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

OCT 30 1997

In the Matter of	)	
	)	RM Docket No. 9167
Implementation of Sections of	)	
the Cable Act of 1992	)	MM Docket Nos. 92-264, 92-265, 92-266

Rate Regulation
Horizontal and vertical Ownership Limits
Development of Competition and Diversity
of Video Programming Distribution and Carriage

OPPOSITION OF U S WEST, INC.

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OPPOSITION OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") herein submits its opposition to the Petition for Rulemaking ("PFRM") filed by the Consumers Union ("CU") and the Consumer Federation of America ("CFA") (jointly "Petitioners").[1] In their PFRM, Petitioners ask the Federal Communications Commission ("Commission") to freeze rates for basic and cable programming services for cable systems subject to rate regulation. In addition, Petitioners request that the Commission lift its stay of its horizontal ownership rules and review the current horizontal and vertical ownership limitations and rules pertaining to unfair practices.

U S WEST is opposed to Petitioners' requests for two primary reasons. First, all of the issues raised in the PRFM have been covered extensively in other Commission dockets and proceedings -- many of them on-going -- and do not justify

[1] In the Matter of Implementation of Sections of the Cable Act of 1992, Rate Regulation, Horizontal and Vertical Ownership Limits, Development of Competition and Diversity of Video Programming Distribution and Carriage, MM Docket Nos. 92-264, 92-265, 92-266, Petition to Update Cable Television Regulations and Freeze Existing Cable Rates, RM-9167, filed Sep. 23, 1997.

the expenditure of additional Commission time and resources for additional proceedings. Second, Petitioners' calls for a rate freeze are unsupported and unnecessary. While Petitioners attempt to elevate concern over rising cable rates on a nation-wide aggregate basis, they fail to examine even the most basic reasons which might exist to explain such increases, e.g., underlying programming cost increases, expansion of channel offerings, system upgrades, etc.[2] The Commission's current rate mechanisms appropriately factor these legitimate cost increases into the rate formula for calculating maximum permitted rates. Freezing rates, and thus prohibiting cable operators from recovering legitimate additional expenses incurred in providing service, is unwarranted and would be a disservice to millions of American consumers who stand to benefit by the investments cable operators are making in new programming and new technology. The Commission should reject Petitioners' requests.

I. INTRODUCTION AND SUMMARY

The timing and tenor of Petitioners' filing demonstrate that their primary intent was to garner headlines on the eve of several Congressional hearings on cable competition.[3] Petitioners no doubt realize that the subject matter included in

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[2] These three factors, along with general inflation, were cited by Chairman Hundt in his statement on "The State of Competition in the Cable Television Industry" to the House Judiciary Committee on September 24, 1997, as responsible for the "bulk of the increase in cable rates over the past year" based upon a preliminary review of the data collected by the Commission in its Cable Price Survey in June 1997 ("Hundt Statement").

[3] Indeed, Gene Kimmelman, Co-Director of Consumers Union made the very same rate freeze proposal during the Senate Commerce Committee's April 10, 1997 hearing on video competition.

their PFRM is covered in multiple other dockets where a record has been fully developed in proceedings before the Commission. Petitioners ignore this fact and essentially seek to reopen and reargue the comments filed recently in the Commission's Notice of Inquiry in preparation for its Fourth Annual Competition Report to Congress.[4] Additional argument in that docket is unnecessary and inappropriate. After it issues its report to Congress, the Commission is certainly free to reopen any proceedings on cable rates or cable competition which are still pending or open new proceedings if necessary. Until that time, any such requests, such as those of Petitioners, are substantially premature and should be denied.

The issues of horizontal and vertical integration are also part of the Commission's Competition NOI and Annual Report to Congress. All parties, including the Petitioners, have had ample opportunity to comment and provide data on the concentration of the multi-channel video programming distribution industry. Here again, Petitioners' calls for various actions related to horizontal and vertical ownership concerns are premature. The Commission must be given time to analyze the data presented, make an evaluation of the current development of competition in the industry, and present its report to Congress. Many parties, including the current Chairman of the Commission, have acknowledged the value of consolidation of cable system regional "clusters."[5] Clustering is essential in order to for cable

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[4] In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 97-141, Notice of Inquiry, FCC 97-194, rel. June 6, 1997 ("Competition NOI").

[5] See, Chairman Hundt's testimony before the House Judiciary Committee on September 24, 1997, "I think it's a good thing for cable operators to consolidate in

operators to achieve sufficient size and scope to be able to offer additional communications services, e.g., telephony. And, although cable companies can realize improved economies from clustering, the largest MediaOne service area will still be dwarfed by the size of the corresponding service area of the incumbent local exchange carrier. Without the advantages of clustering, it would be extremely difficult for cable operators to match the operational and marketing efficiency of the incumbent telcos. Clustering also allows cable operators to effectively compete with local broadcasters for regional advertising accounts. And while concerns about the overall number of cable companies providing service may exist, those concerns are significantly allayed by the entrance of new competitors in the video programming distribution marketplace, e.g., DBS providers, telephone companies, private cable operators.[6]

There is no need for the Commission to open additional proceedings to review the subject matter of Petitioners' PFRM. It would be a waste of Commission time and scarce resources to essentially reopen a proceeding for which the pleading cycle was just completed and the Commission's findings are currently being prepared, especially one that, by statute, is revisited annually. No action is necessary by the Commission and none should be taken.

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geographic units ... geographic clustering or consolidation I think is pro-competitive."

[6] Hundt Statement at 4 "Preliminary analysis for our 1997 Competition Report [to Congress] indicates that these [non-cable subscribership] trends are continuing. For example, it appears that cable's total market share declined to 87% over the past year."

II. THE COMMISSION SHOULD REJECT PETITIONERS' CALL FOR A RATE FREEZE

While Petitioners' filing makes several bald assertions regarding "sharply increased market power, anticompetitive behavior, and unprecedented price increases,"[7] none are supported by current data. Petitioners seem willing to assume that because prices have increased, competition must be lacking. Petitioners fail to examine even the most fundamental reasons which explain the rate increases in the cable industry and fail to perform a proper analysis to normalize rates for a year-over-year comparison, e.g., factoring out the impact of channel additions and programming cost increases. Just as home builders are subject to and must pass on cost increases in the price of lumber, cable operators are subject to and must pass on increases in the cost of programming. In 1996, cable systems' programming expenditures totaled $5.6 billion, an increase of 14 percent over 1995.

The fact that the price of product inputs has increased significantly and that the increase has been reflected in the price of the completed product does not in and of itself demonstrate a lack of market competition. Indeed, a number of indicators show that competition in the multi-channel video programming distribution market is steadily increasing. In 1996 alone, the number of DBS subscribers doubled from 2.2 million to 4.4 million. The trend shows no sign of lessening in 1997. According to recent testimony, the DBS industry now has over 7 1/2 million subscribers.[8] Paul

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[7] PFRM at 4.

[8] See recent testimony of DirecTV, President. Eddy Hartenstein before the Antitrust, Business Rights and Competition Subcommittee of the Senate Judiciary Committee on Oct. 8, 1997.

Kagan and Associates, a leading industry analyst, projects that the number of DBS and C-band subscribers will reach 13.7 million by the end of the year 2000. Additionally, Kagan projects that there will be five million "wireless cable" and 1.3 million telco video subscribers by that time, bringing to 20 million the total number of non-cable multichannel video households or 28 percent of the multichannel video universe.

Petitioners also fail to acknowledge the investment U S WEST and other MSO's have made in rebuilding systems, introducing new technology (hybrid-fiber coax or "HFC") and providing additional, new product to customers. Petitioners focus blindly on rates without any recognition of the magnitude of the investment being made and the additional benefits which flow to consumers from that infrastructure investment.[9] The Commission and Congress have called on the cable industry to improve and expand service to its customers and the industry has responded.[10] U S WEST has invested significant capital in new cable plant in its MediaOne systems across the country.[11] The cable industry invested approximately $2.6 billion in system construction last year and will spend over $2.7 billion in 1997.

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[9] Since 1994, MediaOne has invested over $300 per subscriber to improve and expand the capacity of its cable systems across the country.

[10] Hundt Statement at 18 "At that time [shortly after the adoption of the Cable Television and Consumer Protection and Competition Act of 1992], the Commission noted that one of the policy goals Congress established in the 1992 Cable Act was ensuring that cable operators continue to expand their capacity and the programs offered over their systems, where economically viable."

[11] U S WEST Communications has also invested a significant amount of capital in Omaha where it operates a Title VI cable system under the TeleChoice brand.

Consistent with this commitment to provide superior service and state-of-the-art networks, MediaOne, formerly Continental Cablevision, Inc., entered into the first social contract with the Commission in 1995 (amended in 1996) in which it agreed to invest $1.7 billion through the year 2000. After only two years, MediaOne has already invested $859 million (nearly one-half of the total investment required), and will spend an additional $650 million this year. At its current pace, MediaOne is likely to exceed the investment amount it committed to in the Social Contract. The benefit of this investment flows directly to consumers in the form of greater reliability, crystal clear pictures, more channels, more programming, and more choice. Over 1.2 million MediaOne customers are already reaping the rewards of rebuilt cable systems.

In addition, under its Social Contract, MediaOne has instituted a lifeline basic tier rate for almost four million subscribers. Rate increases on the basic service tiers and customer programming services tiers are limited to the cost of externals over which cable operators possess no control[12] and an annual charge of $1.00 to fund the system upgrades.

The Social Contract has worked. It has allowed MediaOne to rebuild its systems in an environment of financial stability. Over the last year, only 20 out of 1,000 (about 2%) of MediaOne franchise authorities together serving less than five percent of MediaOne's five million subscribers have filed

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[12] These external costs include costs of meeting franchise obligations imposed by local franchise authorities. A rate freeze on the basic service tier limiting an operator's ability to recoup franchise-required costs in rates would seriously jeopardize the ability of cable operators to meet their obligations.

complaints concerning CPST rates. The Commission already has reviewed 13 of those complaints covering the majority of affected subscribers and upheld MediaOne's rates. Only seven complaints concerning CPST rate adjustments remain pending and they involve only 0.7% of MediaOne subscribers.

Clearly, a freeze on regulated tier rates would jeopardize MediaOne's ability to fund the system upgrades envisioned under the Social Contract. It would be fundamentally unfair to ask MediaOne to adhere to its promise to rebuild its systems in the absence of the bargained-for rate stability. None of the benefits made possible by the Social Contract, e.g., expanded programming, new competitive services, and wiring schools for high-speed Internet access, could be guaranteed if a rate freeze were imposed by the Commission.

The recent system upgrades in MediaOne's service areas have allowed MediaOne subscribers to receive an average of five additional channels of programming on regulated tiers (excluding the Basic Service Tier). MediaOne has also introduced New Product Tiers in many rebuilt systems and has expanded its premium and pay-per-view ("PPV") offerings to include time-shifted alternatives for additional consumer convenience.

MediaOne continually asks its customers for their input on the types of new programming they desire. In response to that feedback, MediaOne makes significant efforts to meet the needs of its customers in the various communities it serves. As examples of this commitment, MediaOne has repositioned certain

premium channels, such as the Disney Channel and certain regional sports services, including SportsChannel New England and Michigan's regional Pro-Am Sports Service ("PASS"), from either: 1) an a la carte premium offering; or 2) part of a package of premium services to an expanded basic tier. Nearly 2.5 million MediaOne subscribers (approximately one-half of all customers) now receive the Disney Channel as part of expanded basic service. Of course, there are generally greater costs associated with the acquisition of this highly-desirable programming. Over the past couple of years, the costs associated with sports programming have risen significantly. Such cost increases can be directly correlated with increased license fees programmers are required to pay the various sports teams and leagues and, in many cases, from that point back to the exorbitant salaries paid to individual athletes/performers.

III. THE COMMISSION LACKS THE AUTHORITY TO IMPLEMENT THE RATE FREEZE PROPOSED BY PETITIONERS

Petitioners argue that Section 623 of the Communications Act, 47 U.S.C. § 543 (b)(1), provides the authority for the Commission to impose a rate freeze on cable operators. U S WEST disagrees. The circumstances which existed when the Commission froze rates in April 1993 were significantly different than those which exist today. In 1993, there was no regulation of cable rates. Today, rates are subject to extensive regulation at both the federal and local level. While a rate freeze might have been appropriate during the development and implementation of rate regulation (essentially to prevent any possible manipulation of beginning rates), it is certainly not appropriate today where existing regulation effectively

restricts rate increases by cable operators. The significant majority of cable rate increases are directly attributable to programming and capital cost increases. On a per channel basis, increases are non-existent or negligible. Unlike the 1993 timeframe, there is no evidence of evasion of the Commission's rate regulations or the potential for rates to go unchecked without immediate Commission action. The Commission does not have the authority to freeze rates under Section 623 or under any other statutory provision in the Communications Act.

IV. CONCLUSION

Petitioners have failed to provide sufficient justification for the Commission to take action as requested in the PFRM. A rate freeze is neither appropriate nor lawful under existing circumstances. The Commission is in the process of completing its Annual Report to Congress and any corrective measures it deems are necessary should emerge as a result as a result from that report. Petitioners' requests are unnecessary, unsupported by the underlying facts, and contrary to the

interests of millions of consumers who stand to benefit by the cable industry's investments in new programming and technology.

Respectfully submitted,

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Dan L. Poole

October 30, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 30th day of October, 1997, I have caused a copy of the foregoing **OPPOSITION OF U S WEST, INC.** to be served, via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.

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