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VIA FEDERAL EXPRESS

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William Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of
Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act of 1992

Rate Regulation
In the Matter of
Cable Pricing Flexibility

FCC 96-316
MM Docket 92-266
CS Docket 96-157

Dear Mr. Caton:

Enclosed for filing please find an original and five (5) copies of the Comments of the New Jersey State Board of Public Utilities with regard to the above captioned matter. Kindly place the Board of Public Utilities on the service list for this docket.

Please return one copy marked "filed" in the enclosed addressed, stamped envelope.

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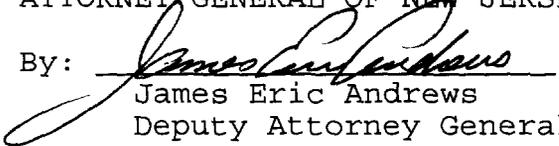
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Thank you for your attention to this matter.

Very truly yours,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 
James Eric Andrews
Deputy Attorney General

Encs.

c: Meredith J. Jones, Chief
Cable Services Bureau
Herbert H. Tate, President - BPU
Carmen J. Armenti, Commissioner - BPU
Dr. Edward H. Salmon, Commissioner - BPU
Celeste Fasone, Director - OCTV
Charles Russell, Asst. Director - OCTV
Blossom H. Peretz, Director - Ratepayer Advocate

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Before the
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COMMENTS OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

INTRODUCTION

The New Jersey State Board of Public Utilities ("Board"), by its attorneys, respectfully submits comments in response to the issuance of the Notice of Proposed Rulemaking ("NPRM") in the above matter released by the Federal Communications Commission ("Commission") on August 15, 1996. Pursuant to the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq., the Board is the franchising authority for cable television operators in the State of New Jersey. As of October 1, 1993, the Board was certified to regulate basic service rates, equipment charges and additional outlets in New Jersey pursuant to 47 C.F.R. 76.910(e).

In the NPRM, the Commission, in contrast to its current rules, proposes to permit a cable operator to reduce the Basic Service Tier ("BST") rate approved by the franchise authority and

allow for an increase in its Cable Programming Service Tier ("CPST") rate in order to offset any lost revenue associated with the BST rate reduction. The Commission also tentatively concludes that this revenue neutral change will give cable operators more price flexibility in response to growing competition while continuing to protect consumers. Because the number of CPST subscribers is generally somewhat smaller than the number of BST subscribers, the Commission notes that any decision by an operator to implement a BST rate decrease in this manner would result in a small net increase on the CPST side because the total loss in BST revenue would in varying degrees be spread over a smaller CPST subscriber base resulting in a net increase in rates for BST/CPST subscribers.

DISCUSSION

It is clear from a review of the NPRM, that BST rates will not be adversely affected and that the proposed pricing flexibility does not interfere with the Board's mandate to protect BST subscribers from the imposition of unreasonable BST rates. However, at paragraph 15 of the NPRM, the Commission asks for comment on whether the amount of increase a CPST subscriber must pay should be limited, or whether the adjustment in BST and CPST rates should be limited. As stated in paragraph 15, the Commission believes that the relatively high CPST penetration rate present in

most systems will result in only minimal* net increases to CPST subscribers. The Board, however, is not certain that there will be only minimal net increases under all circumstances. Therefore, for the reasons outlined below, the Board believes in answer to the Commission's query at paragraph 15 of the NPRM, that there should indeed be a cap on the ability of cable operators to recoup lost revenues on the BST side by raising CPST rates, to the extent that a cable operator is unable to meet the statutory tests for effective competition.

With regard to the tests for effective competition, the Board recognizes that under Section 301(b)(3)(C) of the Telecommunications Act of 1996, the marketing and offering of comparable multi-channel video programming by distributors using the facilities of local exchange carriers or their affiliates constitute effective competition in the franchise area where it is offered, and that a cable operator when faced with this kind of competition may petition the Commission for the deregulation of its rates. Because there is no penetration test under this new effective competition standard, it is relatively easy for a cable operator to make a showing of effective competition even where very few subscribers leave the cable system for alternative video

*At paragraph 14 of the NPRM, the Commission states that it is seeking comment on its estimates on the percentage of customers which receive both BST and CPST service, stating that industry data suggests an average and medium penetration rate of 90% and 95% respectively. While the Board cannot comment on these figures as they relate to systems nationwide, it appears that the level of CPST penetration in New Jersey is higher than the above nationwide percentages with average rates of approximately 97%.

service. For this reason, a cap on CPST rates under the Commission's rate flexibility proposal would likely be rendered moot by a cable operator's quick filing for decertification where competition is emanating from a LEC or LEC affiliated video provider. For this reason, the Board is limiting the following discussion to wireless direct-to-home satellite services, which services are expressly excluded from the 1996 Act's definition of effective competition.

The Board believes that a cap is necessary where there is competition from satellite video providers because it is by no means clear that subscribers will leave a cable system to take advantage of satellite reception offerings as they become available. While it will be relatively easy for some subscribers to invest in satellite reception equipment to replace cable, many subscribers may hesitate for economic and other reasons, such as their lack of understanding of the newer technologies, and decide to remain as cable subscribers. These subscribers will likely become a captive audience in need of protection until CPST rates are deregulated in March 1999 pursuant to the 1996 Act. Because of these circumstances, as satellite reception programming becomes available, the current high CPST penetration rate might actually decrease as users with the means to make the initial investment in this alternative technology leave the system. This would have the effect of reducing the number of subscribers which receive both the BST and CPST. Such a reduction in the penetration rate would increase the likelihood that CPST rates will rise unreasonably as

cable operators attempt to attract basic only subscribers without fear that they will lose their core group of subscribers who are less likely to respond to offers for satellite reception.*

In addition to the above concerns about increasing CPST rates as penetration rates decline due to successful satellite reception competition, under the Commission's proposal for rate flexibility, a cable operator could in effect offer a lifeline-type basic only service at nominal charge resulting in unreasonable increases for CPST subscribers. In other words, with no limit on the amount of revenues to be recouped from the CPST for reductions in the BST, a cable operator could dramatically reduce rates for the BST to attract new customers without fear of losing revenues derived from the above referenced core group of customers which, for the reasons outlined above, do not leave the cable operator's system. Moreover, if competition does not develop relating to satellite or other alternative video providers, including LEC and LEC affiliated video providers, the problem would be further exacerbated. Thus, there would likely be little incentive for price moderation on the CPST side, giving operators free reign to make

*The Board realizes that at some point satellite competition could become available to as many as 50% of subscribers in a given franchise area with as many as 15% signed up, thereby mandating deregulation pursuant to the effective competition standards in place since 1992. 47 C.F.R. 76.905. While this may in fact happen before rates are deregulated in 1999, this is a tougher standard than the 1996 Act's effective competition test, and is less likely to be met where satellite reception service is involved. Therefore, the Board believes that consideration of a cap is a necessary precaution given the likelihood of CPST increases under the rate flexibility proposal where there is no effective competition under the law.

adjustments resulting in more than just minimal increases in CPST rates to compensate for dramatic decreases in BST rates.

There remains the issue of how to determine an appropriate cap. Because there are advantages to allowing cable operators a certain degree of rate flexibility, especially with regard to the setting of basic rates, the Board is not opposed to relative increases in CPST rates if the increases remain minimal. However, as noted above, the Board does not believe that such changes under all circumstances will always be minimal. Therefore, the Board believes that the Commission should develop a methodology which would place a percentage limit over which the CPST rates will not be permitted to rise when BST rates are reduced. This might be accomplished by disallowing all CPST revenue recoupment which results in a net increase in CPST rates if the penetration rate falls below a certain fixed amount, such as 92% for example. In this way, systems with relatively low CPST penetration would not be eligible to fully recoup lost BST revenues, while those with high CPST penetration would be able to do so. This approach would ensure that CPST subscribers would be treated fairly and relatively consistently from system to system, while allowing cable operators to recoup lost revenues where the penetration rates are high enough to guarantee that only minimal CPST rate increases will occur.

CONCLUSION

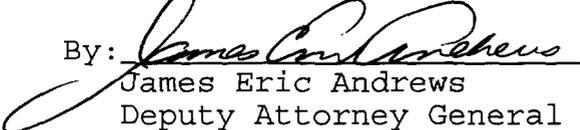
Therefore, for the foregoing reasons, the Board urges the Commission to establish an appropriate capping mechanism which

would serve to protect subscribers who may inadvertently become captive to a process which under some circumstances may cause an unreasonable increase in CPST rates, which would be in addition to those increases allowed under current Commission regulations.

Respectfully submitted,

DATE: 12/4/96

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 
James Eric Andrews
Deputy Attorney General