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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1996)

MD Docket No. 96-84

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PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. §1.429, the National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits a Petition for Reconsideration of the Commission's Report and Order, released on July 5, 1996, in the above-captioned proceeding.¹

INTRODUCTION

The NCTA believes that the FCC, and in particular the Cable Services Bureau, needs to have the necessary resources to fulfill its statutory responsibilities. However, in its Report and Order on the FY 1996 Schedule of Regulatory Fees, the Commission dramatically *increased* the fees for cable television systems from \$.49 per subscriber to \$.55 per subscriber. This increase is *five cents* more than the original *one cent* per subscriber increase proposed in the Notice of Proposed Rulemaking. The Commission provides no explanation for this difference in its Report and Order. Indeed, it gives no indication as to why the

¹ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, MD Docket No. 96-84, Report and Order, 61 Fed. Reg. 36629, July 12, 1996 ("Report and Order").

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cable fees were increased five times over the original proposal less than three months after the NPRM's release.

NCTA believes that this huge increase far exceeds the level of regulation and statutory oversight of cable systems. Given the deregulation of cable television systems that began before and accelerated after the passage of the Telecommunications Act of 1996 -- notably the decrease in rate complaints and the reduction in Cable Bureau staff -- there is no basis to *increase* cable regulatory fees six cents more than the FY 1995 fee. This series of events can be analogized to a prison where the number of inmates has declined, the number of guards has accordingly been reduced, but the warden nonetheless insists that the state provide even more funds to run the place. And when the increase, in light of the decreased duties, is called to the warden's attention, the reaction is to ask for even more money. But here, the warden and the state are the same: the agency's ability to expand the fee burden on cable subscribers has taken on a life of its own, separated from any facts that might bear on the question.

Therefore, we urge the Commission to reconsider its cable regulatory fee decision and to adopt a fee that is reasonably related to the costs of regulating cable television.

DISCUSSION

In its comments in this proceeding, NCTA objected to the proposed one cent increase in cable regulatory fees in light of the series of deregulatory actions initiated by the Commission over the past year and directed by Congress in the

Telecommunications Act of 1996 ("the Act"). We demonstrated that these actions have significantly diminished FCC oversight of the cable industry. Social contracts with major MSOs have resolved rate complaints and other issues for cable systems serving approximately 20 percent of the nation's cable subscribers. Small cable systems serving another 14 percent of cable subscribers are no longer subject to regulation of their cable programming service tier rates under the Act. And even those small cable systems that were not deregulated by the Act are operating under a streamlined regulatory scheme established by the Commission last year.

In addition, regulatory oversight of the rates of larger cable systems is being phased out under the Act's new definition of effective competition and will end entirely in three years.

This substantial and undisputed deregulatory trend prompted Commissioner Quello to question the efficacy of increasing the cable subscriber fees by even one cent.² In an increasingly deregulated cable environment, the Commissioner took issue with whether the fee schedule reflected "the level of regulation -- and, thus, the indirect benefit to subscribers-- of our statutory oversight of the cable industry."³

The Commission acknowledges in the Report and Order that cable deregulation has occurred, but contends that the regulatory costs that the agency is

² Separate Statement of Commissioner James H. Quello, Assessment and Collection of Regulatory Fees for Fiscal Year 1996, MD Docket No. 96-84, April 5, 1996.

³ Id.

required to recover are much higher than they appear primarily due to overhead and indirect costs. Overhead and indirect costs are those attributable to staff assigned to other Bureaus and Offices within the Commission who support direct staff working in the Cable Services Bureau. The Commission further notes that it has commenced several rulemaking proceedings to further its deregulatory cable agenda and has taken on new responsibilities for implementing the provisions of the Act on open video systems, over-the-air reception devices, navigation devices and pole attachments.⁴ In addition, the Commission states that part of the increase is related to costs that cannot be specifically attributed to a particular class of licensee. These costs are allocated on a pro-rata basis to all fee payers.

NCTA submits that the foregoing costs were presumably factored in when the Commission proposed the one cent increase in the NPRM. By April 1996, when the NPRM was released, Congress had enacted the legislation and the Commission had adopted an implementation plan, including designating the Bureaus assigned to each proceeding. Moreover, it appears unlikely that the Commission incurred additional overhead and indirect costs associated with staff support outside the Cable Bureau at such a level after April to necessitate a raise in the cable

⁴ We note that with regard to open video systems, cable subscribers are being assessed fees for a service that cable systems are essentially precluded from participating in. Similarly, the over-the-air reception device proceeding relates to equipment that is not used by cable systems or their subscribers.

regulatory fee of an additional five cents per subscriber. But the Report and Order provides no guidance on this issue.⁵

In any event, the Commission's agency-wide responsibilities under the Act do not justify the disproportionate burden that cable subscribers are asked to bear for the Commission's enforcement, policy and rulemaking activities in FY 1996. Nor do they counterbalance the deregulation of cable television systems that has already occurred. The resources formerly devoted to the massive task of regulating the rates of over 11,000 cable systems nationwide has been significantly reduced. But you would not know that from the increase in regulatory fees.

Indeed, the number of complaints for the February-to-August time period has dropped from 2652 in 1995 to 62 complaints in 1996, over a *40-fold* decline. Some percentage of the 1995 complaints can be assumed to be addressed to rates from the same system. But it is inarguable that the number of complaints under the 1996 Act standard, which limits filings to local franchising authorities only, has reduced the rate review workload dramatically. And review of the complaints should also be less work intensive. First, the LFAs can presume to have analyzed the complaints and have sufficient sophistication to identify the claimed overcharges under the Commission's formulas. Second, with scores of cases already decided, the FCC staff has significant precedent on the book, making fewer of the complaints cases of first impression.

⁵ We acknowledge that subsequent to the April 9, 1996 release of the NPRM, Congress increased the total amount of regulatory fees to be collected by the FCC in FY 1996 from \$116.4 million to \$126.4 million. This additional \$10 million was pro-rated among all existing fee categories. Report and Order at para. 9.

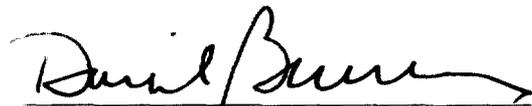
There also has been, understandably, a marked decrease in the number of staff assigned to the Cable Bureau. A cursory review of the Commission's telephone directory and staff list indicates that the number of Cable Bureau staff has dropped from 234 staff in April 1995 to 151 staff in (month) 1996. The heavy implementation assignments of the 1992 Act are complete. Precedent is ample to guide the few rate and other complaint cases that have emerged. The staff has been reduced to reflect these realities.

We believe that this downturn in cable regulatory activity over the past year correlates with a decrease in fees, or at minimum, no change in the cable fee structure. It should not correspond to an increase of the magnitude of \$.6 per subscriber, resulting in cable system subscribers incurring the second highest burden in FCC regulatory fee assessments.

CONCLUSION

While an across-the-board increase in regulatory fees may be justified to offset the agency's increased fee collection requirements, it is unreasonable for the Commission to impose a \$.6 per subscriber increase on cable subscribers for FY 1996. The Commission should reconsider its fee structure and lower, not raise, the fees to more accurately reflect the degree of regulation of the cable industry.

Respectfully submitted,



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