
FORESTRY, FISHERIES AND ENVIRONMENT
CHAIRMAN
IMMIGRATION REFORM
SOCIAL SECURITY
GOVERNMENT REFORM
UNFUNDED FEDERAL MANDATES

SPORTSMEN'S CAUCUS

1524 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0504
(202) 225-2511

2130 PROFESSIONAL DRIVE, SUITE 190
ROSEVILLE, CA 95661
(916) 786-5560
(800) 232-1336

February 15, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Dear Chairman Hundt:

Several months ago I wrote to the then-acting Chairman Quello expressing deep concern over the fate of smaller, more rural cable systems under the complex federal regulations being contemplated. That concern has now grown to alarm. The relief that I was assured was on its way has not yet come.

While I fully understand your desire to review all decisions at the start of your tenure, small operators in my district inform me that these delays are causing significant hardship and threaten the viability of smaller entrepreneurs in the cable business. This was certainly not the intent of the Cable Act of 1992. Smaller operators were specifically recognized in the Act to have different needs and different circumstances that warranted specialized rules. Both administrative and financial differences warranted such an approach.

It is my understanding that you hope to adopt a special set of rules for small systems within the next few weeks. I look forward to seeing those rules and to your assurance that they will indeed bring significant substantive relief for small cable system operators.

Sincerely,

John T. Doolittle

JOHN T. DOOLITTLE
United States Representative

PRINTED ON RECYCLED PAPER