

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: Cable Telecommunications Association v. FCC & USA,
No. 94-1400 and Comcast Cable Communications, Inc.
v. FCC & USA, No. 94-1408. Filing of two new
Petitions for Review in the United States Court of
Appeals for the D.C. Circuit.

RECEIVED

DATE: May 26, 1994

MAY 31 1994

Docket No(s). MM 92-266

File No(s).

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

This is to advise you that on May 19, 1994, Cable Telecommunications Association and on May 20, 1994, Comcast Cable Communications, Inc., filed Section 402(a) Petitions for Review of the FCC decision: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 94-38, released March 30, 1994.

Petitioner petitions the Court to vacate and set aside the cable rules that violate the Free Speech right, the taking of property, and exceeds the statutory jurisdiction and authority of the FCC.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed these cases as Nos. 94-1400 and 94-1408 and the attorney assigned to handle the litigation of these cases is Laurence N. Bourne.

Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

In the
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

May 24 10 00 AM '94

OFFICE OF
GENERAL COUNSEL

CABLE TELECOMMUNICATIONS ASSOCIATION,)

Petitioner,)

v.)

FEDERAL COMMUNICATIONS COMMISSION and)
UNITED STATES OF AMERICA,)

Respondents.)

No. 94-1400

Filed: 5/19/94

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15 of the Federal Rules of Appellate Procedure, the Cable Telecommunications Association ("CATA") hereby petitions this Court for review of a final decision of the Federal Communications Commission (the "Commission") -- the Second Order on Reconsideration and Fourth Report and Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 94-38, released March 30, 1994, 59 Fed. Reg. 17,943 (April 15, 1994). A copy of the decision is attached to this Petition.

CATA is a trade association representing owners and operators of cable television systems in the United States. CATA's members serve approximately 80 percent of the nation's

more than 60 million cable television subscribers. CATA's members are aggrieved and adversely affected by the Commission's Second Order on Reconsideration and Fourth Report and Order, under which their rates will be excessively and unlawfully constrained. Venue in this Court is proper under 28 U.S.C. § 2343.

The Commission's decision is the product of a rulemaking proceeding aimed at implementing Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, 106 Stat. 1460 (1992), codified at 47 U.S.C. § 543 (the "Act"). That provision of the Act establishes a comprehensive framework for the regulation of rates for cable television service. It also directs the Commission to promulgate rules and standards to implement that framework and to govern the regulation of rates by local franchising authorities and by the Commission itself. On April 1, 1993, the Commission adopted an initial set of rules and standards, which became effective on September 1, 1993. Report and Order, FCC 93-177, 58 Fed. Reg. 29,736 (May 21, 1993).

CATA and numerous other parties petitioned the Commission to reconsider various aspects of those rules and standards, and, in the Second Order on Reconsideration, the Commission substantially revised its rules. In addition, in the Fourth Report and Order, the Commission adopted new rules addressing previously unresolved issues regarding the extent to which a regulated cable system's maximum permissible rates will

be affected if the system adds channels of programming. The revised rules generally incorporate many of the same policy determinations, statutory interpretations, and methodological approaches that CATA had challenged as unlawful, erroneous and arbitrary in its petition for reconsideration. But, in "refining" its analysis on reconsideration, the Commission has adopted rules that depart even further from what is required by the Act, permitted by the Constitution, and consistent with reasoned decision-making.

CATA thus respectfully requests that the Court vacate and set aside the Commission's Second Order on Reconsideration and Fourth Report and Order on the grounds that the rules are at odds with the Commission's statutory mandate in Section 3 of the Act; that the rules, and Section 3 itself, are at odds with the First and Fifth Amendments to the United States Constitution; and that the rules are arbitrary and capricious.

Respectfully submitted,

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Attorneys for Petitioner

Date: May 19, 1994

In the
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OFFICE OF
GENERAL COUNSEL

MAY 24 10 33 AM '94

COMCAST CABLE COMMUNICATIONS, INC.,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,
Respondents.

No. 94-1408

Filed: 5/20/94

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15 of the Federal Rules of Appellate Procedure, Comcast Cable Communications, Inc. ("Comcast") hereby petitions this Court for review of the Second Order on Reconsideration and Fourth Report and Order of the Federal Communications Commission (the "Commission") in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, FCC 94-38, released March 30, 1994, 59 Fed. Reg. 17,943 (April 15, 1994). A copy of this final decision of the agency is attached to this Petition. Venue in this Court is proper under 28 U.S.C. § 2343.

At issue are rules and standards adopted by the Commission pursuant to Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, 106 Stat.

1460 (1992), codified at 47 U.S.C. § 543 (the "Act"). Section 3 established a comprehensive framework for regulating the rates charged by cable television systems. It also directed the Commission to promulgate rules and standards to implement that framework and to govern the regulation of rates by local franchising authorities and by the Commission itself.

Comcast, which owns and operates a number of cable television systems throughout the United States, has participated throughout the rulemaking proceeding instituted by the Commission to implement the Act. On April 1, 1993, the Commission adopted an initial set of rules and standards, which became effective on September 1, 1993. Report and Order, FCC 93-177, 58 Fed. Reg. 29,736 (May 21, 1993). Comcast and other parties petitioned the Commission to reconsider various aspects of those rules and standards, and, in the Second Order on Reconsideration, the Commission substantially revised the rules. At the same time, in the Fourth Report and Order, the Commission adopted additional rules addressing previously unresolved issues concerning the extent to which a regulated cable system's maximum permissible rates will be affected if the system adds channels of programming.

The revised rules continue to reflect the unlawful, erroneous, and arbitrary policy determinations, statutory interpretations, and methodological approaches challenged by Comcast in its petition for reconsideration. Indeed, the rules as amended on reconsideration and in the Fourth Report and Order,

remain sharply at odds with the requirements of the Act, the Constitution, and reasoned decision-making. Those rules adversely affect Comcast insofar as they necessarily and unlawfully constrain the rates that may be charged by Comcast's cable television systems.

Comcast thus respectfully requests that the Court vacate and set aside the Commission's Second Order on Reconsideration and Fourth Report and Order on the grounds that the rules are contrary to the Commission's statutory mandate in Section 3 of the Act; that the rules are arbitrary, capricious, and otherwise contrary to law; and that the rules and Section 3 itself violate the First and Fifth Amendments to the United States Constitution.

Respectfully submitted,



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