

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

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In the Matter of)
)
Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992 -- Rate Regulation)
)
Uniform Rate-Setting Methodology)

CS Docket No. 95-174

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COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION INC.

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SUMMARY

NCTA supports the Commission's reexamination of its rate rules to determine whether allowing cable operators to charge a uniform rate across franchise-specific boundaries serves the public interest. In particular, NCTA's comments argue that:

- giving operators the option to establish uniform regional rates will serve the public interest by enhancing operators' marketing efforts and minimizing administrative burdens;
- operators should have flexibility to establish uniform rates across integrated systems and for multiple separate systems;
- uniform rate-setting should not be restricted to systems located within the same Area of Dominant Influence but should be permissible in reasonably proximate systems;
- operators should have the choice between either methodology proposed in the NPRM; operators should be able to lower basic rates to a single uniform level and recoup lost revenues through establishing a uniform cable programming service tier rate or should be able to average rates for both the basic and cable programming service tiers to achieve rate uniformity;
- procedures should be established to ensure that local franchising authorities' review process does not inhibit implementing system-wide rates;
- cable operators should be permitted to advertise their uniform rate, separate from any franchise and PEG related charges; and
- systems with single basic tiers should be permitted to establish uniform rates.

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**COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its Comments in the above-captioned proceeding.¹ NCTA is the principal trade association of the cable television industry in the United States, representing cable operators, programmers, equipment suppliers, and others interested in or affiliated with the cable industry.

INTRODUCTION

The Commission in this proceeding seeks comments on modifying its rate rules to give cable operators the option to set uniform rates for uniform cable services offered in multiple franchise areas. The Notice proposes two alternative approaches that would

¹ Notice of Proposed Rulemaking (rel. Nov. 29, 1995).

enable operators to establish rates for regulated cable service on other than the existing franchise-specific basis. Operators instead under the proposals would be able to establish uniform basic and cable programming service tier rates across franchise boundaries.

NCTA applauds the Commission's reexamination of its rules to determine whether they can be modified to afford an operator the opportunity to establish a single system-wide rate. As described below, the Commission can achieve its goal of protecting subscribers against paying unreasonable rates and at the same time allow operators the flexibility to establish rates that more accurately reflect their service areas and system-wide operations than the current rules. Adopting rules to allow uniform rates will simplify rate calculations, will enable operators to advertise on region-wide basis, and will serve the public interest.

DISCUSSION

I. ALLOWING OPERATORS TO CHARGE RATES THAT ARE UNIFORM THROUGHOUT A GEOGRAPHIC REGION WOULD SERVE THE PUBLIC INTEREST

Several developments since the onset of rate regulation in 1993 have affected the ability of operators to establish a single rate to be charged to their cable system subscribers. First, the Commission adopted a method of benchmark rate regulation that requires operators to include certain franchise-specific variables in deriving their maximum permitted rate -- such as median income in the community and number of additional outlets and remote control units in the franchise area. Mandatory inclusion of

these factors virtually guarantees that even subscribers to the same system with identical channel line-ups will pay amounts that may vary, even by a few pennies.

Second, the Commission has allowed operators to charge rates reflecting system-wide variables only if all relevant factors, including service and equipment rates, channel line-ups and franchise fees are identical, and only then if the franchising authorities involved agree.² As a result, current rules severely restrict the number of operators even eligible for system-wide rates, and provide that even a single franchising authority can unilaterally defeat any attempt to gain rate uniformity.

Third, the Commission's rules establish precise amounts that must be added to, or subtracted from, a rate where an operator makes changes in its channel line-up. For example, an operator adding a channel may at most increase rates by 20 cents plus the cost of programming under the going forward rules. An operator deleting a channel from its line-up, substituting one channel for an existing channel, or moving a channel from one tier to another, also must modify its rates by a prescribed formula.³ As a result, an operator that, for example, desires to consolidate operations of two previously separate systems may face significant rate disparities even after the consolidation occurs.

² See, e.g., Public Notice: Cable Television Rate Regulation, Questions and Answers (dated May 13, 1993) at 9.

³ 47 C.F.R. §§76.922(e)(4), (5) and (6).

These rules thus deny operators the ability to adopt uniform rates for a single integrated system or to even move to a uniform lineup with uniform rates for commonly-owned systems. In so doing, the rules impose unnecessary costs on operators and franchising authorities and generate confusing rate structures for consumers.

Allowing operators to charge uniform rates will serve the public interest in several ways. Operators will be able to more efficiently and effectively market their services, through advertising on a regional basis. Customer service operations will benefit, as customer service representatives are not faced with a confusing array of slightly different rates throughout a system. Operators also will face reduced administrative burdens in calculating rates, and in minimizing the need for multiple rate filings. And operators will be able to compete more effectively against other video service providers that are not tied to the franchise area rate structure.

II. THE COMMISSION HAS AUTHORITY TO ESTABLISH A METHODOLOGY FOR ACHIEVING REASONABLE RATES ACROSS MULTIPLE FRANCHISE AREAS

A. The 1992 Cable Act Allows For System-Wide Uniform Rate Calculations

The Notice asks whether allowing operators to establish uniform rates "would protect subscribers from unreasonable rates in accordance with the 1992 Cable Act."⁴ Subscribers will be fully protected against paying "unreasonable rates," as the

⁴ Notice at ¶20.

Commission's proposals will ensure that any modifications to franchise-specific rates are accomplished in a "revenue neutral" fashion.⁵ As a result, subscribers will pay no more than a rate the Commission has already determined under its rules to be reasonable overall, based on the Form 1200 calculations and any subsequent external cost and inflationary adjustments.

Allowing operators to charge uniform rates is entirely consistent with the 1992 Act. While the Commission is required to set standards for basic service tier ("BST") and equipment rates and criteria for ensuring that CPST rates are not unreasonable, the Act does not require a particular ratemaking methodology. And the 1992 Cable Act does not require the Commission to establish a regulatory framework that identifies the one particular reasonable BST or CPST rate peculiar to each of the thousands of franchise areas in the country. Nothing in the Act compels the Commission to look only to "franchise areas" as the appropriate measure for which rates can be established.

Moreover, the 1992 Act directs the FCC not only to establish formulas to regulate rates, but to do so in a way that minimizes unnecessary regulations that impose undue economic burdens on cable operators⁶, and reduces administrative burdens.⁷ Uniform rate setting certainly furthers these statutory goals.

⁵ Id. at ¶¶18-19.

⁶ 47 U.S.C. §521(6) (purpose of the 1992 Act).

⁷ 47 U.S.C. §543(2).

B. A Uniform Rate-Setting Approach is Consistent With Local Franchising Authorities' Obligation to Implement the Commission's BST Rate Regulation

Creation of a uniform rate-setting approach does not impede or usurp local franchising authority ("LFA") regulatory authority over the BST. Under the 1992 Cable Act, the Commission is directed to "prescribe, and periodically thereafter revise" regulations for BST rates and equipment and to ensure that these rates are reasonable.⁸ Once the Commission establishes substantive and procedural rules for the BST and equipment, LFAs are authorized to enforce these rules and procedures.⁹ In short, the Commission sets the BST rules and procedures, and the LFA implements them. The same will be true under a uniform rate-setting approach: The Commission will establish the rules and procedures governing when and how cable operators may establish uniform rates, and LFAs will implement and enforce these rules and procedures with respect to BST rates.

Today, an LFA may be required to implement any of a variety of Commission approaches for BST rate regulation -- for example, benchmark, cost-of-service, 7.5% going forward rules, modified going-forward rules, FCC Form 1210, FCC Form 1240, FCC Form 1230, Social Contract lifeline basic service tiers, and so forth. The uniform

⁸ 47 U.S.C. §§543 (b) (2) and (b) (3).

⁹ 47 U.S.C. §§543 (b) (5) (A), 543 (a) (2) (A).

rate-setting methodology will simply be one more approach that the cable operator may select and the LFA will enforce at the BST level.

III. THE COMMISSION SHOULD ADOPT A FLEXIBLE UNIFORM RATE-SETTING APPROACH

A. The Ability to Establish Uniform Rates Should Not Be Limited to Integrated Systems with Identical Line-Ups

As an initial matter, the Notice proposes that “a cable operator be allowed to establish uniform rates for uniform service offerings in multiple franchise areas regardless of whether the operator serves multiple franchise areas with one integrated cable system (i.e., one ‘headend’) or with multiple separate cable systems....”¹⁰ We agree that the benefits of rate uniformity should not be limited to operators with a single system with a single headend. There are a variety of historical, operational, or technical reasons why an operator may provide service through separate systems, rather than a single integrated headend. But there is no policy reason to distinguish between operators for rate purposes based on the technical configuration of their systems. Rate uniformity would benefit operators with several discrete systems clustered in a particular area as well as operators that have integrated their system operations through a single headend spanning several franchise areas.

Furthermore, the ability to establish single system-wide rates should not be limited to systems with identical channel line-ups. Operators may have neighboring systems -- or

¹⁰ NPRM at ¶13.

even a fully integrated system -- with nearly the same, but not the identical, channel array. These circumstances can occur for several reasons. For example, an operator may have different must carry obligations on one system than another -- or, even within the same system, from one community to another.¹¹ Subscriber tastes in one community may differ from tastes in a nearby community, resulting in the same number of channels of regulated service but different program offerings to subscribers. Operators also may have differing PEG channel obligations from one community to another.

In order to adopt meaningful relief from the burdens on franchise-specific calculations, any uniform rate rules that the Commission adopts should accommodate these differences. So long as the systems are similar in their regulated offerings to a significant extent, rate uniformity should be permissible.

B. Cable Operators Should Be Permitted to Define The Appropriate Region for Rate Uniformity

The Notice also seeks comment on the appropriate geographic boundaries within which operators may charge uniform rates. Specifically, the Notice asks whether a broadcast station's "Area of Dominant Influence" (ADI), or some other region, would be appropriate.¹²

¹¹ See Report and Order, MM Docket No. 92-295 at ¶41 (rel. Mar. 29, 1993) (where technically capable, system straddling multiple ADIs may offer different must carry channel line-ups in different communities).

¹² NPRM at ¶14.

Limiting the region for rate uniformity purposes to the ADI is inappropriate for several reasons. The ADI is used as a market definition for broadcast stations. For cable systems, it may be too large or too small. Whether or not a cable system is located within a particular ADI has no relevance to the communities it serves. And it is not uncommon for a single system, or contiguous commonly-owned systems, to span multiple ADIs.

It is also the case that integrated or clustered cable systems cross county or state boundaries. For example, Time Warner serves several boroughs of New York with its system-wide operation. As another example, TKR's Mahwah, New Jersey system also serves subscribers in Orange and Rockland, New York. Examples of systems crossing county or state boundaries occur throughout the country.

Any blanket FCC rules defining the geographic area, therefore, would in many cases fail to correspond to the boundaries of cable system common ownership. Accordingly, an operator, based on its system configuration and characteristics, should be permitted to determine the region in which it charges uniform rates so long as its systems are reasonably contiguous or generally located within a market. This region may, in fact correspond to the ADI; or to a county; or even a state. But cable systems historically have been constructed or acquired without these geographic boundaries in mind. The Commission should refrain from imposing a geographic limitation that fails to correspond to the reality of the cable system market.

C. The Commission Should Provide Operators Flexibility To Choose the Uniform Rate-Setting Methodology for Their Service Rates

The Notice sets forth two proposals for establishing uniform rates. Under the first proposal, an operator would obtain rate uniformity by lowering its rate to the lowest basic service tier (“BST”) rate, and making up lost revenue by increasing its cable programming service (“CPS”) tier rate.¹³ In the second proposal, an operator would average its rates for both the basic and CPS tiers.¹⁴

Each alternative formula may work for different operators for a variety of marketing and competitive reasons depending on the communities they serve. Some systems may desire to provide their subscribers with a lower cost BST, while others may wish to limit the amount of CPS tier increases that would be necessary in order to be made whole under the first alternative approach.

We do not believe that the Commission should shoehorn all operators into a single approach. Either approach would be revenue neutral to the operator, thus ensuring that operators gain no unfair advantage by choosing one approach or the other. And since subscribers would be protected against paying unreasonable rates in either case, providing an operator with this choice will not adversely affect their customers. In addition, given the difficulty of establishing a “one size fits all” rule, the Commission should also

¹³ NPRM at ¶¶16-18.

¹⁴ Id. at ¶19-20.

entertain case-by-case uniform rate filings to determine whether they serve the FCC's goals.¹⁵

Under either approach, as the Notice recognizes, differences in franchise-required costs and number of PEG channels can cause non-uniform rates.¹⁶ Therefore, we agree with the Notice that these costs should be backed out from the uniform rate and itemized and billed separately.

Providing a separate charge for PEG and franchise-related costs is similar to the approach to subscriber billing currently allowed under the Commission's existing rules.¹⁷ It is also fully consistent with the 1992 Cable Act,¹⁸ which provides that operators may itemize on subscriber bills the amount of the total bill assessed as a franchise fee and assessed to satisfy PEG support or channel use.

¹⁵ While it is true that certain subscribers' rates would increase (while others would decrease) under either approach, there is no reason to force operators to phase-in or limit the amount of any rate increase resulting from shifting to a uniform rate system. Notice at ¶21. Subscribers' rates will reflect only those costs that the Commission has already determined to be reasonable. Requiring a phase-in of rate increases, in any event, will not make operators whole, given that rate decreases will already have taken place. Operators should not be put to the choice of gaining the benefits of a sound uniform rate policy only by forfeiting lawful revenues.

¹⁶ NPRM at ¶¶ 23-24.

¹⁷ 47 C.F.R. §76.985 (a).

¹⁸ 47 U.S.C. §522(c).

D. The Commission Should Allow Operators to Establish Uniform Equipment Rates

The Notice also seeks comment on the desirability of allowing operators to average equipment costs on a system-wide level.¹⁹ The Commission should allow equipment cost averaging, which would be entirely consistent with the Commission's recent approval of social contracts allowing certain operators to average equipment and various installation costs in broad categories over a statewide or regional basis, its existing small system rate rules, as well as the recently-passed 1996 Telecommunications Act.

In the Continental Social Contract, for example, the Commission waived its franchise-specific equipment rules, stating:

The 1992 Cable Act directs the Commission to establish standards for setting, on the basis of actual cost, the rate for installation and lease of equipment used by subscribers to receive the basic tier. As the Commission has previously recognized, the 1992 Cable Act does not mandate the level at which such rates are established i.e., the franchise, system, regional, or company level. Rather, Congress only specified that rates must be based on actual cost.²⁰

The Commission recognized that such averaging is beneficial in that it will reduce the administrative burdens caused by preparing rates on a franchise by franchise basis.

¹⁹ NPRM at ¶¶16, 19.

²⁰ Social Contract for Continental Cablevision (released Aug. 3, 1995) at ¶30.

The Commission found similar public interest benefits in allowing Time Warner to average equipment costs for all systems on a regional basis. The Commission explained that “while the rates for a particular franchise area may change, the overall impact will be revenue neutral.”²¹ The Commission also recognized that permitting equipment averaging would simplify cost tracking.

The Commission has also allowed small systems to engage in equipment averaging.²² Furthermore, the recently-passed Telecommunications Act of 1996 also provides for equipment averaging. Congress there allowed cable operators to aggregate equipment costs on other than a franchise level.²³ Given that the Commission has already acknowledged the benefits of equipment averaging in a variety of contexts, it clearly should extend these benefits to all operators that choose to adopt uniform rates.

IV. THE COMMISSION SHOULD ADOPT PROCEDURES TO ENSURE THAT LOCAL FRANCHISING AUTHORITIES MAY NOT IMPEDE IMPLEMENTATION OF UNIFORM RATES

The Notice properly expresses concern about “potential timing circumstances” that may represent impediments to achieving rate uniformity.²⁴ Under existing rules, rate

²¹ Social Contract for Time Warner (released Nov. 30, 1995) at ¶40.

²² In the Second Order on Reconsideration, 9 FCC Rcd 4779, 4226-28 (1994), the Commission allowed equipment averaging on a company-wide basis for small systems.

²³ Section 623(a)(9).

²⁴ NPRM at ¶22.

changes may not go into effect prior to local franchising authority approval, subject to limitations on the timing of such review. This could lead to a situation in which the unreasonable LFA becomes the proverbial “tail wagging the dog”: an operator could not achieve system-wide rates for its system if only even a single LFA objected to the amount of the increase or delayed allowing the increase to take place.

Rate uniformity cannot succeed if LFAs may situate themselves as roadblocks to adoption of uniform rates. The Commission has ample authority under the 1992 Cable Act to prevent LFAs from doing so. The Act provides that the Commission must prescribe regulations that “include standards, guidelines, and procedures concerning the implementation and enforcement of such regulations”, including procedures by which local franchising authorities “may enforce the regulations prescribed by the Commission under this subsection.”²⁵ Local franchising authorities will continue to implement and enforce whatever rules the Commission may adopt at the franchise level with respect to the basic service tier. They would continue to play such a role in reviewing basic rates based on cross-jurisdictional calculations.

But in order to implement these new rules, the Commission must ensure that the goal of achieving uniform rates is not frustrated at the local level. Therefore, we agree with the Commission’s proposal that, at a minimum, rates should be allowed to take

²⁵ 47 U.S.C. §543(B)(5).

effect automatically after the end of the review period.²⁶ We also agree with the Notice's suggestion that the rates would be "subject to ultimate resolution in a later 'true-up' process."²⁷ We therefore propose that if an LFA denies the rate, in whole or in part, the proposed uniform rate should still go into effect, pending an appeal at the FCC.²⁸ If the FCC on appeal ultimately agrees with the local franchising authority's determination, then adjustments could be made in the next rate year in the form of a "true-up" to the next uniform rate filing.²⁹

V. OTHER MATTERS

A. Advertising

The Commission also should allow operators that choose the uniform rate approach to advertise their uniform rates. Operators should be permitted in their advertisements to clearly set forth the uniform rate they are charging plus applicable franchise fees and other franchise-related costs -- without specifically detailing those

²⁶ NPRM at ¶22. We suggest that this review period should be limited to 90 days in the case of an annual rate filing review (as is the existing procedure), or 30 days for a quarterly rate adjustment. The Commission should eliminate an LFA's right to toll a quarterly rate adjustment for uniform rate filings.

²⁷ NPRM at ¶22.

²⁸ If more than one LFA denies the adjustment in whole or in part, the Commission should provide for consolidated appeals to reduce administrative burdens.

²⁹ This would be similar to the FCC's existing annual rate adjustment rules. See 47 C.F.R. §76.922 (e)(3).

franchise-specific fees.³⁰ Otherwise, if operators are not permitted to explain their single rate to customers, and instead are forced to specify all the possible combinations of total rates, one the principal benefits of the Commission's uniform rate proposal would evaporate.

B. Single Tier Systems

Finally, neither FCC proposed uniform rate alternative contemplates the ability of operators that have a single regulated tier to establish uniform basic tier rates. The Commission previously has made accommodations for such systems.³¹ To the extent that such systems remain rate regulated, the Commission should allow such single tier systems, just like multi-tier systems, to establish uniform rates, again so long as the result is revenue neutral.

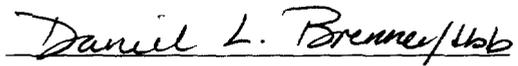
³⁰ This proposed rule would differ from the existing rules in that Section 76.946 only allows operators with systems covering multiple franchise areas to advertise a range of rates, including a "core rate plus the range of possible additions, depending on the particular location of the subscriber." 47 C.F.R. §76.946. The Commission has explained that this provision would require specific mention of the range of franchise fees (e.g., "basic service is \$14.00 per month plus a franchise fee of 28¢ to 70¢, depending on location, or that it is \$14.28 to \$14.70, depending on location.") Third Order on Reconsideration, MM Docket No. 92-266 at ¶143 n.99 (rel. Mar. 30, 1994). Under this proposed rule the operator could state that its basic and CPS rates are \$14.00 per month, exclusive of applicable franchise fees and other franchise-specific costs.

³¹ For example, in adopting going forward rules, the Commission prohibited all but single tier systems from adding channels to the basic tier at the 20¢ per channel rate. Sixth Order on Reconsideration, MM Docket No. 92-266 at ¶65 (Nov. 18, 1994).

CONCLUSION

For the foregoing reasons, NCTA endorses the Notice's proposal to adopt an optional rate methodology designed to allow operators to establish uniform rates.

Respectfully submitted,



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