

EX PARTE OR LATE FILED

National Cable Television Association

Daniel L. Brenner
Vice President for Law &
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February 28, 1995

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

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FEB 28 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**EX PARTE PRESENTATION
DOCKET NO. MM 92-266**

Dear Mr. Caton:

On February 23, 1995, Diane Burstein (National Cable Television Association) and I spoke with Paul D'Ari, Larry Walke and Cindy Jackson of the Cable Services Bureau. In that meeting, we discussed issues addressed in NCTA's Opposition to the Petition for Reconsideration filed by the National Association of Telecommunications Officers and Advisors, as well as NCTA's Comments on the Petition for Reconsideration filed by TKR Cable. Pursuant to Section 1.1206 of the Commission's rules, our discussion is summarized below:

- The FCC should allow operators to pass through all external cost increases upon 30 days' notice to local franchising authorities. Subscribers will be protected against unlawfully high rate increases because a franchising authority can order refunds. Even if an operator may later pass through all external costs based on some accrual method, failure to allow automatic pass throughs will impose another confusing layer of rate calculations on operators, and will cause more frequent rate adjustments than would be desirable from an operator's or consumer's perspective.
- The Commission's current policy is to examine an operator's entire CPS rate where a complaint is filed against a rate increase, even though the underlying rate has not been subject to a complaint. This practice is inconsistent with the statute, which provides for a 180 day window during which to complain about rates in effect at the time of the rule's adoption. That window has long passed, and an operator's rate in existence at that time should not be subject to review at a later date.

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Mr. William Caton, Acting Secretary

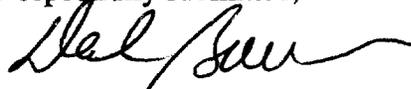
February 28, 1995

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In addition, the attached letter was delivered today to the addresses and names mentioned at the bottom of the letter.

Any questions regarding this filing may be addressed to the undersigned.

Respectfully submitted,



Daniel L. Brenner

DLB:smp

Attachment

cc: Paul D'Ari
Larry Walke
Cindy Jackson

National Cable Television Association

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Delivered By Hand

Meredith Jones, Esquire
Chief, Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., Room 918
Washington, D.C. 20554

Dear Ms. Jones:

As we have discussed there are substantial problems with the application of inflation to Form 393, 1200 and 1210 filings, leading to confusion and determinations that inflation was incorrectly adjusted. We would propose that no refunds or rate reductions should be ordered due to inflation errors on the Form 393. Operators should be directed to true up inflation with the next Form 1210 inflation adjustment, by taking the difference between 5.215% (the right inflation from 9/30/92 through 6/30/94, per the Ninth Order) and whatever was "kept" from the Form 393 when going to Form 1200 rates.

The Bureau is aware of the justifiable confusion which arose from setting rates using GNPPPI information embedded in the form. This inflation issue is a transitional issue arising for nine months during the Form 393 regime. After May 15, 1994 (July 15 for some), rates dropped to Form 1200 levels and removed the inflation taken on the Form 393. Using August 1993 Commerce information, a rate calculated for filing in November would use a factor of 1.0409. Using the next Commerce release, the factor would have been 1.036553.

But the Bureau may be unaware that in addition to this problem, there are now three methods by which the Bureau has been calculating inflation, all of them inconsistent.

Form 393 Software: First, the Form 393 software provided by the Commission, and which we are told not to alter, runs the inflation calculation out to more than four decimal places (as required by instructions) and inflates the rate through the month preceding filing. Thus, using *current* Commerce information, the Form 393 will calculate an inflation factor for a November 1993 filing of 1.030708, and for a December 1993 filing of 1.03307. (These calculations have previously been provided to Greg Vogt by Paul Glist).

Optional Plan Notice: Second, the Optional Plan Notice runs the inflation calculation out to two decimals and inflates the rate through the month preceding filing. This has the effect of reducing inflation from the levels calculated on the FCC's software. Thus, using *current* Commerce information, the Optional Plan sets an inflation factor for a November 1993 filing of 1.030, and for a December 1993 filing of 1.032, both of them less than the FCC's software.

Meredith Jones, Esquire
February 28, 1995

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Rate Decisions: Third, certain individual rate decisions state that those who filed in November 1993 should have taken inflation only through September, 1993, rather than October, 1993, which is contrary to the instructions on the Form and contrary to the calculations of the Optional Plan Notice. Also, it is contrary to the Commission's rules establishing Nov. 15, 1993, as the legal filing deadline for responses to complaints submitted prior to October 15. Operators had been clearly told in 1993 to calculate inflation through to date of filing, which therefore would have used the October 1993 date.

In addition, we submit that because the Bureau continues to use Commerce information whether or not it was available at the time of filing, and that information changes quarterly, anyone who computes a rate using one of the foregoing methods will still be "wrong" once the next quarter's information is published in a few weeks.

Neither cable operators nor the Bureau have intentionally done wrong on inflation, but there is now massive confusion being imposed retroactively on what should be a small and soluble problem.

In basic fairness, cable operators should not be penalized for trying to voluntarily come into compliance with complex and constantly changing rate calculations, particularly when the Bureau itself has been inconsistent on this matter. In addition, in many cases, the amounts may be regarded as de minimis, not justifying refunds.

This is why we suggest that the Form 393 inflation issue be handled like inflation in the Ninth Order. We now know that 5.215% is the "right" inflation from 9/30/92 through 6/30/94. No refunds or rate reductions should arise from inflation errors on the Form 393.

We urge you to consider changing the inflation rule as mentioned in this letter to avoid needless and avoidable confusion that has resulted.

If you have any questions, please call me.

Sincerely,



Daniel L. Brenner

DLB:tkb

cc: Blair Levin, Chief of Staff
John Nakahata, Special Assistant
Maureen O'Connell, Legal Advisor/Mass Media
Lisa Smith, Legal Advisor
Jill Lockett, Special Advisor
Mary McManus, Legal Advisor
Greg Vogt, Deputy Chief, Cable Services Bureau
William Caton, Acting Secretary