Testimony of

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Federal Communications Commission

Before the

U.S. House of Representatives

Subcommittee on Telecommunications and Finance

The Honorable Edward J. Markey, Chairman

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Good morning Mr. Chairman and subcommittee members. With me today are my fellow Commissioners Andrew Barrett and Ervin Duggan, cable staff and bureau chiefs ready to provide any details you may require. We appreciate the opportunity to present a factual account of the FCC's actions.

When the trade magazine Electronic Media last January named me as one of "twelve [individuals] to watch in 1993," I had no idea that you would take that advice so literally.

But seriously, thank you for providing the Commission the opportunity to discuss our role in implementing the Cable Act of 1992. Although this has not been an easy period, I am proud of what we have been able to accomplish.

The Cable Act charged the FCC with completing over 20 rulemaking proceedings and submitting over a half dozen other reports and surveys within a very tight time frame. Since the beginning of this year, the FCC has adopted rules governing:

Retransmission consent
Must carry
Programming access
Customer service standards
Inside wiring
Leased access channels

and a wide range of other matters. In this regard, it is gratifying that you and your colleagues acknowledged in your recent letter that "the majority of rulemakings implemented by the FCC have successfully begun to establish the competition and consumer protection envisioned" by the Cable Act.

So, did the FCC go astray on the question of rate regulation? I don't believe we did. But that is the question posed today, and in the letter to me co-signed by Congressman Christopher Shays and endorsed by 128 other signatories. The letter is of particular concern to me as I believe it is premature. Also, I have been a longtime strong advocate of maintaining an open cooperative relationship with Congress while still preserving the prerogatives of an independent agency.

I'm grateful to the Congressmen who did not sign the letter. I pledge to them and the 130 signatories that the FCC is dedicated to implementing the intent of Congress which is also the intent of the FCC, viz. lower rates for most cable subscribers and reasonable rates for all. As the Commission said last April 1, "These reductions will affect up to 3/4 of cable systems and cable subscribers across the country." At that time, we estimated that "the potential total benefit to consumers of this initial step could be about $1 billion dollars."

I like to think that the Representatives signing the letter, which included a number of my friends, may not have been aware that the FCC had instituted prompt, responsible action and launched an expedited survey of the top 25 cable systems to ascertain the true facts of cable rate adjustments. We believe it is essential that future corrective action, if warranted, should be based on factual evidence rather than anecdotal press accounts or local rate complaints by what would probably turn out to be a minority of national cable subscribers.

It is essential that a comprehensive survey, admittedly with investigatory overtones, determine the true facts of rate increases and other complaints.

I believe it is a matter of fairness and legal and administrative correctness for government to objectively survey which actions, if any, represent culpable evasions of Congressional intent or which rate increases, though unwelcome, were legally permissible. It is vital that the FCC gather accurate information on the effect of our rules, and upon serious evaluation, make necessary adjustments.

If all complaints of creative pricing and rate increases prove true, the cable industry is again open to the charge of being the monopolistic evil empire of the telecommunications world. However, that contention is in the process of being either proven or dispelled. The FCC will not be placed in the position of issuing the verdict first and holding the trial afterward.

Nevertheless, there is little doubt that the cable industry has an economic stake in discrediting the Congressional Act they vehemently and unsuccessfully opposed. They are a formidable opponent. They bring the best of bright high priced legal talent and aggressive, successful, battle-hardened executives to the continuing battle over cable rates and service. Customer service has perceptively improved under regulation. I used to joke that if you wanted beautiful uninterrupted music, all you had to do was call your unfriendly cable company and ask for customer service. That seems to be corrected now by much more friendly and responsive cable operators. I believe and hope that overall cable rates will experience similar improvement.

I am particularly concerned by the statement in your letter that "We are distressed that the Commission's processes may have frustrated Congress' intent to make cable rates reasonable." I respectfully reject the contention that the Commission processes frustrated Congress' intent. I want to emphasize for the record that the FCC worked diligently and closely with the Congressional staff to implement the letter and spirit of the law.

The FCC staff, consisting of the best of our experienced rate experts, lawyers and economists worked nights and weekends to implement Congressional intent. The Commission staff was lauded by practically everyone in the communications industry for completing a monumental task and meeting rigid Congressional deadlines for rulemaking. I have personally stated I was proud to be associated with them as their Chairman.

As a principal architect of the 1992 Cable Act I am sure you recall the provisions of the Act that stipulate that rates for cable program services must be reasonable and based on the rate charged by cable systems facing competition, which the statute in turn defines (Section 623(b)(1) and (1)(1)) and second, the stipulation in the statute that rates for installation and lease of equipment be based on actual cost (Section 623(b)(7)).

The rate regulation rules adopted by the Commission implement these provisions of the statute. Our per-channel rate "benchmarks" were developed by examining the prices charged by competitive systems as they are clearly defined in Section 623(1(1) of the statute. It is important to note that the inclusion in this definition of systems having less than 30 percent penetration drives the per-channel benchmark rates up, because these systems have higher than average subscriber rates.

Nevertheless, the statute is unequivocally clear in stating that these systems must be included in the benchmark computation. As you are aware, the Commission carefully and separately examined the issue of whether as a legal matter we would be free to disregard this explicit statutory provision, and all three Commissioners came to the inescapable conclusion that we could not. To be sure, if such systems had not been included in drafting the statute, the benchmarks would have been much lower-- but this Commission is powerless to change the statute or to enforce it selectively.

Similarly, implementation of the statutory directive that installation and equipment be priced to reflect actual cost has generally resulted in a reduction of such prices to the consumer, which of course is good. However, the cable industry is claiming that equipment and installation prices have in many cases previously subsidized the rates charged for cable programming services. So, by moving equipment prices to actual cost, the statute has eliminated this subsidy and unavoidably caused the price of cable programming -- and particularly the low-cost, so called basic tier -- to rise. However, industry estimates are that only 6% of cable customers subscribe to the basic antenna service tier.

Another significant point is that cable industry estimates exceed with those of the Commission that implementation of the rate regulation rules as currently written will reduce cable industry revenues by approximately $1 billion. Indeed, NCTA stands by its earlier prediction that industry revenues will decline up to 1.8 billion dollars as a result of our rules. These predictions are borne out in estimates of individual cable companies like TCI, Comcast, and Jones Intercable, that 80 percent or more of their subscribers will experience monthly bill reductions, not increases. Press accounts from around the country tend to support these estimates.

However, news coverage has been confusing. Even where the stories actually show that bills for most subscribers are going down, the headlines misleadingly report that rates are going up. There seems to be an irresistible "man bites dog" quality that appeals to some in the press.

There are several possible explanations for the apparent disparity between newspaper reports of increasing rates and government and industry estimates of decreasing rates. But rather than speculate or, perhaps worse, act precipitously based on anecdotal and possibly flawed information, the Commission instituted a survey of the rates charged cable subscribers before the September 1 effective date of new rules and the rates proposed to be charged thereafter.

This survey will encompass 75 percent of all cable subscribers nationally and industry responses are to be returned to the Commission by October 1. The data produced by this survey should resolve some of the current confusion and give both the Commission and the Congress reliable information about what is actually occurring with regard to cable rates.

One more point about these reported rate increases must be stressed. Remember that not one of these new rates has yet been reviewed and approved either by local franchising authorities or this Commission, as the statute prescribes. Until that time, the Commission's freeze remains in effect and, should a new rate be found unreasonable, the subscriber will be entitled to refunds of any overcharges back to September 1 and future rates could be rolled back.

I wish to underscore that the new rate regulation rules have been in effect for less than four weeks. On this basis -- and particularly given the current lack of hard-and-fast data on which to form accurate judgements -- any assumption of widespread rate increases inconsistent with the statute is premature. Industry-wide adjustments of the type dictated by the Cable Act are, perhaps thankfully, infrequent, and a degree of public (not to mention industry) confusion is unavoidable.

In this case the confusion was regrettably magnified by the acceleration of the effective date to September 1; had more notice and preparation been possible, the resulting confusion might have been much less. Nevertheless, the Commission has taken the steps necessary to provide ourselves, and the Congress, with a snapshot of the real-life effects of the statute and the Commission's rules. Should refinements in our rules be shown necessary, I will not hesitate to make them to the extent the statute allows. And to the extent our survey shows that changes to the statute are necessary, I will not hesitate to recommend them to you.

Pending the FCC survey and evaluations of rate increases, consumers who are unhappy with rate increases can file complaints on basic service with local franchise authorities and with the FCC about enhanced programming services. Subscriber complaint form 329 is available from the FCC field offices, from the cable operators or directly from the FCC.

The FCC, too, has recourse. Subscriber complaint forms must be filed with the cable operator and with the FCC. (If only 10% of the 58,000,000 cable subscribers file, that would be an almost overwhelming 5,800,000 complaints the first year -- all to be mini-adjudicated by the FCC.) The FCC will also be setting cost of service standards that could serve as a further check on unreasonable rates. Ultimately, we plan to conduct random audits to assure compliance.

In event of a rate increase or violation, the FCC could order refunds back to September 1st, rate rollbacks and even forfeitures. As promised at the April 1st meeting, the FCC is continuing to refine its analysis of the data used to establish benchmarks.

Many of the problems are caused by the enormity of the task faced by Congress in legislating and in the FCC in regulating a huge previously unregulated monopoly of 11,000 cable operators with a variety of accounting systems, over 30,000 franchises with different levels of regulation and about 58,000,000 subscribers. It is only natural that the change in billing, the retiering and cost shifting will cause some churn and confusion. In fact, the Senate and House anticipated some confusion.

The Senate Committee Report on S-12 noted that:

"Since the legislation permits cable operators to separate basic service from other cable programming services, during a transition time, there may be confusion as to what constitutes 'a rate increase for cable programming services.'" (S. Rep. 102-92 at 75)

Also, the diverse nature of the cable industry does not lend itself to simple answers. The Committee Report on H.R. 4850 stated that:

"[T]he cost of providing this basic service tier could vary substantially from system to system, depending upon the market and the particular characteristics and configuration of the cable system." (H Rep. 102-628 at 82)

Also, it is a matter of human nature that Congress and the FCC will hear mostly from the vociferous minority whose rates have gone up; not from the majority whose cable bills have gone down.

Remember also that the statute itself does not provide for rate reductions for all subscribers. In fact, it doesn't specifically prescribe rate reductions. It requires that rates be set at competitive levels and be reasonably priced, all with the intent of lowering rates. There is no doubt that a mandatory across-the-board reduction of 10% would have been much simpler--and 10% of an estimated 16 billion regulated portion of the industry is over 1.6 billion dollars. The FCC would have enthusiastically embraced it if possible. However, it could never withstand court challenges without an evidentiary showing and would be found arbitrary, capricious and probably confiscatory.

The intent of the Cable Act for lower rates will prevail. Future price increases will be regulated. There is a current price freeze in effect until November 15. Again, the cable industry itself estimates consumer savings of up to 1.8 billion dollars.

While we want to eliminate monopoly price abuse, we must not overreach and destroy the cable industry's incentive to invest in advance telecommunications. Cable, too, needs capital formation to be an important player in the administration's future plan for a national information infrastructure. Cable is destined to become one of at least two competing broadband super electronic multi-channel highways -- It will bring video, phone, data, computerization, interactive and a vast array of services to the American home.

The basic objectives of the 1992 Act were admirable. It provided reasonable rates and better service for consumers, program access for competitors, equity for broadcasters to help preserve universal free TV and reasonable rate of return for cable.

Congress and you, Mr. Chairman, are to be commended for undertaking such a massive, complex consumer-oriented bill. We used our best team of cable and rate experts to implement the bill. There should be enough credit to go around. We appreciate the suggestions in your August 31 letter to me that we should work together in this effort. I also appreciate your statement at that time that "The Commission has done an admirable job in developing rate regulations for a complicated and diverse industry under a very strict timetable."

This was the most resource intensive and complex task in my 19 years at the FCC. Both the statute and regulation may need some fine tuning, but this must not detract from the future rate controls and overall benefits to consumers.

I pledge to you and this committee that the FCC will vigorously enforce the intent of the Cable Act and the Commission rules. Any unintended consequences will be corrected. Certainly, we can expect Chairman Hundt to be a fair but strong enforcer of cable rules. We are all in this together.

The FCC will work with you and members of the subcommittee to resolve problems and to assure that the Cable Television Consumer Protection and Competition Act of 1992 remains true to its name.

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