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OCT 13 1995

October 13, 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**BY HAND**

Mr. William F. Caton  
Acting Secretary  
Room 222  
Federal Communications Commission  
Washington, D.C. 20554

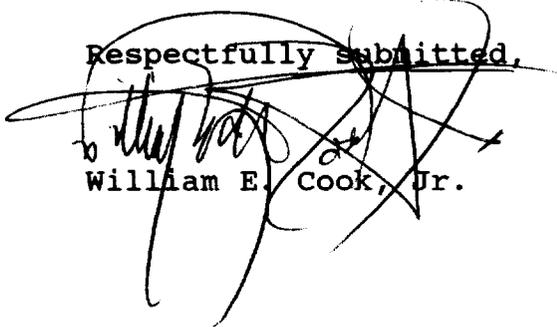
Re: Written Ex Parte Presentation in  
MM Docket No. 92-266

Dear Mr. Caton:

In accordance with the Commission's ex parte rule, 47 C.F.R. §1.1206, two copies of the enclosed written ex parte presentation are being filed in MM Docket No. 92-266 on behalf of the National Association of Telecommunications Officers and Advisors. The written presentation was sent by telecopier to Meredith Jones and Nancy Stevenson of the Cable Services Bureau.

Please contact me if you have any questions regarding this matter.

~~Respectfully submitted,~~

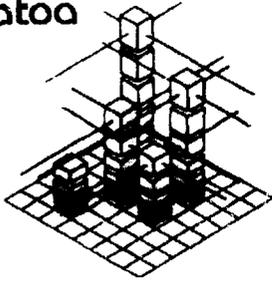
  
William E. Cook, Jr.

cc: Meredith Jones  
Nancy Stevenson

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**The National Association of  
Telecommunications Officers  
and Advisors**

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12 October 1995

Meredith Jones, Chief  
Cable Services Bureau  
Federal Communications Commission  
1919 M Street NW  
Washington, DC 20554

RECEIVED  
OCT 13 1995  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

RE: Ex parte written presentation  
Comments on Proposed Form 1240  
MM Docket 92-266

Dear Ms. Jones,

At the request of Cable Bureau staff, the NATOA-FCC Liaison Committee has reviewed the proposed Form 1240 for "once a year" rate regulation filings.

We herewith submit our preliminary comments, with the understanding that the one week turn-around requested by your staff does not allow very much time to thoroughly analyze such an intricate and complex form and accompanying instructions. Therefore, our comments on the form are only preliminary at this point, and we will continue to advise the Commission on the usefulness and effectiveness of this particular form.

Nothing in these comments should be construed to imply agreement with the Thirteenth Order on Reconsideration (FCC 95-397) as published in the Federal Register on October 5, 1995. We reserve the right to file a petition for reconsideration on this new set of rate regulation rules.

These comments are made with the assumption that we are to suggest only changes which would comply with the Rules as currently issued. Therefore we:

- a) point out places where the Rules and the Form instructions seem to be inconsistent/confusing;
- b) request specific additions and/or changes to the actual form worksheets and modules and written instructions;
- c) identify places on the form where the information to be used may create skewed calculations or results which would cause subscribers to pay higher rates than they should under the rules.

Thank you for the opportunity to comment. A copy of this letter is being filed with the Secretary's Office. Please feel free to phone me if you have any questions.

Sincerely,

Susan Littlefield  
Chair - NATOA Regulatory Affairs

cc: Secretary's Office  
NATOA - FCC Liaison Committee

**LOCAL GOVERNMENT PRELIMINARY COMMENTS ON FORM 1240  
Submitted by NATOA - October 11, 1995**

**GENERAL COMMENTS**

**A> The form is way too complex overall.**

Quite frankly - the rules and forms are extremely problematic and potentially harmful to subscribers deserving reasonable rates. With all due respect, let us say that the rules themselves, accompanied by the Order are repetitive and confusing to wade through. Unless the instructions are amplified, one is forced to refer to the Rules or Order too often for clarification, leading to unnecessary opportunities for confusion or dispute.

The 1240 Form is certainly not simplified compared to those we have seen before. Alarming, our accountants are telling us that determining appropriate rates with these forms will be even more difficult and expensive for local governments than the 393s or earlier 1200 series filings. In some ways, they add, the Cost of Service forms are actually more straightforward.

*We had anticipated a very simple approach which showed*

current approved rate  
total current external cost calculation portion  
  
new allowable capital external cost increase  
return on costs  
new allowable operating external cost increase  
return on costs  
channel adjustments  
  
proposed new rate

**B> Unlike the 393 forms, you have not yet routinely included instructions to attach explanations for the method of calculations/derivations for numbers included on the form. We request that you do so throughout the form and especially for Worksheet G.**

LFA's (and the FCC) should have some backup arithmetic / methodology / etc against which they can evaluate the reasonableness of the numbers provided and therefore the proposed rate.

If we are to act within 90 days, we should not have to ASK for information about where these numbers came from. If the OPs can come up with a number, it is reasonable to expect they can explain HOW they did so on the front end.

This avoids problems and time delays for everyone. A complete form, with complete attachments can be processed much faster.

**The form should be considered to be facially incomplete if such information is not attached.**

**C> Specific guidance is needed as to the type of documentation required to show what are included as franchise requirement projected costs and how these were calculated. This links back to the attached explanations issues.**

See more detailed comments on Worksheet 7 below.

**GENERAL COMMENTS con't****D> Does it really work?**

Would it be possible for some volunteer operators to actually fill out a form 1240, so we can see how it all fits together? It is very hard to evaluate in the absence of numbers.

**E> Amendments will be a problem as currently allowed in the Form Instructions.**

If we receive an amended 1240 on the 59th day so different from the first one that you basically have to start over, why only 30 days instead of 90?

Not only is this instruction unfair and encourages games with the timing of submissions. In addition, under the FCC's own requirements for public comment and response, 30 days is insufficient to adequately review the rates and discuss any proposals with the Operator.

**F> Variable periods are a problem.**

If the rate periods/projected periods and true-up periods are not tied to a standard accounting period, there is a lot of room for unfortunate games.

Especially in regards to projections, how can one compare the projections with the real numbers, unless there is an understandable paper trail which can be checked, and unless the periods are the same length?

All periods should be 12 months. Operators often make annual adjustments at the end of their fiscal year. Regardless of when the fiscal year ended in that 12 month period, those adjustments would be captured in historical or projected periods as long as they are 12 months.

Seasonal fluctuations are an even more important factor in rate variables. For example, Ocean City Maryland discovered program costs are higher in the summer because there are fewer subscribers than in wintertime. Use of a 12 month period would level this churn and provide for fairer and more reasonable rate calculations.

**COMMENTS ON THE INSTRUCTIONS PAGES 1 - 8****TRUE-UP "AWARD"**

**A. We request that "award" be changed to the more neutral "adjustment" throughout the document.**

While it may seem a minor point, the choice of the word "award" is not appropriate on the form or in the instructions: it implies "reward"; it implies that an operator has somehow been previously wronged - hardly the case when rates are set on numbers submitted by operators themselves. Since a "true-up" can theoretically take a rate up OR down, adjustment is the better choice of words throughout the form and instructions.

**B. True-ups are/should be (?) required every twelve months.**

The form instructions currently state that operators may choose the true-up time period. Yet under the Rules, decreases in costs must be passed through to subscribers annually, while increases in costs may be passed through to subscribers annually. It only makes sense that true-ups must therefore be recalculated annually in order to determine if a decrease is in order, and we would suggest that the form instructions make this clear. We find confusion between the Order, the Rules and the Instructions.

If there is a limitation on the true-up, or Op does not have to file, how do you determine decreases????? If the operator does not have to file annually, subscribers may well be paying unreasonable rates during the extended time period.

Leaving the true-up period to the discretion of the cable operator also creates a problem if they choose to go back to a 1210...we understood the rules were to be that you pick one or the other, but then you cannot go back to a 1210 once you begin annual.

**C. "Calculating True-Up Period" Instructions page 5 first paragraph  
Instructions page 6 - first two lines**

We request that you please make clear in the instructions that overcharges earn interest for subscribers for the entire period of the overcharge, until the adjustment is made on the next rates or bill.

**D. Please also see comments below on Part II Module G**

**E. If Op does not complete a true-up every twelve months (whether taken or not) what does that do to refund liability window of 12 months???????**

For example, if an operator does not make a filing for 2 years, and subscribers were overcharged during those two years, are LFAs prohibited from ordering refunds for the entire two year period?

**F. Contradiction between Rules page 9 (ii) and Instructions page 3 (Timing).**

Please review these two sections and advise.

If an operator is not required to file, how can one determine and incorporate a decrease? Instructions do not make clear that Operator must file annually if they have overestimated their costs and therefore charged excessive rates.

### FORM 1240 COVER SHEET

We request that a new SUMMARY cover sheet be added on the front of the current cover sheet to avoid confusion by including the following NEW boxes:

Operator Name \_\_\_\_\_

CUI Number \_\_\_\_\_

Franchise Authority \_\_\_\_\_

DATE OF THIS FILING \_\_\_\_\_ (day received by LFA or FCC)

*Please check the appropriate box and complete the rest of the information required for this filing.*

- a)  Original 1240 for Basic Tier
- b)  Amended 1240 for Basic Tier

- c)  Original 1240 for CPST
- d)  Amended 1240 for CPST

Period \_\_\_\_\_

Period \_\_\_\_\_

Previously approved rate \$ \_\_\_\_\_

Previously Approved Rate \$ \_\_\_\_\_

Proposed new Rate \$ \_\_\_\_\_

Proposed New Rate \$ \_\_\_\_\_

Date Rate Proposed to go into Effect

Date Rate proposed to go into effect

\_\_\_\_\_

\_\_\_\_\_

Such information would make it much easier for LFAs to understand what they are being given, how much time they have to act, and what the proposed rates are. We have often been confused as to whether we are receiving a filing we must act on, a copy of something submitted to the FCC etc.

The existing cover sheet contains useful information - but not what we need.

Please see cover sheet for 393, which was more useful.

**PART II. Module G Lines 1,2,3  
"REVENUES" versus "RATES"**

The 1240 Form is flawed because it compares previous year's actual revenue with proposed necessary revenue for the projected rate year in order to calculate the new rate.

Rate regulation is based on a per subscriber rate and the allowable increases which can be added to that rate for the coming year. It is not based on revenues received.

Cable operators make more or less money in a given year depending on numerous variables, many of which are within their control:

- subscriber churn and resulting pro-rated credits for disconnections
- customer satisfaction credits for poor service issued on individual accounts
- how many customers do or don't pay their bills
- special promotions and rate reductions to get new customers
- timing of posting payments

It is not the subscriber's problem if the operator - for whatever reason - makes less money than it had projected. For example, actual revenues may be less than projected revenues because of discounts the operator may choose to offer during the projection year.

The Forms's use of previous year revenues to calculate rates encourages "gaming" while placing an unfair burden on subscribers to guarantee a revenue stream regardless of the business decisions, marketing strategies or performance of that operator during the previous year.

*The Rules do not allow recovery of promotional discounts. In fact, the costs of promotional discounts were built into the benchmark rate, and therefore should not be recovered from subscribers in external cost adjustments. Such would be the case here, unless the form is changed.*

Rather, in the 1240 approach, the projection formula should be

$$\begin{aligned}
 & \text{[current per subscriber rate]} \\
 + & \text{ [undercharge or overcharge per sub] } \quad \text{[total allowed undercharges or overcharges} \\
 & \qquad \qquad \qquad \qquad \qquad \qquad \qquad \qquad \text{- divided by - avg \# of subs} \\
 & \qquad \qquad \qquad \qquad \qquad \qquad \qquad \qquad \text{= per sub amount ]} \\
 + & \text{ [interest calculations on } \underline{\text{rate}} \text{ differential, not revenue differential]} \\
 = & \text{ NEW RATE PER SUBSCRIBER}
 \end{aligned}$$

Operators should only be allowed to make up RATES that were too low, NOT REVENUES that were too low.

Module G1 establishes a revenue that is - or may be - artificially low compared to the projection for the previous year.

Module G2 is a mythical number which assumes all subscribers counted paid the full amount for full months of service, etc.

Module G3 is therefore not a valid indicator.

**PART III**

**Instructions page 16 "Exclusion of Franchise Fees"**

**A. What is the "maximum permitted level" ?**

**B. Correct second sentence.**

**"Franchise fees you pay should (may?) be added to ~~your monthly basic~~ the appropriate service tier rate as part of the service when billing your customers."**

**Obviously, since this Form 1240 is used for both BST and CPST, it is not a good idea to imply that the entire Franchise Fee is applied only to BST, or that a Franchise Fee is not due on the CPST.**

**WORKSHEET G and Instructions for Same**

There are a lot of problems here. Some can be solved by instructions for appropriate attachments, as was done in the 393 series.

It is important that LFAs and the FCC receive a description as to how these number was derived, in order to determine the reasonableness of the proposed rate, the accuracy of the projected costs, what was or was not included, etc.

These must be submitted on the front end!

**A. Incorrect base date????**

G-1 Instruction needs to be changed? Do you really mean 5/14/94 when there have been 1210s and other adjustments already in the 2 years between 5/14/94 and when this form comes into play?

We note that retransmission consent fees cannot be applied before 10/4/94.

**B. Confusion in form over period covered.**

G-2 It is confusing for the same page to be used for both historical and projected data simply by entering the "period covered". Since Worksheet G is apparently to be used for both True-Up and Projected Costs, we suggest that you use a differently lettered worksheet for the two different kinds of calculations, or - at least - add two boxes to this page which should be checked for "True-Up" or "Projected" calculations.

G-3

For all entries, operator must show a list of both increases and decreases in costs that were included to arrive at the numbers.

**B. Possible error or room for misunderstanding regarding taxes and subscriber paid fees.**

It is our understanding that the Rules do not provide for a markup on taxes. In reading the form and instructions, we do not see guidance to that effect.

G-6 Line 6 should not be included or must be reworded to ensure that it does not include sales taxes, cable entertainment taxes, etc which are paid by subscribers, not operators.

Cable operators often merely collect taxes from subscribers on behalf of the state; they should not receive a mark-up on taxes paid by subscribers.

If there are cable-specific taxes imposed on operators and not subscribers and not passed through to subscribers as a line item on the bill, we would suggest that really Ops should not receive a mark-up on those taxes either. Why should subscribers pay a profit margin on taxes operators must pay to do business?

G-8 For the same reasons, Operators should not receive a markup on fees which are directly imposed on subscribers by the FCC. This should not be part of the rate calculation at all.

See also page 4 of Instructions #2 "External Cost Segment" for the problematic language.

**C. Unjustified numbers which will require documentation.**

G-7 We request that the following instruction be added to this line.

***"Attach a complete list of all costs included in Line 7, how calculated and when they were paid."***

This figure **MUST** be justified when the filing is submitted. LFAs need not only a simple "arithmetic" check, but the breakdown on numbers. These should be line-itemed and described, including dates when they were paid if it was a onetime cost, and methods of interest or markup calculations if used. LFAs will need to determine how the Op arrived at and calculated the number, and whether or not past costs already built into past rates have been re-included.

The entire system will break down, and rates will simply have to be refused within 90 days if this information is not provided.

The instructions should state that ***"the 1240 will be considered facially incomplete if detailed attachments and explanations are not included."***

**D. The instructions should make clear that allowable capital costs must be amortized over their useful life.**

Since it says so in the Order, it would be helpful if the instructions repeated this point on the front end.