

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

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Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Implementation of Sections of the)	MM Docket No. 92-266
Cable Television Consumer)	
Protection and Competition Act of 1992)	
)	
Rate Regulation)	DOCKET FILE COPY ORIGINAL
)	
In the Matter of)	CS Docket No. 96-157
)	
Cable Pricing Flexibility)	

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association ("NCTA"), by its attorneys, hereby submits its Comments in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States, representing cable television operators and program networks.

In this proceeding, the Commission seeks comment on whether it should adopt a new, optional methodology for determining cable rates. Rather than setting "tier neutral" rates, operators could reduce basic service tier ("BST") rates and offset those reductions by adjusting cable programming service tier ("CPST") rates.

NCTA supports the Commission's proposal to grant operators this measure of pricing flexibility.

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DISCUSSION

Prior to rate regulation, cable operators employed a variety of approaches to pricing their service. In some cases, operators offered a “lifeline” basic tier, with higher CPS tier prices subsidizing these lower basic rates.

When the Commission adopted rules implementing the rate regulation provisions of the 1992 Cable Act, it required cable operators to restructure their rates in a so-called “tier neutral” fashion. The rate rules restricted operator flexibility in pricing, and no longer permitted operators to charge less for the basic tier and make up the difference in CPS pricing.¹ Lowering prices for one tier -- while not barred under the Commission’s rules -- would force operators to forfeit full recovery of the amounts the FCC determined to be reasonable in an effectively competitive environment.

The Commission now proposes to modify this limitation through providing operators more flexibility in pricing. The Notice would allow an operator, once it established its rates according to existing rate regulation, to lower the basic rate and increase the CPS rate to offset BST lost revenue. The Notice suggests that this will benefit subscribers who only take the basic tier, and may make basic service more affordable for those who do not currently subscribe to cable television.² Additional flexibility in pricing also will allow operators to respond to competition while protecting customers against unreasonable rates.³

¹ Report and Order 8 FCC Rcd, 5631, 5759-60 & n.501 (1993).

² Notice at ¶ 16.

³ Id. at ¶12.

We agree that providing operators the option of pricing under this alternative approach will serve the public interest. The Commission has already found that to be the case in allowing Continental Cablevision and Time Warner to price their services in a similar manner.⁴ This option should be extended to all cable operators and their customers.

Basic-only customers would see cost savings under the approach. At the same time, customers who subscribe to the basic and CPS tier will see little, if any, change in their overall bill for regulated services. As the Notice recognizes, almost all customers that subscribe to basic service also subscribe to a CPS tier.⁵ Accordingly, given the high penetration rate for CPS tiers, any rate increase for CPS customers, should one occur, will likely be de minimis.

The Commission nonetheless also asks whether “to limit the amount of increase a CPST subscriber must pay or to otherwise limit the amount by which the BST and CPST rates may be adjusted.”⁶ Any such limit would be unfair and would undercut the reason for adopting the rule in the first place. After all, capping the amount that CPS rates can be increased would result in operators forfeiting revenues to which they otherwise would be entitled under the FCC’s existing rate rules. A restriction on the ability to recover those revenues would differ little from the

⁴ In the Matter of Social Contract for Continental Cablevision, FCC 95-335 (rel. Aug. 3, 1995) at ¶47 (“[u]nder the specific circumstances before us, we believe that the clear benefits and absence of significant harms resulting from the provision of a lifeline basic tier justify our approval of such a tier here.”); In the Matter of Social Contract for Time Warner (rel. Nov. 30, 1995) at ¶56.

⁵ Commission data shows that the average penetration rate approaches or exceeds 90% and the median penetration rate exceeds 95%. Notice at ¶14. This is consistent with the evidence presented to the Commission in the course of allowing both Continental Cablevision and Time Warner Cable to engage in similar rate restructuring under the terms of their Social Contracts. In the Matter of Social Contract for Continental Cablevision, FCC 95-335 (rel. Aug. 3, 1995) at ¶46 (noting that rate increase would be de minimis, in amount of 5 cents); In the Matter of Social Contract for Time Warner (rel. Nov. 30, 1995) at ¶56 (explaining that “[b]ecause there are few BST-only subscribers the overall impact on the majority of subscribers who receive both BST and CPST will be minimal”).

⁶ Notice at ¶15.

current environment, where operators are put to the choice of maintaining a tier neutral structure or losing revenues by reducing their basic tier rate.

There is, in short, no reason for this additional restriction because the Commission's proposal only permits restructuring from rates established in accordance with the Commission's rules. By definition, those rates are not unreasonable.

Finally, the Commission seeks comment on the appropriate method for reviewing and implementing these rate changes. The Notice proposes to require operators to synchronize changes in their rates, if this new proposal is adopted, with other permissible rate changes (e.g., annually for those operators adjusting rates under the Form 1240 method).⁷ As a practical matter, as the Commission realized in adopting its annual rate filing option, many operators desire to limit rate changes to once a year.⁸ However, there may be instances in which waiting a year to respond to competitive pressures is unreasonable and would unfairly disadvantage operators.⁹ The Commission should not on one hand give operators flexibility to respond to competition while at the same time take that flexibility away by requiring strict adherence to an artificial regulatory timetable.

⁷ Id. at ¶ 20.

⁸ Thirteenth Order on Reconsideration, MM Docket No. 92-266 at ¶5 (Sept. 22, 1995).

⁹ This is particularly true if the Commission adopts its tier flexibility option shortly after an annual rate change has already occurred. Rates often are scheduled to change at the beginning of the year. Strict adherence to the one-year rule would mean an operator could not take advantage of the rule change until its next rate adjustment -- which could be almost a year later.

CONCLUSION

For the foregoing reasons, the Commission should adopt the rules proposed in the Notice, with modifications suggested herein.

Respectfully submitted,



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