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May 16, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

Re: **Eternal Word Television Network
Petition for Reconsideration
MM Docket No. 92-266
Cable Rate Regulation**

Dear Mr. Caton:

On behalf of Eternal Word Television Network ("EWTN"), enclosed please find an original and eleven (11) copies of a Petition for Reconsideration in the above-referenced proceeding.

EWTN requests the Commission to reconsider the provisions in the most recent round of cable regulations that act to discourage cable operators from carrying high-quality programming when it is provided, as is EWTN's, free of charge. EWTN also proposes alternative regulations to solve this problem, achieve the Commission's goals and better serve the public interest.

Should any questions arise with respect to this petition, please communication directly with Howard J. Barr, Esq., of this firm or the undersigned.

Very truly yours,



L. Charles Keller
Counsel to
Eternal Word Television Network

Enclosures

cc: Hon. Reed Hundt, Chairman
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Hon. Robert J. Dole, U.S. Senate
Hon. Thomas J. Bliley, Jr.,
U.S. House of Representatives

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Implementation of Sections of) **MM Docket No. 92-266**
the Cable Television Consumer)
Protection and Competition Act)
of 1992: Rate Regulation)

To: The Commission

PETITION FOR RECONSIDERATION

Eternal Word Television Network (EWTN), by counsel and pursuant to section 1.106 of the Commission's Rules, respectfully requests reconsideration of the Commission's Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking ("Second Order"), FCC 94-38, released March 30, 1994, in the above-captioned proceeding.

EWTN is compelled to point out that the Commission's rate regulations act to discourage cable operators from including high-quality channels in their lineups when those channels are provided to the operators free of charge and to encourage cable operators to add networks with a higher cost to maximize their rate of return. Accordingly, EWTN takes this opportunity to suggest possible solutions to this problem.

EWTN is the nation's largest religious cable network, providing programming from a Catholic perspective to 1,214 cable systems in 49 states, reaching 38 million homes nationwide. EWTN's 24-hour programming includes telecasts of religious services as well as informative talk shows on moral and social

issues and other programs and specials of interest to those concerned with America's spiritual life.

Public opinion surveys show that a large portion of the population is concerned with these issues. Fully nine out of ten Americans say their religious faith is an important part of their lives, and identify themselves as Christians. Of those, 26% are Catholic, the largest single faith group in the country. The importance that the American public places on the material that forms the subject matter of EWTN's programming goes a long way toward explaining EWTN's enormous popularity among cable viewers. EWTN added 6 million subscribers in 1992 and 7 million more in 1993, and now reaches 38 million homes. Cable companies carrying EWTN report a highly positive response from subscribers about the channel.

I. The Problem

EWTN's high-quality programming is available to cable operators via satellite free of charge. Ironically, however, under the new rules this very fact could lead to EWTN being dropped from cable systems' channel lineups, and could dissuade other operators from adding EWTN to their channel offerings.

The Commission's new cable regulations allow cable companies to increase rates to reflect increased external costs in two cases that are relevant here: (1) when programming costs increase for the programming provided,^{1/} and (2) when the operator

^{1/} Second Order, FCC 94-38, at pp. 84-86, paras. 171-175. See also 47 C.F.R. § 76.922.

adds a more expensive channel to the lineup.^{2/} Both of these rules tend to discourage carriage of EWTN.

Because cable operators receive EWTN free of charge, the "external cost" to the operator of providing EWTN will never increase. EWTN will therefore never provide a justification for an increase in rates. This may provide an incentive to cable operators to switch out EWTN in favor of more expensive programming -- regardless of the merit of that programming -- in order to take an external cost adjustment for the channel occupied by EWTN. This incentive is all the stronger because the external cost adjustment includes a 7.5% markup for the operator.

Additionally, cable companies looking to add a channel to their lineups have an incentive to select more expensive programming over EWTN. In doing so, the cable operator will be able to take both the external cost adjustment as well as the per channel adjustment to the residual component of its permitted rate for a tier to reflect changes in the number of channels offered on the tier.^{3/} An operator adding EWTN will be able to increase its rates only for the latter because the channel is free of charge to the operator. Of course, the per-channel adjustment factor decreases drastically as the average number of regulated channels increases, from a high of 0.52 when the operator has 7 regulated

2/ Id. at p. 125, para. 125.

3/ See sections 76.922(c), 76.922(d)(3), and 76.922(e) of the Commission's Rules.

channels to a low of 0.01 when the operator has 46.5 or more regulated channels, and is essentially a non-factor.

Although the Commission has expressed a desire to encourage high-quality cable programming,^{4/} attention thus far has focused primarily on whether the new benchmark level will prevent cable companies from carrying high-cost programming.^{5/} The Commission should recognize that the new regulations can discourage cable operators from carrying high-quality programming even when such programming is provided free of charge. Unfortunately, EWTN's popularity among cable subscribers is little help in assuring continued carriage or future addition of EWTN.

While EWTN could initiate a charge to operators in an effort to avoid the above described consequences, that should not be the answer. The Commission's rules upset the apple cart of normal economic benefits and advantages obtained in the carriage of free networks such as EWTN. EWTN should not be forced into the position of having to initiate a charge in order to right that cart.

II. Proposed Solutions

To avoid discouraging cable companies from adding or continuing to carry EWTN or other high-quality, cost-free services, EWTN offers two possible solutions. The first involves ascribing to no-cost channels like EWTN a cost or increase equivalent to the average cost or increase of other services carried on the

^{4/} See, e.g., Second Report and Order, FCC 94-38, at p. 122, para. 240.

^{5/} See id.; see also Nickolas Davatzes, President & CEO, A&E Networks, Letter to the Editor, Washington Post, April 27, 1994.

tier on which EWTN is or would be carried. The second involves ascribing to a flat fee markup to no-cost channels like EWTN.

A. Average Cost of Services on the Tier

Under this proposal, cable operators presently carrying EWTN or other no-cost channels^{6/} would be allowed, quarterly or annually as provided in the Rules, to attribute to EWTN a cost increase equivalent to the average increase in cost of other services on the tier on which EWTN is carried. This would allow the operator to take an external cost adjustment that it could not take if EWTN were viewed as "free," and prevent the operator from feeling pressure to replace EWTN with a channel that would regularly allow such an adjustment.

Similarly, cable operators adding EWTN would be allowed to attribute to it a cost equivalent to the average cost of services on the tier to which it is to be added. The operator would therefore be able to take an external cost adjustment in addition to the per-channel adjustment to the residual component of its permitted rate, thus diminishing the cable operator's motivation to select a more costly channel over EWTN.

B. Flat Fee Markup

Under this proposal, cable operators already carrying EWTN would be allowed, quarterly or annually as provided in the

^{6/} Throughout the rest of the discussion of these proposals, references to "EWTN or similar no-cost programming providers" will be shortened to simply "EWTN." The Commission should bear in mind, however, that the positive effects of these proposals would flow to all no-cost programming providers -- many of whom produce very high-quality programming -- equally.

Rules, to attribute to EWTN a flat fee markup. This would allow the operator to take an external cost adjustment that it could not otherwise take for a free channel, and prevent it from feeling pressure to replace EWTN with a channel that would regularly allow such an adjustment.

Similarly, cable operators adding EWTN would be allowed to attribute to it a flat fee markup. The operator would therefore be able to take an external cost adjustment in addition to the per-channel adjustment to the residual component of its permitted rate, thus diminishing the cable operator's motivation to select a more costly channel over EWTN.

CONCLUSION

The Commission's new scheme of cable rate regulation has a strong likelihood of providing an economic incentive for cable operators to drop EWTN, and other programmers like it, who provide high-quality programming at no cost to the operator. By ascribing to EWTN and other no-cost programming a cost equivalent either to the average cost of programming on the tier, or by allowing a flat fee markup to be applied to no cost networks, this negative consequence can be avoided.

WHEREFORE, the premises considered, EWTN respectfully re-
quests the Commission to reconsider its cable rate regulations as
requested herein.

Respectfully submitted,

ETERNAL WORD TELEVISION NETWORK

By: 
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