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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In the Matter of:	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 1995	)	MD Docket No. 95-3
	)	
Regulatory Fees for the 1994 Fiscal Year	)	

COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION.

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Comments of the Cable Telecommunications Association

1. The Cable Telecommunications Association, Inc., ("CATA"), hereby files comments in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

2. Bowing to exigencies imposed upon it by the Congress, the Commission has proposed dramatic increases in Regulatory User Fees for FY 1995. Cable television operators are particularly impacted by the Commission's proposal. Cable system fees would be increased by 37 percent, CARS fees by 154 percent and, unbelievably, fees for the receive only satellite terminals that have become the primary conduit of cable programming would increase by over 8000 percent!

3. Under the Commission's proposal, a system with 1000

subscribers, one CARS license and several satellite dishes would suddenly owe the federal government approximately $2000 a year. Even a small multiple system operator (MSO) would have to pay hundreds of thousands of dollars a year; a large MSO, for its pains, would owe millions. Somewhere, lost in the Commission's process of accounting and finance something has gone terribly haywire.

4. The monies sought by the Commission are the latest example of big government run amuck. The Commission cannot simply give a bureaucratic shrug, assuming that significant new expenses will be passed through to the ultimate users of communications services -- in this case, cable subscribers. First, of course, new regulations that increase consumer cost should be avoided, period. "Planet Washington" cannot continue the habit of burdensome regulation at the expense of the taxpayer. Second, for sound business (and political) reasons, it will not be possible for many cable operators to increase fees to recover huge new federal levies. With the recent loosening of the Commission's stranglehold on cable rates, it is all operators can do to fashion rate increases, acceptable to the consumer, to finance new programming, new equipment, system re-builds, and investments in new services, much less the more mundane necessity of taking increases to cover inflation, increased franchise fees and higher programming costs. At some point, even if a beneficent government permits them to do so, cable operators

cannot raise rates.

5. Earth Stations. The most extreme example of the Commission's proposed new user fee increases is for use of receive-only satellite earth stations. Based only on a desire "to eliminate the disparity in the fee requirement for receive only antennas above and below 9 meters," the Commission is proposing to increase fees from $6.00 for each terminal to $120 per meter. For most terminals used by cable systems, this means an increase of close to $500 per dish. Since multiple earth stations are usually installed at each headend, this fee falls heaviest on small systems, and particularly on small companies owning many small systems. The potential extra imposition of $1500 per headend for companies with hundreds of headends is of serious concern. There is no indication the Commission was aware of this potential impact when it proposed this rule change.

6. We note initially that the "disparity" in fees between larger and smaller earth stations was created by Congress and is not the result of accident or chance. Congress is owed some presumption that it intended the consequences of its actions. The Commission cannot merely seek to impose its view of symmetry on the structure created by the Congress by eliminating "disparity." It is reasonable to assume that Congress knew, as the Commission should have, that there are thousands of smaller earth stations used by cable systems and chose not to overburden

these systems as a matter of sound public policy. The flexibility granted the Commission to make "permissive" changes in the Congressional fee schedule surely did not include completely ignoring some very real differences built into the fee schedule. CATA maintains that by correcting what it perceives to be a "disparity," the Commission will be violating the law.

7. The Commission should also take account of the nature of the regulatory relationship between users of the smaller receive-only earth stations and the government. These earth stations are not licensed in the usual sense of the term. Rather, in order to obtain protection from terrestrial microwave signals, users of the terminals are permitted to register at the FCC. Registration is not mandatory, but neither is it without cost. There is a filing fee of $265.00 to register a receive only earth station. This fee, presumably designed to defray Commission administrative costs, pays for an absolute minimum of regulation. A registration filing is checked to see if the fee is correct, the filing is put on public notice, there is a cursory review of the filing (the engineering work has already been done by a private coordinator paid for by the applicant) and some data is keypunched for Commission record-keeping. For the next ten years, until the opportunity for renewal, nothing happens -- nothing. There is no "enforcement, policy and rulemaking and international activities" associated with the care and feeding of the small earth station registrations. In other words, the

registration process is an extremely low maintenance activity. Under these circumstances, an 8000 percent increase in user fees seems anomalous.

8. It is the simplicity of small earth station regulation that has prompted many cable operators to engage in the process. There are undoubtedly many unnecessary earth station registrations from systems in areas where there is really little threat of interference, or from prior years when these earth stations were licensed and have remained on the books. Surely, before the Commission penalizes the holders of these registrations with enormous fee increases it should give them the opportunity to hand in their registrations and depart the process. Unlike licensees who cannot operate without Commission permission, cable operators desiring to use small earth stations need not be captive to regulation. Many have already decided to use small earth stations at their own risk without government involvement. The rest should be given the opportunity <u>before</u> they are charged increased fees. Clearly they will be turning in those licenses in any event should these fees be imposed, so the Commission's fee structure assumptions going forward will be skewed almost immediately upon adoption. To retroactively charge the increased fees when an operator, given adequate notice, would have turned in its license to avoid the undue imposition, is simply not fair.

9. Finally, we must note the irony of adopting "going forward" rules designed to promote the carriage of new programming followed by the sudden imposition of a sudden and crushing burden on the means of receiving this very programming. We can only presume that the Commission does not intend to perform in such a contradictory fashion. Perhaps this is a classic case of the left hand not knowing what the right hand is doing. Hopefully, as a result of the comments in this proceeding, the Commission will focus more intently on its proposal.

10. Cable Service and CARS Fees. CATA recognizes that the Commission is required by law to impose user fees and adjust these fees in order to account for increased costs for enforcement, policy and rulemaking and international activities and user information services. We are constrained to note, however, that there should be some review of what these activities have entailed and whether there should be some relationship between what a cable operator must pay and what the Commission has done. For instance, as of December 31, 1994, the Cable Services Bureau, augmented staff and all, acted on only 525 of 7566 rate complaints. The result of this enterprise has been that only 23 systems have been ordered to pay refunds to their subscribers. Without arguing whether these refunds were justified, we point out that the ratio of refunds ordered to cases considered displays a significant programmatic defect in

the Commission's approach to enforcement. It is not clear why industry should bear the burden of paying for this.

11. During the same period, the Commission's cable-related rulemaking activity has been largely devoted to correcting what it perceived to be the inadequate product of rulemaking activity from the year before. In addition to adopting new rules that changed entirely the theory and means of rate regulation because, quite frankly, the Commission concluded that it didn't do its job properly before, the Commission has had to amend many of its regulations (we are now up to the ninth reconsideration of the Commission's rate regulations), in order to relieve cable systems of what the Commission has admitted were onerous and unnecessary burdens that had the effect of slowing the industry's growth, or, in the case of small systems, reducing them to penury. Much of the Commission's informational services devoted to its cable regulations have been to explain these mistakes. Now the Commission explains that in order to cover the costs of all this revisionist activity, much of it de-regulatory, it must charge cable operators (and subscribers) more money. Again, we wonder why industry and the consumer should bear the cost.

12. Payment Schedule. For a cable system serving 5000 subscribers, the proposed increase in user fees from 37 cents per subscriber annually to 51 cents per subscriber annually amounts only to an increase of approximately 12 cents a year. The process for claiming user fees as an external cost, however, when combined with the Commission rules for recovering other external costs creates a disincentive for cable operators to make themselves whole. In October of 1994 TKR filed with the Commission a petition arguing that, for business reasons, operators should be able to choose when external costs would be recovered. CATA supported TKR's petition. To date, the Commission has not acted. Many operators would prefer not to be forced to recover external costs according to the Commission's schedule, whether it be some amount per month starting at a particular time (in the case of user fees) or at the beginning of a quarter (in the case of going forward expenses). For sound business reasons some operators would rather not raise rates as often as the rules dictate and, in the case of user fees, would rather not change their rates during the year in order to account for the fact that most fees are not evenly divisible by 12. Constant variation in rates is confusing to the subscriber and expensive for the operator. Since it would appear that the

Commission will be adjusting user fees on an annual basis, this problem will not go away by itself. If, as in the case of the above example for instance, annual user fees increase by 12 cents, then a cable operator should have the freedom to determine how the increase will be recovered -- either on a one time basis, perhaps in conjunction with an increase to recover other external costs, or according to a regular schedule.

13. Conclusion. CATA urges the Commission to weigh the impact of proposed cable television user fee increases together with other costs imposed upon the industry. While we understand that the Commission is forced to raise user fees, the proposed increases are beyond what many systems will be able to pass through to subscribers. In particular, the outrageous proposal to increase user fees for receive only earth stations by more than 8000 percent represents a failure of the Commission to consider the potential impact of its actions. The Commission has taken pains in its regulations to ensure that all rate perturbations be announced in advance and explained to subscribers. The Commission then adopted rules requiring operators to increase rates according to a schedule, thus ensuring that operators entitled to increases would have to take the increases and notify subscribers at least four times a year.

Now, as part of this notification process, cable operators will have to explain further increases brought by courtesy of the federal government. What is the cable consumer to make of all this?

Respectfully submitted,

THE CABLE TELECOMMUNICATIONS ASSOCIATION

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