

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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OCT - 7 1996

Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
Implementation of Sections of the	)	
Cable Television Consumer	)	MM Docket 92-266
Protection And Competition Act of 1992	)	
	)	
Rate Regulation	)	DOCKET FILE COPY ORIGINAL
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	)	
In the Matter of	)	
	)	CS Docket 96-157
Cable Pricing Flexibility	)	
	)	

**COMMENTS OF TIME WARNER CABLE**

**TIME WARNER CABLE**

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Dated: October 7, 1996

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## SUMMARY

Time Warner commends the Commission's proposal in the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding to allow cable operators the flexibility to decrease the basic service tier ("BST") rate and increase the cable programming services tier ("CPST") rate in a revenue neutral fashion. Such pricing flexibility will enable cable operators to respond to their competitors, who have no restrictions over the pricing and packaging of their services. For instance, under the Commission's proposal, all cable operators across the country would be free to offer a "lifeline" BST, which Time Warner's subscribers have enjoyed since implementation of Time Warner's Social Contract with the Commission. However, while the provision of a lifeline BST may be beneficial under appropriate circumstances, such marketing and pricing strategies properly lie entirely within a cable operator's sole discretion. Further, in order to effectively compete with their unregulated competitors, cable operators offering multiple CPSTs should be allowed to offset any BST rate decreases on any combination of CPSTs in a revenue neutral fashion.

The Commission's pricing flexibility proposal would impose far fewer regulatory burdens than the customary rate review process. First, local franchising authority ("LFA") review of any decreases in BST rates simply is not necessary or desirable. Further, where a LFA files a valid CPST complaint, the Commission should limit its review to determining whether any rate adjustment was revenue neutral, because cable operators choosing to institute the new cable pricing flexibility proposal are not increasing subscribers' rates. This applies equally to cases where the BST is or is not regulated by the LFA. Even in the rare instance where substantive rate review is deemed necessary, the existing regulatory burdens inherent in reviewing CPST rates should not substantially increase because the same FCC

form (e.g., Form 1210 or Form 1240) typically will demonstrate the reasonableness of both the BST and CPST rates.

Furthermore, the Commission should confirm that cable operators may institute channel adjustments simultaneously with lifeline BST discounts, recognizing that, to respond to competition, cable operators may need to make competitive pricing, tiering and channel line-up changes together as part of a coordinated marketing strategy. Faced with ever-increasing competition, cable operators will have an incentive to keep the frequency of rate adjustments to a minimum to avoid losing subscribers to competitors. In any event, because there is no rate increase under the Commission's pricing flexibility proposal, the concern behind the Form 1240 limit of one rate increase per year is not applicable. Additionally, because cable's competitors have full flexibility over the packaging and pricing of their products, cable operators should be able to make any revenue-neutral rate adjustments, and not be limited solely to making BST rate decreases with offsetting CPST rate increases.

Finally, while Time Warner applauds the Commission's efforts to offer cable operators increased pricing flexibility in order to respond to increased competition, the ability to establish a rational, system-wide rate structure is an even more important tool. While cable operators are hindered by non-uniform rate structures in marketing their service across multiple franchise areas, their competitors are able to offer simple, uniform rates. In order to compete with their unregulated competitors, cable operators must be freed from unnecessary restrictions on their marketing abilities. Accordingly, Time Warner urges the Commission to act expeditiously on its pending proposal to grant cable operators the flexibility to establish uniform rates for any reasonably proximate systems with comparable

channel line-ups. Coupled with the pricing flexibility the Commission proposes in this proceeding, such uniform rate flexibility will begin to provide cable operators with the tools they need to respond to growing competition, which will benefit consumers.

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**COMMENTS OF TIME WARNER CABLE**

Time Warner Cable ("Time Warner") respectfully submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.<sup>1/</sup> Given the increasing competition faced by the cable industry, Time Warner applauds the Commission's proposed rules which would provide cable operators with greater pricing flexibility in order to effectively compete with alternative video programming providers that are not subject to the type of rate regulation imposed upon cable operators by the Communications Act of 1934, as amended. The Commission should expeditiously adopt such proposed rules with the modifications and clarifications suggested herein.

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<sup>1/</sup>Memorandum Opinion and Order and Notice of Proposed Rulemaking, MM Docket No. 92-266, CS Docket No. 96-157, FCC 96-316 (released August 15, 1996).

**I. THE EXPERIENCE SURROUNDING TIME WARNER'S SOCIAL CONTRACT WITH THE COMMISSION DEMONSTRATES THE COMPETITIVE BENEFITS OF THE CREATION OF A LIFELINE BST**

In the Notice, the Commission notes that "this proposal should make the BST more affordable for some customers who currently do not subscribe to cable at all."<sup>2/</sup> It also will permit cable operators, after setting initial or adjusted rates in accordance with existing regulations, to decrease the basic service tier ("BST") rate and increase the cable programming services tier ("CPST") rate in a revenue neutral fashion and lower rates for current BST-only subscribers. The creation of a "lifeline" BST, affordable to low and fixed income citizens, was one of the major goals of the Social Contract between the Commission and Time Warner,<sup>3/</sup> and indeed, one of the provisions most praised by commenters in that proceeding. Typical of the overwhelmingly favorable response by commenters in that proceeding to the "lifeline" BST proposal was the recognition by one commenter that "creating a low cost 'lifeline' basic service tier and reducing basic service rates by 10% will help to ensure that low and fixed income families can receive cable television service at an affordable rate."<sup>4/</sup> Time Warner's ability to offer this popular option to its customers has benefitted Time Warner, consumers, and competition as a whole.

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<sup>2/</sup>Notice at ¶ 16.

<sup>3/</sup>Memorandum Opinion and Order, In the Matter of Social Contract for Time Warner, 11 FCC Rcd 2788 (1995) ("Time Warner Social Contract MO&O"), petition for review pending, New York City Dep't. of Information Technology and Telecommunications, et al. v. FCC, D.C. Cir. No. 96-1027.

<sup>4/</sup>Time Warner Social Contract, Comments of San Diego City Council Member Barbara Warden at 1.

As the Commission noted in adopting the Time Warner Social Contract, "the creation of a lifeline BST increases the option of consumers and increases competition for services on the upper tiers."<sup>5/</sup> Accordingly, Time Warner commends the Commission's current proposal to enable all cable operators to create a lifeline BST while offsetting the lost revenues on the CPST. Such pricing flexibility will enable cable subscribers across the country to realize the benefits of such a lifeline BST which Time Warner's subscribers have enjoyed since implementation of the Time Warner Social Contract.

However, while Time Warner's provision of a lifeline BST has created many benefits, Time Warner agrees with the Commission's proposal that any flexibility granted for cable operators to create a low-priced BST must ensure that such decision remains entirely within a cable operator's discretion. Section 623(b)(7)(B) of the 1992 Cable Act provides that "[a] cable operator may add additional video programming signals or services to the basic service tier" beyond the statutorily mandated minimum.<sup>6/</sup> As the Commission states in paragraph 25 of the Notice, "the current proposal . . . simply permits operators to reduce the price of the BST as part of an overall marketing strategy."<sup>7/</sup> The Commission correctly has not expressed any desire to permit local franchising authorities ("LFAs") to dictate the offering of a low-priced BST. To do so would directly contravene the statute, as well as the purpose of the proposals put forth in the Notice, which are based on giving cable operators greater regulatory flexibility to respond to increasing competition.

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<sup>5/</sup>Id. at ¶ 56.

<sup>6/</sup>47 U.S.C. § 543(b)(7)(B).

<sup>7/</sup>Notice at ¶ 25 (emphasis added).

**II. CABLE OPERATORS OFFERING MULTIPLE CPSTS SHOULD BE ALLOWED TO OFFSET ANY BST RATE DECREASES ON ANY COMBINATION OF CPS TIERS IN A REVENUE NEUTRAL FASHION**

Time Warner fully agrees with the Commission's proposal to allow cable systems offering more than one CPST to allocate any amount deducted from the BST rate among the various CPSTs in a revenue neutral manner.<sup>8/</sup> As the Commission recognizes, the cable industry must be given greater pricing flexibility to respond to growing competition from alternative video programming providers.<sup>9/</sup> The Commission correctly notes that

[b]ecause these competitors are not subject to the type of rate regulation imposed upon cable operators by the Communications Act, they have greater flexibility to restructure their pricing as well as the services they offer consumers. We tentatively conclude that the proposed rate adjustment mechanism may enhance a cable operator's ability to compete with the alternative providers.<sup>10/</sup>

Cable operators can more effectively compete with such unregulated competitors with respect to CPST programming packages if cable operators offering multiple CPSTs have the flexibility to respond to the competitive marketplace by spreading the cost of any BST rate reductions among the operator's various CPSTs in a revenue neutral manner.

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<sup>8/</sup>Id. at ¶ 19.

<sup>9/</sup>Id. at ¶ 12.

<sup>10/</sup>Id. at ¶ 16.

### III. THE RATE REVIEW PROCESS

#### A. No Local Franchising Authority Approval Should Be Required So Long As The BST Rate Is Decreased.

The Commission notes at paragraph 21 of the Notice that the current proposal should not generate additional burdens on LFAs since LFAs will "engage in the same rate review process as before."<sup>11/</sup> The Commission seeks comment on how to further simplify the rate review process.<sup>12/</sup> Time Warner submits that regulatory burdens on all affected parties can be minimized through express FCC recognition that LFA review of any decreases in BST rates simply is not necessary or desirable. One commenter in the Time Warner Social Contract proceeding recognized that the creation of a "lifeline" BST by decreasing BST rates relieves LFAs from "expending time and scarce resources in attempting to regulate Time Warner Cable's Basic Rates. By relieving municipalities from the burdens of rate regulation, the Social Contract is a positive development."<sup>13/</sup> Indeed, the Commission's pricing flexibility proposal should relieve LFAs from the burdens of rate regulation completely where there is a decrease in BST rates, and not simply require LFAs, in the Commission's words, to "engage in the same rate review process as before." There can be no more effective simplification of the rate review process than expressly preempting any LFA review of decreases in BST rates.

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<sup>11/</sup>Id. at ¶ 21.

<sup>12/</sup>Id.

<sup>13/</sup>Time Warner Social Contract, Comments of Akron, OH at 1.

**B. Commission Review Should Be Limited to Whether the Rate Adjustment Has Been Revenue Neutral.**

The Commission expresses its belief in the Notice that its pricing flexibility proposal would add another step to the Commission's review of CPST rate complaints since cable operators instituting the new pricing flexibility option might increase CPST rates above an amount normally permitted under the Commission's rules.<sup>14/</sup> Accordingly, the Commission suggests that it may need to review the combined BST-CPST rate, and not just the CPST rate, to determine whether the CPST rate is reasonable.<sup>15/</sup> To the contrary, Time Warner submits that review of any actions taken by cable operators pursuant to the Commission's pricing flexibility proposal should actually impose far fewer regulatory burdens than the customary rate review process. As noted above, so long as the BST rate is being decreased, there is no need for any review or other involvement by either the LFA or the FCC. FCC jurisdiction is triggered only where the LFA files a valid CPST complaint under the revised procedures pursuant to the Telecommunications Act of 1996. In such circumstances, the Commission should limit its review to determining whether any rate adjustment was revenue neutral. This can be accomplished without a detailed analysis of the Commission's benchmark forms, but rather through a simple mathematical process similar to that employed by the Commission in connection with the cable rate freeze of 1992.<sup>16/</sup>

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<sup>14/</sup>Notice at ¶ 22.

<sup>15/</sup>Id.

<sup>16/</sup>Order, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, 8 FCC Rcd 2921 (1993), clarified, 8 FCC Rcd 2917 (1993); extended in Order, FCC 93-304, 73 RR 2d 14 (continued...)

The Commission also seeks comment on how the Commission's rate review process should work where a cable operator who has sought to take advantage of the new pricing flexibility proposal is only subject to CPST rate regulation because the relevant LFA has not sought or exercised authority to regulate the BST.<sup>17/</sup> First, as the Commission recognizes, review of a cable operator's CPST rates is necessary only upon submission of a complaint invoking the Commission's jurisdiction.<sup>18/</sup> Should such Commission jurisdiction over CPST rates be invoked, and the cable operator in question is not subject to BST rate regulation because the relevant LFA is not certified to regulate the BST, clearly the Commission's rate review jurisdiction would not extend to a benchmark analysis of the cable operator's BST rate.<sup>19/</sup>

Because cable operators choosing to institute the new cable pricing flexibility proposal are not actually increasing subscribers' rates,<sup>20/</sup> Commission review should be limited solely to whether the adjustment made pursuant to such pricing flexibility has been revenue neutral. Due to the absence of a true rate increase, where the BST is unregulated and the CPST rate has either previously been found to be reasonable or is deemed reasonable because

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<sup>16/</sup>(...continued)  
(1993), Erratum, 8 FCC Rcd 4511 (1993); extended in Order, FCC 93-494 (1993); extended in Order, 9 FCC Rcd 1299 (1994).

<sup>17/</sup>Notice at ¶ 23.

<sup>18/</sup>Id. See also 47 C.F.R. §§ 76.950 and 76.957.

<sup>19/</sup>See 47 C.F.R. §§ 76.910 and 76.913.

<sup>20/</sup>The Commission recognizes that "[a]lthough CPST subscribers could experience a minor rate increase, all CPST subscribers are also BST subscribers for whom the increase in CPST rates would be substantially offset by the decrease in BST rates." Notice at ¶ 15.

it was not timely challenged, a benchmark analysis is unnecessary. Particularly in the case of an unregulated BST, there is no need for the Commission to review a rate which was unregulated to begin with. However, even in the case of a regulated BST, absent evidence to the contrary, the Commission can safely assume that the pre-existing BST rate has been approved by the LFA, and thus any reduction in the amount of an allowable BST rate is not a legitimate matter of regulatory concern for either the Commission or the LFA.

In order to minimize regulatory burdens, and in keeping with the true nature of any rate adjustments under the pricing flexibility proposal, any Commission review of a CPST rate complaint where the cable operator has instituted such pricing flexibility must be limited to whether the cable operator has offset any decreases in BST rates by a revenue neutral increase in the CPST rate, regardless of whether the BST is regulated by the LFA.

Commission review of the underlying rate might be warranted only where the adjustment is shown not to be revenue neutral and only where the cable operator refuses to make appropriate adjustments and refunds to achieve a revenue neutral result. However, this extra step should not substantially increase the existing regulatory burdens inherent in reviewing CPST rates because the same FCC form (e.g., Form 1210 or Form 1240) typically will demonstrate the reasonableness of both the BST and the CPST rates.

#### **IV. CABLE OPERATORS SHOULD BE ABLE TO MAKE CHANNEL ADJUSTMENTS SIMULTANEOUSLY WITH A LIFELINE BST DISCOUNT**

As the Commission states in paragraph 25 of the Notice, its proposal "preserves the ability of the operator to move channels in order to accommodate market changes."<sup>21/</sup>

However, it is not clear from the Notice whether the Commission proposes to limit cable operator discounts in connection with creating lifeline BSTs to a pure pricing change. In fact, to respond to competition, cable operators may need to make competitive pricing, tiering and channel lineup changes together, as part of a coordinated marketing strategy. This could include the addition or deletion of discretionary services to or from the BST.

All such actions are permissible under federal law. As stated above, Section 623(b)(7)(B) of the 1992 Cable Act provides that "[a] cable operator may add additional video programming signals or services to the basic service tier."<sup>22/</sup> Likewise, cable operators may move programming services from their BSTs to create lifeline BSTs made up of only the statutory minimum BST requirements.<sup>23/</sup> Cable operators may also "take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under section 623."<sup>24/</sup> Accordingly, the Commission should confirm that cable

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<sup>21/</sup>Notice at ¶ 25.

<sup>22/</sup>47 U.S.C. § 543(b)(7)(B).

<sup>23/</sup>Id. at § 543(b)(7)(A).

<sup>24/</sup>Id. at § 545(d).

operators may institute channel adjustments simultaneously with implementation of lifeline BST discounts.

**V. CABLE OPERATORS SHOULD BE ABLE TO MAKE RATE ADJUSTMENTS AT ANY TIME**

In the Notice, the Commission proposes "that an operator should be permitted to use the proposed adjustment mechanism only when it has the opportunity to adjust rates under our existing rules."<sup>25/</sup> In most cases, therefore, cable operators would be limited to making adjustments only in conjunction with the annual Form 1240 adjustment.<sup>26/</sup> The Commission reasons that "[t]his restriction would ensure that our proposal does not increase the number of times subscribers experience rate adjustments."<sup>27/</sup> While Time Warner agrees that too many rate adjustments per year could cause subscriber confusion and consternation, this is a business judgment that is best left for the operator to decide in the free marketplace, rather than the federal government. After all, cable's competitors can make rate adjustments at any time.

Indeed, the 1992 Cable Act expressed Congress' policy to "rely on the marketplace, to the maximum extent feasible. . . ."<sup>28/</sup> Likewise, the Telecommunications Act of 1996 states that one of its purposes is to "promote competition in cable communications and

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<sup>25/</sup>Notice at ¶ 20.

<sup>26/</sup>See id. at ¶ 15; Thirteenth Report and Order on Reconsideration, MM Docket No. 92-266, 11 FCC Rcd 388 (1995) ("Thirteenth Report and Order").

<sup>27/</sup>Notice at ¶ 20.

<sup>28/</sup>1992 Cable Act, Sec. 2(b)(2).

minimize unnecessary regulation that would pose an undue economic burden on cable systems."<sup>29/</sup> In light of this clearly expressed policy, the Commission should not involve itself in the timing of any revenue-neutral rate adjustments. This is especially true since cable operators, faced with ever-increasing competition, as the Commission acknowledges, will have the incentive to keep such rate adjustments to a minimum, in order to avoid losing subscribers to competitors.

In addition, limiting cable rate adjustments to once per year would telegraph such price changes to cable's competitors. Since Forms 1240 and other rate forms become public upon filing, cable's competitors would be given ninety days' notice that the cable operator was taking its annual adjustment, as well as the details regarding the level of such adjustment. The competitors could thus respond accordingly, and make rate adjustments at other times of the year free from the threat of an immediate competitive response from the cable operator. Such a scenario directly contravenes the purpose of the Notice, which is to "provide cable system operators with more flexibility to compete with alternative providers of video programming."<sup>30/</sup>

Furthermore, the purpose of the Commission's requirement that cable operators limit rate adjustments pursuant to Form 1240 to once a year is to avoid rate increases more than once per year.<sup>31/</sup> Under the Commission's pricing flexibility proposal, however, there is

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<sup>29/</sup>47 U.S.C. § 521(6).

<sup>30/</sup>Notice at ¶ 12.

<sup>31/</sup>See Thirteenth Report and Order at ¶¶ 68-78.

no rate increase.<sup>32/</sup> The overall rate adjustment will remain revenue neutral.<sup>33/</sup>

Accordingly, the concern behind the Form 1240 limit of one rate increase per year is not applicable under these circumstances. Thus, even cable operators who have elected the annual rate increase methodology pursuant to FCC Form 1240 should be allowed to make revenue-neutral adjustments which reduce the overall BST rate as often as such operator deems advisable in light of competitive circumstances.

## **VI. CABLE OPERATORS SHOULD BE PERMITTED FLEXIBILITY TO PRICE TIERS IN DIFFERENT WAYS**

The Notice acknowledges that cable pricing flexibility is being proposed by the Commission chiefly because "the market for video services has experienced an increase in competition from alternative providers of video programming."<sup>34/</sup> The Commission clearly realizes that cable's competitors have full flexibility over the packaging and pricing of their products, and that cable operators should have equal flexibility to respond to such competition.<sup>35/</sup> However, the Commission proposes only "to permit an operator, once it has set its initial or adjusted rates in accordance with existing regulations, to decrease its BST rate and increase the CPST rate to offset the lost revenue on the BST."<sup>36/</sup> If the goal

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<sup>32/</sup>Notice at ¶ 15.

<sup>33/</sup>Notice at ¶¶ 19, 24-25.

<sup>34/</sup>Notice at ¶ 12, citing Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48 (rel. December 11, 1995).

<sup>35/</sup>See, e.g., Notice at ¶ 16.

<sup>36/</sup>Notice at ¶ 13 (emphasis added).

is increased flexibility, there is no reason why cable operators should be limited to decreasing the BST rate in combination with an offsetting CPST rate increase. Cable operators should also be able to make any revenue-neutral rate adjustments pursuant to the Commission's proposal in this proceeding. For example, cable operators should be free to collapse the CPST into the BST, so long as any such packaging and pricing changes are revenue neutral, which is not always the case under the Commission's arcane "residual shift" approach.

The case for such flexibility is further strengthened by two factors: First, Congress never intended the same degree of regulatory oversight for CPSTs as for BSTs.<sup>37/</sup> Second, pursuant to the Telecommunications Act of 1996, all CPST rate regulation sunsets on March 31, 1999.<sup>38/</sup> Thus, not only have the Congress and the Commission recognized that cable operators face ever-increasing competition,<sup>39/</sup> to which they are entitled to respond, but Congress never envisioned that Commission regulation of the CPST had to mirror BST regulation. Moreover, it makes sense to permit greater flexibility over CPST offerings when such tiers will be fully deregulated in less than two and one-half years. Accordingly, there is

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<sup>37/</sup>47 U.S.C. § 543(c)(1)(A) (emphasis added). See also, H.R. Rep. No. 628, 102d Cong., 2d Sess. 86 (1992) ("[w]hile most operators have been responsible about rate increases in this deregulated environment, a minority of cable operators have abused their deregulated status and have unreasonably raised subscriber rates.") (emphasis added).

<sup>38/</sup>Telecommunications Act of 1996, Section 301(a)(4).

<sup>39/</sup>See, e.g., Second Annual Report, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 95-61, 11 FCC Rcd 2060 (1995) at ¶ 9.

no reason why cable pricing flexibility must be limited to BST rate decreases with offsetting CPST rate increases.

## VII. THE COMMISSION NEEDS TO RESOLVE THE ISSUE OF SYSTEM-WIDE RATE CONFORMITY

While Time Warner applauds the Commission's efforts to offer cable operators greater pricing flexibility in order to respond to increased competition, the ability to establish a rational, system-wide rate structure is an even more important tool. In its November 1995 Notice of Proposed Rulemaking, the Commission proposed to implement an optional rate-setting methodology under which a cable operator could establish uniform rates for uniform cable service tiers offered in multiple franchise areas.<sup>40/</sup> While cable operators are hindered by non-uniform rate structures in marketing their service across multiple political subdivisions, their competitors are able to offer simple, uniform rates. For example, direct broadcast satellite ("DBS") providers are making competitive inroads due in no small part to the fact that they are unregulated and can offer nationwide uniform rates. This dramatically increases the efficiency of their nationwide marketing efforts, and drastically reduces consumer confusion. Not surprisingly, therefore,

Stanley E. Hubbard II, president/COO of United States Satellite Broadcasting, said there is no end in sight to the rapid penetration that USSB and DIRECTV are making into the TV marketplace. The dish receivers are selling at a rate of 25,000 a week, he said. Asked to predict total penetration in five to 10

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<sup>40/</sup>Notice of Proposed Rulemaking, CS Docket No. 95-174, FCC 95-472 (released November 29, 1995) ("Uniform Rate Notice") at ¶ 1.

years, he said the low range is 10 million - 15 million and the high range is 25 million - 30 million.<sup>41/</sup>

In order to compete with such rapid growth by their unregulated competitors, cable operators must be freed from unnecessary restrictions on their marketing abilities. This flexibility to establish consistent system-wide rates should apply to all rates which are potentially subject to regulation, whether BST, CPST or equipment rates. As the Commission observed in the Uniform Rate Notice,

[u]nder the Commission's cable service rate regulations, a cable operator serving multiple franchise areas must establish maximum permitted service rates in each franchise area. These rates often vary from franchise area to franchise area, even if each area receives the identical package of program services. This outcome may cause needless confusion for subscribers, as well as unnecessary administrative burdens for cable companies. In addition, a cable operator's ability to market its product on a regional basis may be hindered.<sup>42/</sup>

The problem that the Uniform Rate Notice seeks to address stems from two basic factors. First, pursuant to the Commission's rules and its 1200 series forms, cable operators must set rates based on a variety of variables, including the number of subscribers in the community, number of subscribers per tier, and census income level.<sup>43/</sup> Accordingly, the rates in two communities served by the same cable system, as calculated pursuant to the 1200 series forms, are rarely the same, resulting in subscriber confusion. Similarly, several nearby, stand-alone systems often have comparable line-ups but divergent rates. Clearly, in

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<sup>41/</sup>Harry A. Jessell, "Superpanel III," Broadcasting & Cable, October 2, 1995 at 17-18.

<sup>42/</sup>Uniform Rate Notice at ¶ 1.

<sup>43/</sup>FCC Form 1200.

all such cases, if the cable operator is permitted to charge uniform rates, each community served by the system could be charged the same rate for comparable service packages, thus drastically reducing subscriber confusion.

The second factor which causes non-uniformity of cable rates across a cable system is that each LFA served by a single cable system typically imposes different franchise-related costs (such as PEG access support payments) upon the cable operator. The approach advocated by the Commission to address this problem, *i.e.*, permitting cable operators to set uniform rates over multiple franchise areas, and to itemize franchise-related costs over and above the uniform programming service rates, will minimize subscriber confusion, permit cable operators to respond to competition, and reduce administrative burdens on LFAs.

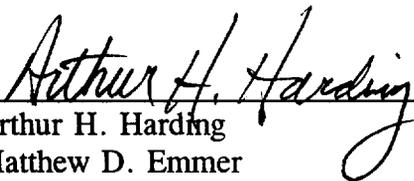
The Commission and numerous commenters in the uniform rates proceeding have recognized that the current situation is unfair because cable operators' marketing efforts are frequently hamstrung due to the often confusing variances in rates from community to community which arise from anomalies in the Commission's benchmark rate regulation methodology. The final round of comments in that proceeding was filed on March 12, 1996, almost seven months ago. Time Warner thus urges the Commission to act expeditiously on its proposal to grant cable operators the flexibility to establish uniform rates for any reasonably proximate systems with comparable channel line-ups. Coupled with the pricing flexibility the Commission proposes in this proceeding, such uniform rate flexibility will begin to provide cable operators with the necessary tools to respond to growing competition, all of which will inure to the benefit of consumers.

## CONCLUSION

The Commission's proposed cable pricing flexibility rules would enable cable operators to effectively compete with alternative video programming providers that are not subject to the type of rate regulation imposed upon cable operators by the Communications Act of 1934, as amended. The Commission should expeditiously adopt such proposed rules with the modifications and clarifications noted above.

Respectfully submitted,

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