

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

In the Matter of)
)
Amendment of the Commission's Rules) RM-9167
To Update Cable Television Regulations and)
Freeze Existing Cable Television Rates)
of 1996)

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**REPLY OF
NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), pursuant to § 1.405 of the Commission's Rules, hereby replies to the statements filed in response to the above-captioned petition for rulemaking.

Significantly, the request of Consumers Union and the Consumer Federation of America that the Commission impose a freeze on cable rates and investigate the cause of recent cable rate increases attracted no significant support from commenting parties.¹

The petition appropriately did attract a number of critical comments -- particularly from cable programmers and equipment suppliers who emphasized that the effect of freezing or reducing permissible rate increases would be to stall investment in improved programming and facilities.

The comments opposing a freeze definitively strike down one of the petitioners' totally unfounded charges -- specifically, that rates have been driven upwards by programming cost

¹ The only filing supporting the proposed freeze was a two-paragraph, conclusory statement filed by a "senior telecommunications analyst," asserting that a freeze is needed because "consumers are being gouged." Comments of Elliot Becker.

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increases artificially inflated by cable-owned program networks. Notably, several networks that are *not* owned by or affiliated with cable operators made clear, in opposing the petition, that *their* growth and development would be seriously impaired by more stringent restrictions on rate increases and programming cost pass-throughs. Thus, Lifetime Television warns such restrictions “would jeopardize the ability of Lifetime and other programmers to provide new, original programming.”² A&E Television Networks reminds the Commission of the initial period of rate regulation, when the rules “discouraged operators from adding services” and “programmers promising to enhance the diversity of programming available to viewers, such as The History Channel, were forced to delay launch of new services because of regulatory impediments.”³

USA Networks similarly notes that its fledgling Sci-Fi Channel was “stagnant” between the advent of rate regulation in 1993 and the adoption of the “going forward” rules but has experienced “extraordinary growth” since then.⁴ As Viacom Inc. explains, the license fees charged to cable operators “are crucial to most programmers . . . which depend greatly on the quality of their programming to overcome challenges to gaining and maintaining carriage on capacity-constrained cable systems.”⁵ Further restrictions on programming cost pass-throughs “would hamper the creation and distribution of programming.”⁶ In sum, as these comments of unaffiliated programmers make clear, the programming cost pass-throughs permitted by the rules

² Opposition of Lifetime Television at 1.

³ Opposition of A&E Television Networks at 8.

⁴ Opposition of USA Networks at 2.

⁵ Response of Viacom, Inc. at 2.

⁶ *Id.* at 1.

reflect necessary and desirable increased investment in programming and are not, as Petitioners suggest, some sort of evasion of rate regulation.

Equipment suppliers also foresee similar drastic effects of a freeze on rate increases. Scientific-Atlanta, for example, makes clear that recent rate increases reflect increased investment in facilities and equipment -- and that further restrictions on rate increases will “severely jeopardize this needed investment.”⁷ As Scientific-Atlanta explains,

[e]fforts in the early and middle 1990s to re-regulate the cable industry caused capital expenditures for equipment and construction to plummet from over \$2 billion to under \$1.5 billion. During this period of re-regulation, Scientific-Atlanta saw its cable equipment sales fall dramatically and its earnings drop 97%, while being forced to lay off 20% of its work force. In the more deregulatory climate since the middle 1990s, the company has seen equipment sales rise dramatically, its earnings rise to record levels and its work force increase by over 50%.⁸

While Petitioners suggest that cable rate increases in excess of inflation must reflect market power and excess profits, NextLevel Systems, Inc. points out that expenditures on facilities upgrades -- like expenditures on programming -- are increasing by far more than inflation: “Cable companies are expected to invest about \$2.7 billion in system upgrades this year, a 30% increase over last year.”⁹

The Telecommunications Industry Association (“TIA”) similarly notes that “cable operators increased their investments [in fiber optics] by seven fold between 1992 and 1995” and that, currently, investments in cable modem technology are increasing at a similar pace.¹⁰ Still, according to TIA, cable investment is “not at the levels which could reasonably be expected in

⁷ Comments of Scientific-Atlanta at 2.

⁸ *Id.*

⁹ Opposition of NextLevel Systems, Inc. at 8 (emphasis added).

¹⁰ Comments of Telecommunications Industry Association at 2.

the absence of re-regulation.”¹¹ Therefore, “[i]f the United States is to continue to have the most advanced communications infrastructure in the world . . . , then the regulatory scheme under which the industry operates must become more deregulatory, not more regulatory.”¹²

If rate increases could be frozen without adversely affecting the quantity and quality of cable service in a manner that diminished consumer satisfaction, who wouldn’t support Petitioners’ request? But the evidence shows not only that recent rate increases reflect increased investments in programming and facilities but also that consumers have responded positively to the resulting enhancements in cable service.

Petitioners also argued, against all evidence, that legislation intended by Congress to promote competition in the video marketplace is not working. Relying primarily on data that predates the advent (much less the rapid growth) of DBS service and the elimination of the cable-telco crossownership prohibition, they maintained that new multichannel competitors are not affecting cable’s “market power and economic concentration in the industry.”¹³ Therefore, they argued, the Commission should impose more stringent restrictions on horizontal and vertical integration and on vertical restraints.

The only parties that agreed that competition in the video marketplace needs an additional regulatory boost were two of cable’s competitors -- DIRECTV and Ameritech. These parties largely ignore the arguments and proposed solutions of the petitioners. Instead, they use this proceeding to rehash their proposals and complaints in other pending proceedings regarding the Commission’s “program access” and “home wiring” rules.¹⁴

¹¹ *Id.*

¹² *Id.* at 3.

¹³ Petition at 19.

¹⁴ *See* Comments of Ameritech New Media, Inc.; Comments of DIRECTV, Inc.

In sum, the petitioners' call for a rulemaking proceeding has attracted virtually no support, while cable operators, programmers and equipment suppliers unanimously oppose petitioners' request for a rate freeze and refute the asserted need to investigate recent rate increases.¹⁵ While two of cable's competitors have taken the opportunity to reiterate positions that they have staked out in other proceedings, there is no need to open a new proceeding to address their concerns.

For these reasons, and for the reasons set forth in our Opposition, the petition should be denied.

Respectfully submitted,



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¹⁵ What NCTA explained in its Opposition was that the Commission's rules limit increases in regulated rates to (1) inflation, (2) increases in "external costs" in excess of inflation (including programming costs -- which the Commission expected to increase by far more than inflation), and (3) in certain circumstances, a limited additional amount deemed necessary by the Commission to encourage and justify investment in more and better service. Recent increases in rates have, in fact, been accompanied by enhancements to the quantity and quality of cable service. And consumers have clearly appreciated and benefited from these enhancements, as evidenced by increased ratings for cable programming and increased subscribership to cable service. There is no evidence that the rate increases include anything more than what is necessary to continue such investments in improved service -- and, indeed, there is no way under the rules that they could. See Opposition of NCTA at 4-21. See also Opposition of Comcast Cable Communications, Inc.; Opposition of U S WEST, Inc.; Comments of Cable Telecommunications Association; Opposition of Turner Broadcasting System, Inc.; Opposition of the C-Span Networks.

CERTIFICATE OF SERVICE

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