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**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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DEC 27 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Cable Rate Regulation  
MM Docket Nos. 92-266 / 93-215

Dear Mr. Caton:

Transmitted herewith on behalf of Children's Television Workshop are an original and eleven copies of its Petition for Reconsideration of the Sixth Order on Reconsideration and Fifth Report and Order in the above-referenced proceeding (FCC 94-286, released Nov. 18, 1994; 59 FR 62614).

Respectfully submitted,

*Barbara K. Gardner*

Barbara K. Gardner

BKG/kkj  
Enclosure  
cc: Gary Knell, Esq.

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Implementation of Sections of )  
the Cable Television Consumer )  
Protection and Competition ) MM Docket No. 92-266  
Act of 1992: Rate Regulation )  
)  
Implementation of Sections of )  
the Cable Television Consumer )  
Protection and Competition ) MM Docket No. 93-215  
Act of 1992: Rate Regulation )  
  
To: The Commission

**PETITION FOR RECONSIDERATION**

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## SUMMARY

For more than twenty years, Children's Television Workshop ("CTW") has been developing engaging and entertaining children's television programming of proven educational and social value. Based on that experience, CTW strongly believes in the potential of television, including cable television, to educate our country's children. CTW shares the concern of Congress that television's promise has not been realized and that (in the words of Congressman Edward Markey) children's television "remains the video equivalent of a Twinkie."

A significant reason for the failure of television to achieve its educational potential is that, at a time of exploding entertainment options in the media world, commercial television networks and cable operators perceive little economic benefit to providing children's educational programming. CTW believes that the cable "going-forward" rules present the Commission with a unique opportunity to foster children's educational programming by providing cable operators with economic incentives to help ensure that in the multi-channel environment, children's educational programming will have a dedicated "home" that is as widely available as possible to children of all ages and income levels.

Although the current going-forward rules provide incentives for cable operators to add new channels to cable programming service tiers ("CPSTs") during the next three years, they do not provide sufficient incentives for operators to add

children's educational programming to those tiers. CTW proposes that the Commission provide such incentives by (i) increasing the Operator's Cap by 20 cents per month per subscriber for operators that add one or more channels programmed by "qualified educational or minority programming sources," as already defined in the Commission's cable rules, to CPSTs during the next three years; and (ii) during 1995 and 1996, increasing the License Fee Reserve to permit such operators to pass through to subscribers an additional 20 cents in license fees payable to qualified educational or minority programming sources.

CTW also requests that the Commission adopt a requirement that it reexamine the cable programming marketplace prior to the scheduled termination of the going-forward rules, to determine whether the incentives the rules provide should be continued.

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To: The Commission

**PETITION FOR RECONSIDERATION**

Children's Television Workshop ("CTW") hereby submits this petition for reconsideration of the Commission's Sixth Order on Reconsideration and Fifth Report and Order in the above-captioned proceeding (FCC 94-286, 59 FR 62614 (released November 18, 1994) ("Order")). CTW applauds the Commission for its creativity in developing regulations that both protect the interests of consumers and seek to foster the introduction of new cable program channels: CTW believes that the availability of both price-regulated cable programming service tiers ("CPSTs") and price-flexible new product tiers ("NPTs") will benefit consumers, operators and programmers alike. However, CTW urges

the Commission to modify the "going-forward" rules adopted in the Order to provide cable operators with a specific incentive to make channels available on CPSTs that will help remedy the existing dearth of quality children's educational programming.

At this time of exploding entertainment options in the media world, cable operators perceive little economic benefit to providing children's educational programming. CTW believes it is imperative, therefore, that the Commission provide cable operators with specific incentives to ensure that, in the multi-channel environment, quality educational programming will have a dedicated "home" that is as widely available as possible to children of all ages and income levels. In particular, as fully described below, for operators who choose to add one or more CPST channels programmed by "qualified educational or minority programming sources" as already defined in the Commission's cable rules, the Operator's Cap and the License Fee Reserve should each be increased by 20 cents. In this way, the Commission will further the Congressional objective of utilizing television, including cable television, to promote educational and minority programming, without infringing on important First Amendment values.

INTRODUCTION

A. An Overview Of Children's Television Workshop.

CTW, a non-profit educational organization chartered by the State of New York in 1968, was the first production organization to develop television programming that combines measurable educational impact with mass entertainment appeal. CTW's mission is to help educate children through high-quality and entertaining programming, products and services, with a special commitment to reaching minority and poor children. CTW strives not only to impart information and teach cognitive and social skills, but also to motivate and empower children to learn and to have fun doing so.

SESAME STREET, CTW's first program series and now an international institution, was created in 1968 to help prepare preschoolers for school. It was followed by THE ELECTRIC COMPANY, 3-2-1 CONTACT, and SQUARE ONE TV, which reinforce reading, science and mathematics concepts respectively for school-age children. GHOSTWRITER, CTW's newest series for public television, utilizes a reality-based mystery/adventure format to make reading and writing exciting to seven- to ten-year-olds,

while CRO, CTW's first program series produced for commercial television, is an animated comedy/adventure series targeted to six- to eleven-year-olds and designed to stimulate children's interest in science and technology.

Over the years, CTW has purposefully extended the reach of its program series by becoming a diversified educational enterprise serving not only children, but also their parents, teachers and caregivers. CTW publishes magazines for children and guides for teachers and parents, produces home videos, computer software and interactive materials, conducts workshops, develops child care and after-school programs, participates in educational forums, and explores educational applications of emerging media technologies. Currently, CTW is exploring the feasibility of launching an all-day, advertiser-supported cable channel dedicated to children's educational programming.

B. CTW's Objectives In This Proceeding.

Under the going-forward rules adopted in the Order, beginning January 1, 1995, cable operators may elect to increase subscriber rates by up to 20 cents per month per subscriber for each new channel added to CPSTs at any time between May 15, 1994

and December 31, 1997, up to a limit of \$1.20 per subscriber per month during 1995 and 1996, and \$1.40 during 1997 (the "Operator's Cap"). 47 C.F.R. § 76.922(e)(3). Additionally, during the first two years, operators may recover up to 30 cents per subscriber per month for license fees for new channels (the "License Fee Reserve") -- an average of only 5 cents per channel to production entities if six channels are added and the full 20-cent per channel adjustment factor is taken on each. Id.

As shown below, although these rules provide incentives for cable operators to add new channels to CPSTs during the next three years, they do not provide sufficient incentives for operators to add educational and minority programming, particularly quality children's educational programming, on those channels. CTW therefore proposes that the Commission remedy this deficiency by (i) increasing the Operator's Cap by 20 cents per month per subscriber for operators that add one or more channels programmed by qualified educational or minority programming sources (as defined in 47 C.F.R. § 76.977) to CPSTs during the next three years; and (ii) during 1995 and 1996, permitting such operators to pass through to subscribers an additional 20 cents in license fees payable to qualified educational or minority

programming sources. In addition, the Commission should adopt a requirement that it reexamine the cable programming marketplace prior to the scheduled termination of the going-forward rules, to determine whether the incentives provided by the rules continue to be needed.

**I. CONGRESS AND THE COMMISSION HAVE DEMONSTRATED A CLEAR INTENTION TO PROVIDE INCENTIVES TO PROMOTE CHILDREN'S EDUCATIONAL PROGRAMMING.**

In recent years, Congress, with overwhelming bipartisan support, has unequivocally acted to promote children's educational programming. In enacting the Children's Television Act of 1990, Congress found that:

[C]hildren in the United States are lagging behind those in other countries in fundamental intellectual skills, including reading, writing, mathematics, science, and geography; . . .

television . . . can be effective in teaching children; [and]

educational television programming for children is aired too infrequently either because public broadcast licensees and permittees lack funds or because commercial broadcast licensees and permittees or cable television system operators do not have the economic incentive.

47 U.S.C. § 394 note (1991) (emphasis added).

A recent letter from Congressman Edward Markey, as Chairman of the Subcommittee on Telecommunications and Finance, and Congressman John Bryant further demonstrates Congressional recognition that regulatory incentives are needed to foster quality children's educational programming:

[S]ome have argued that the free market is taking care of the needs of children -- that marketplace incentives will lead to an increase in informational and educational programming for children. In fact, Congress specifically concluded in 1990 that marketplace incentives do not work to provide children with quality programming. The FCC confirmed this finding in . . . March 1993, concluding that "little change in available programming that addresses the needs of the child audience" had occurred since [1990] . . . .

Letter from Congressmen Edward J. Markey and John Bryant to Chairman Reed E. Hundt (Dec. 8, 1994).

Congress further evidenced its support for educational (as well as minority) programming by creating, in the 1992 Cable Act, a statutory exception to the leased access rules intended to promote such programming. See 47 U.S.C. § 532(i) (1993). This exception permits a cable operator to use a portion of the channel capacity that is required to be designated for leased commercial use to instead provide programming from qualified minority or educational programming sources, in order to promote

public understanding of the arts, the humanities, the sciences, and mathematics, and to encourage the coverage of minority viewpoints and programming directed to members of minority groups. Id.; 47 C.F.R. § 76.977.

The Commission has echoed Congress' concerns regarding the promotion of educational children's programming. In 1993, it initiated a proceeding to determine whether implementation of the Children's Television Act should be strengthened, in part because since the Act took effect, the Commission had seen "little change in available programming that addresses the needs of the child audience."<sup>1/</sup> Earlier this year, the Commission conducted an all-day en banc hearing on children's television to focus public attention on whether, pursuant to Congress' objective in enacting the Children's Television Act, the educational needs of children are being met by television and cable television programmers and operators.

Most recently, in an Opinion and Order regarding competition and diversity in video programming, the Commission pointed out with reference to educational/informational

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<sup>1/</sup> Policies and Rules Concerning Children's Television Programming, 8 FCC Rcd 1841, 1842 (1993).

programming that "ample evidence exists that Congress intends to promote this type of programming."<sup>2/</sup> Accordingly, the Commission declined requests to exempt minority and educational programmers from certain affiliate transaction rules, in part because the effect of the requested exemptions would be to narrow, rather than broaden, the distribution of such programming.<sup>3/</sup> By contrast to those requests, CTW's proposal herein is intended to increase the distribution of educational and minority programming, by giving cable operators incentives to make channels available for such programming.

**II. THE PRODUCTION OF QUALITY CHILDREN'S EDUCATIONAL PROGRAMS THAT CHILDREN WILL WANT TO WATCH REQUIRES SIGNIFICANT RESOURCES.**

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CTW's experience demonstrates that children's programming that is both educational and entertaining will attract large audiences. Striking the appropriate balance between quality education and entertainment, however, is neither

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<sup>2/</sup> In the Matter of Development of Competition and Diversity in Video Programming Distribution and Carriage, MM Docket 92-265, FCC 94-287, para. 49 (released Dec. 9, 1994).

<sup>3/</sup> Id. at paras. 45, 49.

cheap nor easy, but is the product of extensive and costly educational planning, research and production.

For example, CTW's process for developing a new program typically involves the use of expert advisors (often interdisciplinary teams including content specialists, educational researchers and television producers), the development of specific educational goals, both cognitive and affective, and the evaluation of the program's effectiveness in meeting those goals -- all of which increase production costs. Similarly, in testimony given at the Commission's recent en banc hearing on children's television, the president of Fox Children's Network described the network's large financial investment in WHERE ON EARTH IS CARMEN SANDIEGO, necessitated by Fox's determination to provide educational programming that met the network's high standards of excellence in terms of delivering a compelling and imaginative series that children would watch.<sup>4/</sup>

Producers of children's programming are not the only ones to recognize the high costs associated with the production of quality children's educational programs. Commissioner Ness,

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<sup>4/</sup> Presentation of Margaret Loesch, President, Fox Children's Network, at FCC en banc hearing on children's television, at 2-3 (June 28, 1994).

for instance, in a recent speech to the National Academy of Television Arts and Sciences, acknowledged that "[f]or [educational] programming to be successful --- to get kids to watch --- it must capture their imagination . . . [which] takes a large commitment of dollars to produce quality programming."<sup>5/</sup>

Examples of the resources required to produce quality children's educational programs are numerous. The total production cost for the 42 episodes produced by CTW for GHOSTWRITER's initial season was \$11 million. Quality animation, a favorite format of children, costs even more: for example, CRO is being produced at a cost of approximately \$400,000 per episode.

The Commission's rules should seek to foster the creation of a dedicated "home" for quality children's educational programming that is as widely available as possible to children of all ages and income levels in the increasingly cluttered 500-plus-channel universe. To do so, the Commission must stimulate the flow of resources sufficient to enable programmers to provide the quality children's programming which is now so noticeably

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<sup>5/</sup> Remarks of Commissioner Susan Ness to National Academy of Television Arts and Sciences, at 6 (Dec. 9, 1994).

lacking. Unfortunately, as discussed below, the current going-forward rules will not support production of the kind of programming that would serve as a much needed alternative for America's children.

**III. THE GOING-FORWARD RULES DO NOT PROVIDE CABLE OPERATORS WITH SUFFICIENT INCENTIVES TO MAKE CHANNELS AVAILABLE FOR EDUCATIONAL AND MINORITY PROGRAMMING, INCLUDING CHILDREN'S EDUCATIONAL PROGRAMMING.**

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CTW has been exploring the feasibility of launching a dedicated children's cable program service that could fill a critical role for our nation's children and parents. Its economic analyses, performed with the assistance of financial advisors, indicate that a minimum programming budget of \$30 million is needed at startup to support the type of research, educational planning and production qualities which are needed to encourage children to choose "edutainment" services over those aimed merely at entertaining them. Given expected operator rebuild rates and reasonable projections of subscriber growth for successful future launches, this kind of production expense can be supported only with license fees of approximately 20 cents.

Perversely, the going-forward rules provide financial incentives for operators to add multiple low-cost channels to

regulated tiers, rather than fewer high-cost ones, since the lower the license fee, the more of each 20-cent per channel adjustment factor, and therefore of the total Operator's Cap, the operator can retain as "profit."

Clearly, a License Fee Reserve totalling only 30 cents for all added channels together is not sufficient to support the addition of quality children's educational programming to regulated CPSTs. The new rules contemplate the addition of six new channels to CPSTs through December 31, 1996. The average License Fee Reserve per channel, therefore, is only 5 cents, a level of support which falls far short of that which will support a minimum programming budget for a start-up service like CTW's own.<sup>6/</sup>

The unregulated NPTs might seem, at first glance, to provide a convenient "home" for high-cost, high-quality

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<sup>6/</sup> Because the 30-cent License Fee Reserve applies only to the first two years of the three-year period covered by the going-forward rules, theoretically programmers will be able to obtain higher license fees from operators in the third year. As a practical matter, however, the marketplace will not permit the kind of increases in license fees that would be necessary to support quality children's educational programming. Typical license fee increases for programmers on a CPST, for example, average only 1 cent every two years. Moreover, because operators generally require programmers to sign multiple-year carriage agreements, programmers are unlikely to be able to renegotiate license fees after the first or second year.

programming such as CTW's planned children's educational channel. However, these tiers are more suited for "premium" or "niche" channels than for general-audience children's educational programming. Because programs carried on NPTs will not have the wide distribution of those carried on CPSTs, NPTs will not permit children's educational programming to be made widely available to the broadest possible cable audience. For this reason, advertising revenues, which will be needed by CTW to help support its quality programming and which increase as the number of viewers increases, will be less for channels carried on NPTs than for channels carried on CPSTs. Accordingly, carriage on NPTs will meet neither CTW's educational mission -- service to the broadest possible audience -- nor its economic needs.

**IV. THE COMMISSION SHOULD INCREASE THE OPERATOR'S CAP AND LICENSE FEE RESERVE FOR OPERATORS THAT ELECT TO ADD PROGRAMMING FROM QUALIFIED EDUCATIONAL OR MINORITY SOURCES.**

In order to provide cable operators with incentives to make channels available for children's educational programming, CTW proposes that the Commission modify the going-forward rules for channels programmed by "qualified educational or minority programming sources," as defined in the Commission's commercial

leased access rules. See 47 C.F.R. § 76.977. Such a source is a producer that devotes substantially all of its programming to educational programming and spends more than \$15 million per year to do so, or a producer that devotes substantially all of its programming to coverage of minority viewpoints or to programming directed at members of minority groups, and is more than 50 percent minority-owned. Id. The Congressionally-mandated exception to the commercial leased access rules for such programmers -- an exception which, like CTW's instant proposal, cable operators may utilize or not, as they choose -- provides ample precedent for the Commission to create a similar incentive to encourage new programming from qualified educational and minority programming sources.

Under CTW's proposal, the Operator's Cap for operators that add one or more channels programmed by qualified educational or minority programming sources would be increased by 20 cents per month per subscriber to \$1.40 during the first two years, and to \$1.60 during the third year. This potential for additional profit would provide operators with an incentive to add new channels for educational or minority programming, including children's educational programming.

Additionally, CTW proposes to permit operators that add one or more channels of qualified programming to pass through to subscribers an additional 20 cents in license fees payable to qualified educational or minority programming sources, increasing the total License Fee Reserve to 50 cents. The additional License Fee Reserve would enable operators to pay the higher license fees typically associated with educational and minority programming without having to pay those fees from the Operator's Cap.

Because these proposals provide cable operators with options based on economic incentives, rather than mandates, they would permit the Commission to foster the potential for television to educate without infringing upon operators' First Amendment rights.

Finally, CTW urges the Commission to amend Rule 76.922(e)(8) so as to require that the Commission reexamine, before the scheduled "sunset" of the Operator's Cap in three years, the need (based on data available at that time) for retaining incentives to foster new programming on CPSTs, including educational and minority programming.

**CONCLUSION**

The Commission should use the opportunity presented by the going-forward rules to promote the potential of television to help educate our country's children, by providing cable operators with the suggested economic incentives to make channels available for educational and minority programming, especially quality children's educational programming.

Respectfully submitted,

CHILDREN'S TELEVISION WORKSHOP

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