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FEDERAL COMMUNICATIONS COMMISSION
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket Nos. 92-266 and 93-215
	)	
Rate Regulation	)	

REPLY COMMENTS OF
AFFILIATED REGIONAL COMMUNICATIONS, LTD.

Affiliated Regional Communications, Ltd. ("ARC") submits these reply comments in response to the comments in this proceeding on the Commission's proposal to eliminate the modest permissible mark-up on programming cost increases. All commenters addressing the Commission's proposal[1] uniformly opposed it and reinforced ARC's initial analysis demonstrating that adoption of that proposal would act as a disincentive to carriage of higher-cost programming services and to additional investments in new and better programming.

As ARC explained in detail in its Comments, the Commission's proposal to eliminate the 7.5 percent mark-up on

[1] The Chair of the Sacramento Metropolitan Cable Television Commission also submitted comments in this docket. The Chair generally addressed several issues which are largely irrelevant to the Commission's present proposal and did not comment on that proposal.

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cost increases for programming services carried before May 15, 1995 "is unsupported by the record and contrary to its reasoning in adopting the new 'going forward' rules." Again, those commenters which analyzed the empirical bases for the Commission's proposal strongly supported ARC's Comments. See Comments of National Cable Television Association on the Seventh Notice of Proposed Rulemaking ("NCTA Comments") at 3-6; Comments of A&E Television Networks, Inc. ("A&E Comments") at 6-8; Comments of Comcast Cable Communications, Inc., Cox Communications, Inc., and Jones Intercable, Inc. ("Comcast, et al. Comments") at 5 ("Nothing in the new formula applies in any way to such previously carried programming, and nothing in the Commission's Notice explains the relationship"). In short, the per-channel adjustment adopted by the Commission under the going-forward rules only compensates cable operators for the cost of adding new programming services and provides no substitute for the 7.5 percent mark-up on cost increases for those new services, much less all other existing programming services.

Both cable operators and programmers recognized that the Commission's proposal would cause cable operators' operating margins to "decline precipitously over time." E.g., A&E Comments at 9. Such declines will cause cable operators

to resist programming cost increases,[2] thereby preventing programmers from not only improving the quality of their services, but also maintaining existing quality levels as programming costs continue to increase:

> As cable operators, facing steadily smaller incentives, resist increases in licensing fees for the financially less attractive "old" channels, the reduced licensing revenues received by programmers will impair <u>their</u> financial ability to sustain programming quality, in turn forcing them to look even more to advertising revenue to support programming costs. As programming quality declines, the American public will suffer.

Comments of Discovery Communications, Inc. ("Discovery Comments") at 6 (emphasis in original, note omitted).

> Without license fee increases, existing program services like Lifetime will be thwarted in their efforts to stay competitive by expanding production and underwriting top creative talent. Rather, this failure of support would render Lifetime unable to keep pace with rising programming costs, which would result in an erosion in the quantity and quality of original production.

Comments of Lifetime Television ("Lifetime Comments") at 7-8 (note omitted).[3] <u>See also</u> A&E Comments at 9-10; Comments of Viacom International Inc. ("Viacom Comments") at 4-7; Comments of United Video at 6-7.

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[2] Comcast, <u>et al.</u> Comments at 4, 6-7 ("[E]liminating the mark-up will stifle the growth and development of existing programming..."); NCTA Comments at 6-8 ("[I]t would disadvantage cable operat[ors] and diminish their incentive to invest in existing programming services").

[3] Lifetime provides an example of the escalating programming costs faced by cable programmers. Lifetime's "total programming investment has grown more than tenfold" over the past decade and has more than doubled since 1990. Lifetime Comments at 9-10.

Programmers commenting in this proceeding also have expressed concern that the Commission's proposal would skew cable operator investment in favor of new programming services. See Discovery Comments at 5-6; Lifetime Comments at 2-4; Viacom Comments at 4-7. Clearly, as ARC explained in its Comments at 10-12, the Commission's proposal would have a disproportionate impact upon regional programming services which the Commission already has recognized as necessarily tending to have higher costs. The addition of programming for a new team or league by a regional sports network would only exacerbate that disparity.

The record in this proceeding is unequivocal: (a) there is no empirical support for the Commission's proposal to eliminate the existing margin on increases in programming costs; and (b) implementation of such proposal would adversely affect the quantity and quality of programming offered over existing cable programming services, particularly higher-cost regional services. In an effort to constrain regulated cable rates, the Commission would stifle "the continued growth of programming diversity" which it recognized as a critical objective when initially establishing external cost treatment for programming cost increases.[4] Thus, ARC respectfully submits that the Commission should abandon its current

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[4] See First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, 9 FCC Rcd. 1164 (1993), at ¶90; NCTA Comments at 6-7.

proposal to eliminate the modest mark-up on cost increases in existing programming services and reconsider its decision to preclude such mark-up on cost increases in newly-added programming services.

February 13, 1995

Respectfully submitted,

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