TALKING POINTS ON CABLE FRANCHISING

The Ratepayer Advocate urges the Commission to:

- The FCC lacks jurisdiction over the awarding of initial franchises under the Act.

- The Act prohibits an LFA from unreasonably refusing to award a franchise and the Act already has specific legal remedies that a cable operator can exercise to contest an unreasonable decision to award or renew a franchise by the LFA.

- Many of the concerns expressed in the NPRM are not directed at the decisions made by LFAs but by the process itself, a process that is mandated by the Act and which the FCC is not free to change or ignore.

- The LFAs are in the best position to evaluate the needs of their respective citizenry, and to evaluate the potential of each cable entrant to meet those needs. Moreover, local and State control can better ensure that cable operators who are awarded franchises have the requisite financial and technical capabilities to meet the needs of the cable customers.

- It is the refusal of new entrants to abide by the same terms as other cable operators, and not onerous restrictions, which has hindered the new entrants' ability to obtain franchises in some municipalities.

- The Ratepayer Advocate supports new legislation regarding statewide cable franchises provided that it:

  1) promotes adequate, economical and efficient cable television service to New Jersey consumers;

  2) encourages the optimum development of the educational and community service potentials of the cable television medium;

  3) provides just and reasonable rates and charges for cable television system services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices;

  4) promotes and encourage harmony between cable television companies and their subsidiaries and customers; and

  5) adequately protects the interests of municipalities of the state in regard to the award of franchises.

The entrance of traditional telephone companies into cable television markets, as well as entry of cable companies into telecommunications services raises questions that need to be addressed within the framework of what regulations are appropriate and necessary and how consumers are to be protected.

- The Ratepayer Advocate supports the establishment of new benchmarks for Basic Service Tier ("BST") rates and the need to adjust those benchmarks for unregulated services, such as information services, by imposing allocation requirements.

- The FCC should adopt rule changes that require cable operators to file Form 1235, even if the upgrade costs are only recovered through the CPST, and permit LFAs to review and approve such filings.

- The Ratepayer Advocate urges the FCC to considering permitting LFAs to review and regulate CPST rates or in the alternative, to re-impose CPST regulation by the FCC.

- The Ratepayer Advocate urges the FCC to take steps to have Congress revise Section 623 of the Act to eliminate the ability of cable operators to avoid rate regulation of the BST through the filing of effective competition petitions. The various tests for determining effective competition should be eliminated.

- In order to avoid cross subsidization, there needs to be uniform rules applied to traditional cable operators and to traditional telephone providers that seek to offer competing services. Structural separation is the best safeguard against cross-subsidization of services. The Ratepayer Advocate believes measures must be adopted that provide for true structural separation, when for example a non-traditional service provider, such as a telephone common carrier, enters the cable market or cable companies offer telephone service. Recommended structural separations would include but should not be limited to the:

    1) creation of a subsidiary company, which will operate independently as the service provider for cable television service, internet service, and/or telephone service;

    2) maintenance of separate records and accounting books, maintained pursuant to the Uniform System of Accounts; and

    3) maintenance of separate officers, directors and employees.

- Any sharing of any personnel, buildings, equipment, and networks, should be duly noted in the affiliates records and accounts.

- The FCC by rule should seek to impose the safeguards identified in Section 272 of the Act and apply them to cable operators and telephone companies that offer competing services. Any business conducted between the parent company and its cable affiliates, internet affiliates, and/or telephone affiliates must be on an "arm's length" basis, in writing and made available for public inspection.

- The Ratepayer Advocate recommends that all cable, internet, and telephone affiliates should be required to file Cost Allocation Manuals ("CAMs"), consistent with sections of 47 C.F.R. § 64.903 and Part 32 affiliate transaction rules. Moreover, these CAMs should address not only the allocation of costs among various services, e.g. cable, internet, and telephony, but they should also address the allocation of cable costs between the BST and CPS tiers.

- Appropriate allocation methods should also be developed and approved to ensure that costs related to network upgrades are appropriately allocated among the various services benefiting from the upgrade.

- Regularly mandated reviews of accounting books and records should be required to ensure that revenues and expenses from one entity are not being credited or charged to others, as such cross-subsidization would for all intent and purposes eliminate the benefits and frustrate effective competition.

- The Ratepayer Advocate also urges the FCC to end the separation freeze and re-initialize rate caps for all interstate services. With the substantial changes like 271 entry, classification of cable modem and DSL as information services, and the classification of VoIP as an interstate service, the federal rate caps based upon the frozen 75/25 split and distort rate caps do not ensure just and reasonable rates. The freeze also distorts state rate caps in that the state rate caps are over stated. The portion of cost associated with the local loop that is allocated to states should be substantially lower and most likely be in the range of 25% versus 75% that is assigned today. As a practical matter, this means that state rates are subsidizing interstate rates by keeping state rate caps artificially high. The FCC should not ignore this situation any longer and fulfill its public interest obligations by aligning cost allocations with its reclassification decisions on various services.

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