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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

National Cable Television Association

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November 21, 1997

<u>EX PARTE</u>

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

Re: <u>Consumers Union Rates Rulemaking, RM 9167</u>

Dear Mr. Caton:

Daniel Brenner, Michael Schooler and Loretta Polk of the National Cable Television Association ("NCTA") met with FCC staff to discuss the cable industry's position in the above-referenced proceeding. NCTA's representatives met with:

<u>Monday, November 17</u>
- Anita Wallgren, Legal Advisor
- Jane Mago, Legal Advisor

<u>Tuesday, November 18</u>
- Rick Chessen, Legal Advisor
- Meredith Jones, Chief, CableServices Bureau
- Tom Power, Legal Advisor

<u>Wednesday, November 19</u>
- Katherine King, Legal Advisor

NCTA reiterated the positions set forth in its oppposition and reply comments in this proceeding and left a copy of the attached handout for their review.

Sincerely,

Daniel L. Brenner

DLB:tkb

Attachment

NCTA PRESENTATION ON RATE REGULATION

- The 1993 rules required systems to reduce rates by 10% -- and then, on reconsideration, by 17%.
- Subsequent rate increases are limited to
  - Inflation
  - Increases in "External Costs" in excess of inflation
  - An additional "mark-up" deemed necessary to justify investment in programming and facilities.

EXTERNAL COSTS INCLUDE:

- Costs outside the operator's control:
  - Franchise fees.
  - Cable-specific taxes.
  - Costs of complying with franchise requirements.
  - Copyright and retransmission consent fees.
  - FCC cable regulatory fees
- Programming costs.

PROGRAMMING COSTS

- 1993 decision allowed pass-throughs of programming cost increases because:
- Programming costs had historically "increased at a rate far exceeding the rate of inflation," and
- Rate increases were typically attributable to "an increase in the quality and diversity of cable programming."

MARK-UPS ON PROGRAMMING COSTS

- The initial 1993 rules allowed pass-throughs of programming cost increases -- with no additional mark-up.
- On reconsideration, the FCC allowed a 7.5% mark-up on programming cost increases, in order to provide sufficient incentive to invest in improvements to *existing* programming.

THE "GOING FORWARD" RULES

- The 7.5% mark-up did not provide adequate incentives to add *new* channels -- "especially new channels with low license fees."
- The 1994 "going forward" rules provided an alternative:
  - A fixed mark-up of 20¢ per-channel for channels added in 1995-97, limited to a total of $1.40.
  - Pass-throughs of licensing fees for added channels, limited to a total of 30¢ in 1995-96. No limit on pass-throughs of licensing fees in 1997.
- The "going forward" rules apply only to channels added to "cable programming service" tiers. The 20¢ per-channel mark-up does not apply to channels added to the "basic" tier.
- The "going forward" rules expire at the end of 1997.

LIMITS ON PASS-THROUGHS FOR AFFILIATED PROGRAMMING

- Pass-throughs for affiliated programming are limited to "prevailing company prices" offered to unaffiliated distributors, or "fair market value," if there are no prevailing marketplace prices.

THE RULES ARE WORKING:

- Rate Increases Have Reflected Increases in the Quantity and Quality of Cable Service
- **Quantity:** The number of channels available to subscribers has increased -- and the *per-channel* price of basic and CPS tiers has remained constant since 1991.
- **Quality:** Ratings for cable programming have increased and so has the number of cable subscribers.
- If rates were set at reasonable levels in 1994,

  and
- If rate increases are limited to costs plus an amount necessary to justify investment,

  and
- If increased investment is enhancing the attractiveness of cable service to consumers,

  then
- How can such rate increases be excessive?

COMPETITION IS GROWING

- Subscribership to non-cable services has increased by 22% per year since 1990.
- Cable's share of subscribership to multichannel services decreased 2% last year, to 87%.
- More than 9.5 million households subscribe to non-cable multichannel services.
- DBS is *available* nationwide.
- Cable and its competitors are attracting equal numbers of *new* multichannel subscribers.
    - *This indicates that new services are perceived as good alternatives to cable.*
- But cable is retaining most of its existing subscribers.
    - *This indicates that cable operators are competing effectively -- by increasing the quantity and quality of service, rather than simply by reducing price.*