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

In the Matter of	)	
	)	
Revisions to Cable Television Rate Regulations	)	MB Docket No. 02-144
	)	
Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	)	MM Docket No. 92-266
	)	
Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	)	MM Docket No. 93-215
	)	
Adoption of a Uniform Accounting System for the Provision of Regulated Cable Service	)	CS Docket No. 94-28
	)	
Cable Pricing Flexibility	)	CS Docket No. 96-157

COMMENTS OF CABLEVISION SYSTEMS CORPORATION

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COMMENTS OF CABLEVISION SYSTEMS CORPORATION

Cablevision Systems Corporation ("Cablevision"), by its attorneys, hereby submits these comments in the Notice of Proposed Rulemaking in the above-captioned proceeding.[1/] Through various subsidiaries and affiliates, Cablevision provides cable television and cable programming services, cable modem service, telephony and other product offerings to customers located primarily in New York, New Jersey and Connecticut.

[1/] In the Matter of Revisions to Cable Television Rate Regulations; Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation; Implementation of Sections of The Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation; Adoption of a Uniform Accounting System for the Provision of Regulated Cable Service; Cable Pricing Flexibility, MB Docket No. 02-144, MS Docket Nos. 92-266, 93-215, CS Docket Nos. 94-28, 96-157, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 11550 (2002) ("Notice").

INTRODUCTION AND SUMMARY

The Commission's rules governing local regulation of Basic service tier (BST) rates and associated equipment and installation charges are nearly ten years old. Over the last ten years, the competitive landscape faced by cable operators has changed dramatically. The Commission's rate rules were first adopted in 1993, when there was virtually no competition from DBS and competing providers served less than five percent of multichannel subscribers nationwide.[2/] Today, as Chairman Powell recently observed, DBS providers offer consumers "an existing viable competitor in every market in the country,"[3/] and competing distributors serve nearly one-quarter of the nation's multichannel subscribers.[4/] When measured on a statewide basis, DBS penetration now exceeds the key 15% threshold established by Congress in 44 of the 50 states.[5/]

The vigorous competition faced by cable operators in every market across the country underscores the importance of minimizing unnecessary regulatory costs and burdens. That objective is particularly critical now, as cable operators face not only a challenging competitive environment, but also must cope with a more constrained and skeptical capital market. Thus, Cablevision agrees that the rate rules should be re-

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[2/] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, First Report, 9 FCC Rcd 7442 (1994), Appendix G, Table 1 (in 1993, cable operators served over 95 percent of all MVPD subscribers, MMDS less than 1 percent, SMATV operators less than 2 percent and DBS operators only 0.12 percent).

[3/] Press Release, "FCC Declines to Approve EchoStar-DirecTV Merger," October 10, 2002, Statement of Chairman Powell at 1, available at http://wwwfcc.gov/Daily_Release/ Daily_Business/2002/db1010.

[4/] See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 02-145, Comments of the National Cable & Telecommunications Association (filed July 29, 2002) ("NCTA Video Competition Comments") at 13.

[5/] Id. at 6, 12.

examined at this time, with an eye toward modifying or eliminating provisions, which may be outdated or unworkable.

The modifications proposed in these comments aim to be consistent with the Notice's objective of improving the existing regulatory structure without effectuating wholesale changes to a framework that "has come to be understood by both operators and local governments involved in the rate regulation process:"[6/]

- The Commission should make clear that cable operators may increase BST rates for channels added or moved to the Basic tier, and for adding any digital broadcast channels to the BST. Rate increases for digital broadcast channels added to the BST should be computed on a per-channel basis, rather than on the 6 MHz basis previously suggested by the Commission.

- The Commission should clarify that local franchising authorities (LFAs) may not review the entire rate structure of cable systems that are newly regulated or subject to re-regulation due to changed competitive circumstances in a franchise area. Only incremental rate adjustments effectuated after such a system has become newly regulated or re-regulated should be subject to LFA review.

- The Commission's rules should be modified to presumptively permit a cable system serving multiple franchise areas with the same channel lineup and rate structure to submit a single system-wide rate filing for each area served by the system, without having to obtain advance approval from LFAs.

- The Form 1235, streamlined cost-of-service filing option should be retained to allow operators to recover from BST subscribers a properly allocable portion of the costs of significant network upgrades.

- The Commission should allow cable operators the option of continuing to charge either an aggregate, regulated rate for converter boxes pursuant to the current rules, or an unregulated, digital-only converter rate for digital boxes. The Commission should also streamline the Form 1205 filing process to allow operators to set installation rates on a multi-year basis.

- The Commission should streamline the process of reviewing and deciding effective competition petitions. The Commission should establish a 90-day deadline for resolution of effective competition petitions, and, in light of the substantial competition offered by DBS and other competing providers around the

[6/] Notice at ¶ 6.

country, eliminate its presumption that cable systems are not subject to effective competition.

While some fine-tuning of the Commission's rate regulations may be in order, Cablevision agrees that "[t]here would be considerable regulatory cost involved in changing to an entirely new rate setting process."[7/] In that regard, the Commission should not recompute the competitive differential which serves as the basis for the benchmark rates charged by cable operators today. Likewise, the Commission should not pursue the suggestion in the Notice that local rate decisions by LFAs be accorded greater deference when being reviewed by the Commission.

I. THE COMMISSION'S RULES SHOULD BE MODIFIED TO ENSURE THAT OPERATORS ARE COMPENSATED WHEN CHANNELS ARE MOVED OR ADDED THE BASIC SERVICE TIER

The Notice acknowledges that there has been "debate" and "confusion" over whether and how the Commission's rules allow operators to adjust rates for channels added or moved to the Basic service tier.[8/] An Order accompanying the Notice (which was modified on August 14, 2002) adopts an interim solution to this issue which, inter alia, grandfathers LFA rate orders that have accepted BST rate changes for moved channels based upon the procedures set forth in Section 76.922(g) of the Commission's rules and the Form 1240.[9/] The Interim Order states that if an LFA has accepted a BST rate adjustments for channels moved from the cable programming services tier (CPST) to the BST that was computed based upon the residual formula set forth in the rules, then

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7/ Notice at ¶ 6.

8/ Notice at ¶ 15; id. at ¶ 55. See also In the Matter of Revisions to Cable Television Rate Regulations, MB Docket No. 02-144, Order, 17 FCC Rcd 15974 (2002) ("Interim Order").

9/ See 47 C.F.R. § 76.922(g)(2)-(5); "FCC Form 1240, Worksheets 3-5," available at http://www.fcc.gov/forms ("FCC Form 1240 Instructions"), FCC Form 1240 Instructions, pp. 29-35, available at http://www.fcc.gov/forms.

such a determination should not be changed in the true-up process associated with any subsequent Form 1240 filing.[10/]

The proposed grandfathering approach represents a reasonable means of addressing channel addition/movement issue on an interim basis, and is an important step in preventing the build-up of a backlog of unresolved local rate orders. Indeed, any interim solution which permitted LFAs to reopen BST rate adjustments for channel movements via the true-up process would thwart the Commission's goal of creating "stability in the rate-making process pending resolution of this proceeding."[11/]

On a going-forward basis, the Commission should adopt a clear rule that enables cable operators to adjust rates to reflect the movement or addition of channels to the BST. Depriving cable operators of any additional compensation when channels are added or moved to the BST would contravene Congressional intent. Section 623 of the Cable Act requires the Commission's rate rules to take into account "the direct costs . . . of obtaining, transmitting, and otherwise providing signal carried on the basic service tier, including" any additional "video programming signals or services" beyond those required to be carried pursuant to must-carry and PEG requirements.[12/] Absent a provision permitting operators to increase rates when channels are added or moved to the Basic tier, the operator is being deprived of the ability to recover the capital costs and operating

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[10/] Interim Order at ¶ 2.

[11/] Id. The Interim Order also clarifies the manner in which BST rates should be adjusted when channels are unbundled from the Basic tier and moved to higher service tiers. Id. at ¶ 4. This issue is particularly significant for cable operators unbundling a single, "fat basic" tier, into two tiers consisting of a low-cost broadcast basic offering and a CPST package. The revised methodology set forth in the Interim Order corrects flaws in the approach outlined in the Notice in June, and protects against significant rate swings and pricing anomalies that would otherwise be caused by a literal application of the Worksheet 4 instructions to a circumstance in which an operator is unbundling a large number of channels from a former "fat basic" tier.

[12/] 47 U.S.C. § 543(b)(2)(C)(ii); 47 U.S.C. § 543(b)(7)(B).

expenses associated with providing those channels to BST subscribers, as well as a return on that investment.

The Notice recognizes that the "policy objective in terms of channel additions" has been "to provide the system operator with an appropriate return of its investment in the underlying facilities and programming services."[13/] In addition, ensuring that operators have the ability to adjust rates to reflect the addition of channels to the BST will benefit consumers, by providing cable systems with greater flexibility to devise more attractive entry-level packages in response to competition.

The methodology proposed in NCTA's comments offers a reasonable means of ensuring that rates are properly adjusted whenever channels are added, deleted, or moved to or from the BST.[14/] Using the per-channel adjustment factors already set forth in the Commission's rules, while eliminating the consideration of CPST channels when computing total channels, offers a fair method for calculating rate adjustments when channels are either added to or deleted from the BST. There is no policy justification or legal authorization in the Cable Act for establishing an "asymmetrical" adjustment methodology that calculates a larger downward adjustment when BST channels are deleted and smaller upward adjustment when the same number of channels are added to the BST.[15/] The approach proposed by NCTA offers a neutral methodology, avoids the potential for rate distortions that could arise through use channel "residuals," and ensures that rates will be reduced by an appreciable amount when "fat basic" tiers are unbundled.

[13/] Notice at ¶ 17.

[14/] See In the Matter of Revisions to Cable Television Rate Regulations, MB Docket No. 02-144, Comments of NCTA, at Section I (filed November 4, 2002).

[15/] Cf. Notice at ¶ 20.

The Commission's rules also should permit operators to increase benchmark rates for any digital broadcast channels added to the BST. Cablevision agrees with the Commission that such benchmark rate adjustments should be separate from any headend equipment cost or Form 1235 surcharge which the Commission also endorsed as a means of defraying some of the costs associated with providing DTV signals.[16/] The adjustment for carriage of digital broadcast signals, however, should be computed on a per-channel basis, rather than on the basis of "each 6 MHz of capacity," as suggested in the Notice.

There is no justification for establishing a bandwidth-based adjustment factor for digital broadcast signals carried on the BST, rather than the per-channel adjustment approach that has been used in the Commission's rules up to now. A bandwidth-based factor would disadvantage cable operators opting to carry more digital channels by precluding them from recovering costs and earning a return on some channels being provided to subscribers. The result would be to thwart the Commission's broader goal of expediting the digital transition.

II. LFA REVIEW OF RATES CHARGED BY NEWLY REGULATED OR RE-REGULATED CABLE OPERATORS SHOULD BE LIMITED TO INCREMENTAL RATE INCREASES IMPLEMENTED AFTER THE OPERATOR BECOMES SUBJECT TO RATE REGULATION

The Commission should treat a cable operator subject to BST re-regulation in the same manner as it treats small systems that lose their eligibility for the small system exemption from rate regulation due to subscriber growth or acquisition by a larger cable company.[17/] The FCC endorsed such an approach in a recent order recertifying the

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16/ Notice at ¶ 25-26.

17/ In the Matter of Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, CS Docket No. 96-85, Report and Order, 14 FCC Rcd 5296 ¶¶

Connecticut Department of Public Utility Control's authority to re-regulate Cablevision systems serving two franchise areas in Connecticut.[18/]

Under this approach, any BST rate and associated equipment charges in effect while the LFA was not certified to regulate due to effective competition are not subject to regulatory review and may remain in effect. However, following issuance of a Commission order granting re-certification, any changes to the operator's pre-recertification BST and associated equipment rates would become subject to LFA regulatory review. To the extent a re-regulated or newly regulated operator opts for the Form 1240 annual rate filing procedure, the operator's initial "re-regulated" rate filing can be submitted and reviewed in the same manner in which the Commission processed Form 1240 filings submitted by operators whose CPSTs were previously deregulated.[19/]

88-89 (1999). Deregulated systems that lose their "small system" status (as a result of subscriber growth or due to acquisition by a large system) may continue to charge the BST and associated equipment rates established while they were not subject to rate regulation. Any BST rate increases sought after a system loses its "small system" designation, however, are subject to FCC rate regulation rules. Id. Prior to the statutory deregulation of the CPST in March, 1999, a similar process was in effect with respect to cable operators that received complaints against CPSTs in franchise areas that were not otherwise subject to CPST rate regulation. In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-266, Thirteenth Order On Reconsideration, 11 FCC Rcd 388 ¶¶ 161-64 (1995).

[18/] See In the Matter of Connecticut Department of Public Utility Control, Petition for Recertification of Rate Regulation Authority, DA 02-2693, Memorandum Opinion and Order, 2002 FCC Lexis 5232 (rel. October 17, 2002).

[19/] See e.g. In the Matter of Falcon Cablevision d/b/a Falcon First, Inc., DA 98-942, Order, 13 FCC Rcd 13198 ¶ 5 (1998); FCC Form 1240 Instructions at 4, 12, 15.

III. CABLE SYSTEMS SERVING MULTIPLE FRANCHISE AREAS WITH THE SAME CHANNEL LINEUP AND RATE STRUCTURE SHOULD BE PRESUMPTIVELY PERMITTED TO SUBMIT A SINGLE, SYSTEM-WIDE RATE FILING TO EACH AFFECTED FRANCHISE AREA

The Notice asks whether there are "changes in the rules that might be useful in order to create greater flexibility in rate structures or more uniform regional rates while continuing to maintain rules designed to keep BST rates reasonable."[20/] While a procedure was established in 1995 enabling operators to submit uniform rate proposals for particular geographic areas, few operators have availed themselves of that option.[21/]

One modification satisfying the Notice's objectives would be to allow cable systems serving multiple franchise areas with identical channel lineups and rate structures to be presumptively permitted to submit a single, system-wide filing. The Commission has stated that system-wide rate filings are permissible if "all relevant factors (including program service and equipment rates, channel line-ups and franchise fees) are identical and the local franchising authority . . . permits the use of such system-wide data."[22/] Thus, even where a cable system serves multiple franchise areas with an identical channel

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[20/] Notice at ¶ 29.

[21/] The approach adopted by the Commission effectively required uniform rates in a multi-franchise area region to be set by the franchise area with the lowest regulated rate that would have been permitted under the normal operation of the Commission's rules. Thus, the option would typically yield lower revenues for multi-franchise area cable systems than would have normally prevailed under the Commission's rules. See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 – Rate Regulation, Uniform Rate-Setting Methodology, CS Docket No. 95-174, Report and Order, 12 FCC Rcd 3425 ¶¶ 14, 17 (1997).

[22/] Public Notice, "Questions and Answers on Cable Television Rate Regulation," at 3 (rel. June 1, 1994).

line-up, rate structure and franchise fees, the current rules still give LFAs the discretion to prevent an operator from consolidating multiple franchises into a single filing.[23/]

Rather than place the burden on cable operators to justify system-wide filings for multiple franchise areas that have identical channel lineups and rate structures, the Commission's rules should presumptively allow such filings.[24/] Further, cable systems that add new franchise areas to their service territory due to network upgrades and headend consolidation – and provide those areas with the same channel lineups and rate structure as the other areas served by the system – should be presumptively permitted to incorporate those franchise areas into a system-wide filing. BST service and equipment rates would still be governed by the Commission's rate formulas, while providing both operators and cable subscribers with more opportunities to benefit from greater efficiencies and economies of scale.

IV. THE FORM 1235 NETWORK UPGRADE SURCHARGE FILING OPTION SHOULD REMAIN AVAILABLE TO CABLE OPERATORS

The Commission's rules permit benchmark-regulated cable operators that make capital investments and incur increases in operating expenditures due to significant cable network upgrades to recover those increased costs from subscribers as an add-on to regulated tier rates established under the benchmark approach.[25/] FCC Form 1235 is designed to measure and allocate the costs of eligible upgrades, and compute the

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23/ See id. ("all three factors" must be identical "before system-wide data may be used" and LFA "has the discretion to determine whether there are other relevant factors that would preclude the use of system-wide data"); FCC Form 1240 Instructions at 10 (Form 1240 rate filings "must be provided on a franchise wide basis, unless the franchising authority or the FCC has specifically agreed to accept system wide information").

24/ The Commission need not require franchise fees to be identical, since operators already are permitted to separately itemize such fees on subscriber bills. 47 C.F.R. § 76.985.

25/ 47 C.F.R. § 76.922(j).

appropriate add-on rate that may be assessed on regulated tier subscribers. Current FCC rules permit an operator to "recover its upgrade costs by establishing an add-on rate for both the basic service tier and the cable programming service tier(s), or may elect to recover those costs by establishing an add-on rate only for the cable programming service tier(s)."[26/] The Notice asks whether, "in light of the breadth of unregulated services that can now be delivered over cable systems," the Commission should continue to allow operators" to submit Form 1235 filings for the BST.[27/]

Cablevision strongly believes that the Form 1235 filing option should be retained for all cable operators. The abbreviated cost-of-service filing process was adopted in order to encourage and accelerate deployment of advanced cable network infrastructures and enable the provision of additional services.[28/] The Commission recognized that the benchmark rate system may not adequately allow for recovery of the significant capital investment needed to construct and deploy an advanced cable network infrastructure.

While CPST regulation has been sunset, that is no reason to preclude cable operators from the opportunity to recover a properly allocable portion of their network upgrade investment costs from its entry-level and most highly-penetrated tier of service. Indeed, it would be highly anomalous to deprive a business of the opportunity to spread recovery of its capital costs over a portion of its customers and service offerings that benefit from that capital investment.

[26/] FCC Form 1235 Instructions at 2, 8, available at http://www.fcc.gov/forms.

[27/] Notice at ¶ 36.

[28/] In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Adoption of a Uniform Accounting System for Provision of Regulated Cable Service, Report and Order and Further Notice of Proposed Rulemaking, FCC 94-39, 9 FCC Rcd 4527 ¶¶ 285, 287, 291 ("Cost of Service Order") (referencing adoption of "abbreviated" cost-of-service showing for Form 1235 network upgrades).

The Commission has recognized that network upgrades that are eligible for the Form 1235 surcharge provide benefits to all cable consumers, including BST subscribers. Indeed, the FCC has expressly approved the imposition of network upgrade surcharges in cases where no new channels were added to the operator's Basic tier, reasoning that BST subscribers reap significant benefits from the improved service quality and reliability resulting from an upgrade that meets the Form 1235 technical criteria – even if no new channels are added.[29/]

The cable industry has invested over $60 billion dollars upgrading its infrastructure to provide cable subscribers with state-of-the-art networks that offer greater reliability, picture quality, and access to an array of new services.[30/] The Commission would thwart the goal of encouraging deployment of new technologies and advanced services if it changed the rate rules to deprive cable operators of any opportunity to recover a portion of that network investment from its most-popular tier of service. The Form 1235 filing option should be retained.[31/]

[29/] In the Matter of Cox Communications San Diego, Inc. (Chula Vista), DA 98-1536, Memorandum Opinion and Order, 13 FCC Rcd 17653 ¶¶ 9,13-15 (1998).

[30/] NCTA Video Competition Comments, supra n. 4, at 23.

[31/] To the extent that the Commission opts to "modify FCC Form 1235 so that rate base recoveries will be limited to an operator's average upgrade investment over the life of the upgrade rather than its total investment over the life of the upgrade," see Notice at ¶ 37, it should do so on a prospective basis only. Many cable operators filed Form 1235 on a pre-approval basis using estimated costs, and the upgrade surcharge authorized for pre-approval filers is subject to a true-up based upon actual costs once the upgrade is complete. Operators that established upgrade surcharges based upon pre-approval filings, should be permitted to submit their true-up filing based upon the same rules and policies governing Form 1235 submissions that prevailed at the time they submitted the pre-approval filing.

V. THE COMMISSION SHOULD UPDATE ITS EQUIPMENT RATE RULES TO REFLECT CHANGED CIRCUMSTANCES IN THE MARKETPLACE

A. The FCC Should Allow Cable Operators the Option to Charge Either An Unregulated, Digital-Only Converter Rate, or An Aggregate Converter Charge Set In Accordance with the Rate Rules

The Notice asks whether, on either a discretionary or mandatory basis, "it [would] be appropriate to associate digital equipment . . . with non-regulated tiers," thereby exempting digital converter prices from the constraints of the Commission's equipment rate regulations.[32/] While Basic tier subscribers clearly receive added value for choosing a digital box,[33/] most subscribers decide to lease digital converters – rather than rely on analog boxes or direct connection to a cable-ready set – in order to obtain unregulated tiers and service offerings. Thus, the Commission is correct to question whether a digital converter box should be subject to the rate regulation rules since it may be inaccurate to classify it as "equipment used by subscribers to receive the basic service tier."[34/]

The choice of whether to offer a separate, unregulated digital converter rate should be discretionary on the part of the operator, however, since many cable operators have established business plans based upon the equipment rate aggregation rules passed by Congress in the Telecommunications Act of 1996.[35/] Some operators may have digital box deployment and analog converter phase-out plans that are predicated on the Congressional decision to allow cable systems to blend digital and analog converter box costs into a single, aggregate regulated converter rate. Limiting or eliminating the ability

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32/ Notice at ¶ 47.

33/ In the past, some Cablevision basic-only subscribers opted for advanced set-top boxes in order to obtain improved picture quality and performance and to gain access to impulse pay-per-view movies, a precursor to video on demand.

34/ 47 U.S.C. § 543(b)(3); Notice at ¶ 45.

35/ 47 U.S.C. § 543(a)(7).

of cable operators to aggregate digital and analog converter costs could interfere with business plans established in reliance on the equipment rate aggregation rules, and jeopardize the ability of cable operators to recover their investment in digital technology.

Accordingly, the Commission's rules should be amended to grant cable operators a new option of charging an unregulated, digital-only converter rate, while preserving the existing ability of cable operators to blend analog and digital box costs into a single, aggregate converter rate established in accordance with the Commission's rules.

B. The Commission Should Seek to Simplify the Form 1205 Equipment Rate-Setting Process

The Notice asks whether "FCC Form 1205 can be simplified in any way to ease the burden of regulation on both cable operators and franchising authorities."[36/] Form 1205 review can be an extremely time-consuming and data-intensive process in some jurisdictions, with cable operators required to submit in some cases thousands of pages of documentation each year in order to support the cost amounts set forth on their equipment rate forms. Further, in many cases, the documentation is sought as support for data entries or allocation formulas that may not vary significantly from year to year. In addition, some LFAs press operators to track installation time activities or alternative methods and account for costs to levels of detail that are unrelated to the operator's normal business practices and accounting books and records.

The Commission should establish a streamlined Form 1205 filing process that would allow cable operators to establish and maintain installation rates on a multi-year

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[36/] Notice at ¶ 49.

basis.[37/] While equipment rates for converters recur on a monthly basis,[38/] most subscribers pay installation charges (if at all) on only a one-time basis. The establishment of installation rates on an annual basis, however, is one of the most paperwork intensive and time-consuming aspects of the rate regulation process, requiring the generation, completion, and review of installation activity time studies from installers; compilation of extensive payroll and benefit information, inside labor and outside contractor data; and entailing considerable review and explication of cost accounting procedures and policies.

Facing vigorous competition from DBS, and under close scrutiny from the capital markets with respect to churn and subscriber growth rates,[39/] cable operators have no incentive to overprice installation costs and thereby discourage potential customers from becoming subscribers. Indeed, cable operators often offer promotions that provide subscribers with installations at discounted rates. In short, regulation of installation rates imposes significant regulatory costs and administrative burdens, but provides little or no incremental protection against unreasonable rates that is not already provided by the

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[37/] Under this proposal, operators choosing to establish installation rates on a multi-year basis would still be required to set rates on an annual basis for converters and other Schedule C items. In years where only the schedule C items were subject to review, however, the rules could allow for a streamlined submission based upon the Commission's existing procedure for the introduction of new equipment in the middle of a rate year. 47 C.F.R. § 76.923(o). This approach allows operators to establish rates for new equipment by completing only Schedule C and the relevant worksheet steps relating to the new item, while relying upon previous Form 1205 entries "for information not specifically related to the new equipment, including but not limited to the Hourly Service Charge." Id. Adapting the new equipment procedure for setting converter rates during the "off-years" of a multi-year Form 1205 filing would further reduce unnecessary regulatory costs and burdens.

[38/] Converter rates also may be subject to larger variations on a year-to-year basis due to depreciation expense and changes in converter capital stock.

[39/] Cf. "Cable's Growth Worries Take a New Twist," , October 31, 2002, available at http://www.thestreet.com/ tech/georgemannes/10051356.html.

market itself. To reduce these unnecessary burdens and costs, the Commission's rules should give cable operators filing Form 1205 the option of establishing and maintaining installation rates for up to three years.

VI. THE COMMISSION SHOULD STREAMLINE ITS PROCESSES FOR REVIEW OF EFFECTIVE COMPETITION PETITIONS

The Notice asks whether there are ways to improve "the procedures used to demonstrate effective competition."[40/] The process of obtaining competing provider data from SkyTrends in order to demonstrate effective competition on a franchise area by franchise area basis can be costly and time-consuming. Since DBS service is now available in every local market in the country, and serves more than 15% of subscribers in nearly 44 of the 50 states,[41/] the Commission's presumption that effective competition is not present in local franchise areas is no longer sustainable.[42/]

The Commission also should establish a deadline for the processing of effective competition petitions. While it is apparent that the Media Bureau in recent months has been working to expedite the resolution of effective competition petitions, in past years some petitions filed by Cablevision remained open for years.[43/] These delays can hobble

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40/ Notice at ¶ 52.

41/ NCTA Video Competition Comments at 13. See also Notice at ¶ 53 (noting that DBS penetration now exceeds 20% of television households in 30 states and 30% in five states).

42/ Cf. 47 C.F.R. § 76.906.

43/ See e.g., In the Matter of Cablevision of Boston, Inc., DA 01-1731, Memorandum Opinion and Order, 16 FCC Rcd 14056 (2001) (granting effective competition petition filed 4 years earlier on July 14, 1997); In the Matter of Cablevision Systems of Connecticut, L.P., DA 99-1921), Memorandum Opinion and Order, 14 FCC Rcd 15883 (1999) (granting effective competition filed 2 years earlier). Even where some past effective competition petitions were uncontested, an actual determination of effective competition could sometimes be protracted. See e.g., In the Matter of Cablevision of the Midwest, DA 99-1683, Memorandum Opinion and Order, 14 FCC Rcd 13838 (1999) (8 months to resolve uncontested effective competition petition).

cable operator efforts to respond to competition and prolong unnecessary regulatory costs and burdens. Accordingly, Cablevision proposes that with respect to uncontested effective competition should be resolved within 30 days after the last date on which opposition or comments could have been filed. Contested petitions should be subject to a timetable for resolution, similar to the 90 day deadline imposed for resolving program access complaints.

Finally, in order to clarify any ambiguity with respect to the regulatory consequences of a grant of effective competition, the Commission should consider in contested rate deregulation cases resolved in the cable operator's favor specifying the date on which the cable operator is no longer subject to refund liability and regulatory oversight. While the Commission has indicated in previous effective competition decisions that rate deregulation is effective as of the filing date of a successful petition, clarifying this policy either in this proceeding or on a case-by-case basis in contested cases would help to smooth the transition to rate deregulation for operators and LFAs.

VII. THE COMMISSION SHOULD NOT RELAX ITS OVERSIGHT OF, OR GRANT GREATER DEFERENCE TO, LFA RATE DECISIONS

The Commission's role as arbiter and enforcement backstop of its rate rules and procedures has been critical in providing a modicum of stability and predictability in the local rate regulation process. Cable operators already are subject to multiple and often conflicting interpretations of the FCC's rate rules by LFAs. Such differing interpretations and applications of the Commission's rules can adversely effect cable revenues and hamper efforts by multi-system cable operators (MSOs) to establish company-wide rates and practices.

For example, to facilitate providing and expanding new advanced digital applications to subscribers, such as interactive digital programming, HDTV, IP telephony, Cablevision is working to streamline its cable operations in order to help the company provide the highest quality support for these new services. Part of this streamlining involves the standardization of program offerings and service and equipment prices. The success of this plan depends on continued FCC oversight to ensure the consistent application of the Commission's rate rules and policies across different local boundaries and jurisdictions.

A decision by the FCC to relax or reduce its level of oversight would slow cable operator efforts to deploy new services and advanced technology by heightening regulatory uncertainty and increasing costs and burdens on cable operators. If anything, the Commission should be examining whether to heighten its level of oversight over local rate decisions, particularly since it no longer is required to regulate CPST rates. Unless the FCC continues to serve as adjudicator and enforcer of its rate rules, cable operators will be subject to multiple and inconsistent interpretations of its regulations governing BST and equipment prices, with no means nor prospect of reconciling such inconsistencies through FCC review.

CONCLUSION

For the foregoing reasons, the Commission should modify its rules governing the rates charged for Basic cable service in accordance with the proposals set forth herein.

Respectfully submitted,

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