

MEMORANDUM

TO: Chairman Reed E. Hundt
Meredith Jones

FROM: Commissioner James H. Quello *James H. Quello*

DATE: July 11, 1994

RE: Cablevision Industries Request for Relief

I am extremely concerned about the status of attempts by Cablevision Industries ("CVI") to obtain Commission assistance in crafting relief from rate regulation through a hardship showing or other mechanism. CVI, the 9th largest cable system in the industry, with approximately 1.3 million subscribers in 18 states (primarily in rural areas), claims that it will be unable to pay its debt or participate in the building of the information superhighway under the FCC's benchmark or interim cost-of-service rules. CVI has been working with the staff of the Cable Services Bureau, and with the 8th Floor, to develop a solution that will ensure its continued ability to provide service to its 1.3 million subscribers, while at the same time charging the most reasonable rates feasible. CVI has agreed to open its financial records to the FCC, and to provide whatever information is necessary to back up its claims. Because the Commission provided little or no guidance in our recent rate and cost-of-service orders as to what type of showing must be made to justify hardship relief, CVI is forced to rely on the expert advice of this Agency.

CVI has developed a proposal that I understand is being circulated this week on the 8th Floor and to the Bureau. This proposal apparently involves significant concessions on the part of CVI in an effort to avoid difficult questions regarding the jurisdiction of local authorities to regulate basic rates. (A copy of CVI's most recent proposal is attached.) I feel strongly that we must provide CVI with some guidance in sufficient time for them to prepare for the imminent August 15 deadline. I am therefore interested in receiving answers to the following questions from the Bureau by July 15.

1. What is the specific timetable for providing guidance to CVI on the issues on which they have requested advice?
2. What are the Commission's various options for responding to CVI's request? What are the pros and cons of each option? I am particularly interested in the potential for a cost-of-service filing in which we agree to work with CVI in overcoming presumptions that currently could prevent the

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company from charging a reasonable rate. This approach would probably require a waiver or partial waiver of the ex parte rules to allow for direct communications between CVI and the Commission. Please address this approach, including the ex parte implications, in some detail.

I am concerned about the implications for this Agency, the cable industry, and CVI of a hardship filing by the 9th largest cable company in the country. I also believe that if relief is ultimately provided to CVI, it should be as narrowly tailored as possible to accommodate the company's unique financial circumstances.

I look forward to a response from the staff by Friday, July 15. Whatever assistance the Chairman's office can provide in this regard would be greatly appreciated.

cc: Commissioner Andrew C. Barrett
Commissioner Susan Ness
Commissioner Rachelle B. Chong

Attachment

PROPOSAL FOR FCC REGULATION OF CVI REGULATED RATES

BACKGROUND:

1. Among the purposes of the Cable Act are to encourage the growth and development of cable systems and to minimize unnecessary regulations that would impose an undue economic burden on cable systems.
2. Cablevision Industries ("CVI") is an independent, closely-held cable company serving approximately 1.3 million subscribers in 18 states, primarily in rural areas. It is a "pure" cable operator in that it has virtually no investments other than in cable plant and systems in the U.S. And the Company is recognized for its deployment of fiber-optics technology in rural areas ("Fiber-to-the-Farm"). Being a "pure" cable operator, it is unable to rely upon diversified sources of income to mitigate the impact of rate regulation as promulgated under the FCC rules.
3. CVI carries a reasonable debt of approximately \$1500 per subscriber, for a total of \$1.7 billion. Over the period 1983 - 1992, CVI accumulated an aggregate cash flow deficit of approximately one-half billion dollars largely because the Company spent more than one-half billion dollars constructing and upgrading its cable systems.
4. Under the FCC's benchmark and interim cost-of-service rules, CVI is unable to pay its debt or to continue to participate in the building of the information superhighway.
5. In order to enable CVI to pay its debt, to participate in the building of the information superhighway, and to provide for reasonable rates for CVI's regulated cable services, the FCC should find that CVI is entitled to the relief as outlined in this proposal. By such a finding, the FCC will help to ensure the continuation of consumer benefits that have resulted -- and will continue to result -- from CVI's extension of fiber-optic broadband transmission systems into rural America.

A. OBJECTIVES:

To maintain CVI's cable programming service and à la carte revenues at their present levels, with

the understanding that CVI would seek to justify basic service rates pursuant to the benchmark and cost-of-service standards generally applicable to cable television operators and that all of CVI's rates would be subject, on a going-forward basis, to the price caps and rules generally applicable to cable television operators.

B. BASIC SERVICE RATES:

1. Where a franchising authority has certified to regulate basic rates and has authority under the FCC's rules to regulate rates (or where the FCC has authority to regulate basic rates, either because the franchising authority's certification has been rejected or revoked or because the franchising authority has requested that the FCC regulate basic rates), CVI shall proceed to justify existing rates for basic service under either the benchmark approach or the cost-of-service rules and standards generally applicable to cable operators.
2. CVI shall retain the right to appeal any determination of the franchising authority or the FCC, pursuant to the rules generally applicable to cable television systems.

C. CABLE PROGRAMMING SERVICES:

1. In any proceeding relating to CVI's programming service rates that were subject to complaints brought prior to March 1, 1994, any rate for a particular cable programming services tier that does not exceed the greater of: (i) the rate charged by CVI at the time of the complaint for that tier; or (ii) the rate as calculated under the final cost-of-service rules that are ultimately adopted by the Commission for general applicability to the cable television industry shall be deemed reasonable and permissible.
2. The rates for the à la carte packages and services offered by CVI in accordance with the FCC's First Report and Order and the FCC's First Reconsideration Order shall be grandfathered and not subject to regulation. However, if any such package is deemed by the Commission to be a cable programming services tier subject to rate regulation and such tier is subject to a complaint brought prior to March 1, 1994, then any rate charged for that à la carte package shall be

deemed reasonable and permissible if it does not exceed the greater of: (i) the rate charged by CVI at the time of the complaint for that tier; or (ii) the rate as calculated under the final cost-of-service rules that are ultimately adopted by the Commission for general applicability to the cable television industry.

3. Notwithstanding the foregoing, CVI shall retain the option of justifying the existing rates of any system under the benchmark method.

D. GOING-FORWARD RATES:

CVI's rates for basic service and cable programming service tiers, as determined by the above provisions, shall be subject to the price caps and going-forward rules that are generally applicable to cable television operators.