

November 10, 1993

**Separate Statement of Chairman James H. Quello**

**In the Matter of Implementation of Sections of the Cable  
Television Consumer Protection and Competition Act of 1992: \* Rate  
Regulation**

Today, the Commission issues a decision to extend the rate freeze until February 15, 1994, where local governments have not initiated rate regulation of the basic service tier. This decision is designed to give local franchising authorities and consumers additional time to participate in the process of rate regulation to assure that the rates charged by cable operators are reasonable. **Toward this end, I wish to emphasize that the regulation of basic rates is not triggered until local franchising authorities request and are granted authority to regulate; and the regulation of expanded basic rates is not triggered until subscribers file a properly completed complaint with the Commission.** Thus, it is vital that we give local franchising authorities and subscribers every opportunity, within reason, to file requests for certification and complaints. By extending the freeze, we can ensure that rates remain stable in the interim.

However, I am, as always, concerned about the effect of our rules on small cable systems. Therefore, I wish to emphasize that the Commission will entertain petitions for relief filed by operators who can show that the freeze is causing severe economic hardship or threatens the viability of continued provision of cable service.

Also today, we decided not to extend the November 15, 1993, date established for cable operators to respond to initial notices of regulation of the basic tier, and subscriber complaints, filed prior to October 15, 1993. By maintaining the November 15 response date, we can begin the process of rate regulation at the earliest possible time by providing local authorities and the FCC with the information they need to evaluate the reasonableness of rates. We can then order rate rollbacks and refunds for subscribers where rates are found to be unreasonable.

I wish to emphasize that I am sympathetic to the concerns of cable operators who urged the Commission to extend the response date along with the freeze, arguing that our benchmark formula is subject to change on reconsideration, and that current cost-of-service guidelines -- which state that responses will be reviewed pursuant to "generally accepted cost-of-service principles" -- are not sufficiently specific and will in any event be replaced by more detailed guidelines in the future. However, moving the

785a

November 15 response date would not resolve these concerns. Cable operators have known since July 27, 1993, that responses to initial certification requests and subscriber complaints would be due on November 15, 1993, and they have known since May 3, 1993, the benchmark and cost of service rules and principles that will apply to responses filed on this date. While the Commission will be addressing in the near future petitions for reconsideration of the benchmark rules, as well as interim, and ultimately final, cost of service guidelines, those rules can only be applied prospectively, and not to the time period from September 1, 1993 until the effective date of any new rules. Thus, regardless of what action the Commission takes in the future with respect to the benchmark formula and cost of service guidelines, the showing cable operators are required to make for the current period of regulation will not change, and further guidance or specificity will not be provided, whether the cable operators' response is filed November 15, 1993, February 15, 1994, or any time in between.

I point out that the above scheme was specifically contemplated by the Commission -- in a Report and Order voted on by all three Commissioners -- at the time our initial benchmark formula and cost-of-service guidelines were adopted on April 1, 1993. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rule Making, MM Docket 92-266, 8 FCC Rcd 5631, paras. 271-272 (1993) (FCC declined to adopt specific cost-of-service standards, stating instead that pending adoption of more specific standards, cable operators could attempt to justify above-benchmark rates in their "initial rate filings"). To claim at this late date that this approach is somehow unfair or unintended is disingenuous.

The statutory deadlines with which the Commission was faced in implementing the 1992 Cable Act were such that reconsideration of the benchmark formula and more detailed cost of service rules simply were not possible prior to the effective date of the Act -- despite the herculean, around the clock, work of the Commission's staff. However, both the Commission and the Courts have determined that the rules and policies currently in place are sufficient to proceed with rate regulation. Rate Order, 8 FCC Rcd 5631, paras. 271-272; Intermedia Partners v. FCC, No. 93-1491 (D.C. Cir. August 31, 1993) (rejecting request by cable operators that our rate rules be stayed until adoption of final cost-of-service rules).

Thus, to delay the response date for complaints and certification requests filed by October 15 would merely put off the inevitable. The only conceivable benefit to cable operators is simply additional time to prepare a response. This, when weighed against the benefits to consumers of moving forward with the business of rate regulation as quickly as possible, is not

compelling. While I have carefully considered the arguments of cable operators, I must side on this issue with subscribers.

Finally, I wish to respond to Commissioner Barrett's dissenting statement on the freeze. As to the freeze extension, until late last night, it was my express understanding that Commissioner Barrett supported extension. As to the response date, Commissioner Barrett apparently for the first time has concerns about the "two-pronged" enforcement scheme, a scheme that was set forth in the Rate Order that he voted for on April 1, 1993, seven months ago.