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December 7, 1993

Mr. Robert W. Healy
City Manager
City of Cambridge
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

RE: Rate Regulation Pilot Program

Dear Mr. Healy:

When I attended the City Council meeting on November 22, 1993, regarding the senior citizen discount, Councillor Alice Wolf asked me several questions about the rate regulation Pilot Program that is being advanced by the Massachusetts Community Antenna Television Commission (the "Commission"). Councillor Wolf was interested in whether or not the City of Cambridge (the "City") should apply to the Commission for possible inclusion in the Pilot Program. At that time, I responded with some of the advantages and disadvantages of a municipality being a part of the Pilot Program. Councillor Wolf then requested a follow-up memorandum explaining my responses in more detail.

The Pilot Program

The Pilot Program is discussed in detail in the Commission's Report and Order and Further Notice of Proposed Rulemaking (the "Report and Order"), dated September 24, 1993. The Pilot Program is essentially an experiment by the Commission to determine "..whether or not local regulation could be a productive, equitable and efficient process." To determine this, the Commission will pick up to, but not more than, six (6) municipalities to participate in the Pilot Program. Interested municipalities must send a certified letter to the Commission requesting participation in the Pilot Program no later than December 31, 1993. The Commission will then decide which municipalities can participate based on i) the ability of the municipality to conduct rate regulation on its own and ii) "the extent to which the participants will represent a cross section of Massachusetts communities." Once the six communities have been chosen, each will be obligated to follow the rate regulatory process mandated by the Commission's *proposed* new regulations at 207 CMR 6.60 (see enclosed). Please note that the Commission has not yet released the actual Report and Order regarding the Pilot Program. I expect that such a document will be released in the next several weeks.

It is important to note that the Report and Order appears to be based on municipal involvement in making *benchmark determinations*. As you know, Continental Cablevision, in a letter dated November 15, 1993, advised the City that it will be filing a *cost-of-service showing* for Cambridge. Because of this, it is not clear that the City can participate in the Pilot Program. In fact, the Commission alluded to this fact in the Report and Order when it stated that "As the FCC has yet to release its cost-of-service regulations, we will continue to defer judgement in determining the usefulness of the two-step process for this type of rate regulation." While the Commission has not made a final decision on this one way or the other, it is nonetheless important for the City to take this fact into account.

Given the City Council's interest in the Pilot Program, I've delineated some of the possible advantages and disadvantages of the program below.

Possible Advantages of the Pilot Program

There *may* be several advantages of participating the Pilot Program. First, by analyzing the FCC Form 393 in detail, the City will ostensibly have a better understanding of Continental's costs and how it computes its customer rates. Second, the City will nominally have a better understanding of the federal rate regulatory process, by actually following and implementing the FCC's rate regulations.

Possible Disadvantages of the Pilot Program

There are several distinct disadvantages of the City participating in the Pilot Program.

First, the City will be obligated to commit a fair amount of time and money to implementing the FCC Form 393 rate review. At a minimum, I suspect that the City would want to hire a financial consultant or accountant to analyze the financial numbers.

Second, because the Pilot Program is a two-tier process, the Commission must approve the City's ultimate decision on Continental's allowable rates, by issuing a so-called Certificate of Verification. If the Commission does not agree with the City's decision, it can simply review the Form 393 itself and compute different allowable rates. Therefore, the City could be in a situation of spending time and money on a Form 393 analysis, only to have the Commission preempt the City's decision. In its Report and Order, the Commission made it clear that it will remain the final arbiter of all rate decisions in the Commonwealth. Given this, the City must decide how meaningful the Pilot Program will really be.

Third, because the Pilot Program is based on basic service and equipment benchmark rates, the City's decision on allowable rates should be the same as a decision reached by the Commission itself. This is because the FCC has established the process to follow and has mandated that Franchising Authorities must use the FCC's benchmarks to compute allowable rates. Therefore, the City, the Commission or any other party should ostensibly reach the same allowable rates based upon the FCC's benchmarks. If this is the case, the City must ask itself what value there is in participating in the Pilot Program, when the Commission, at its expense, will arrive at the same allowable basic rates anyway. While a cost-of-service analysis is different, one would nonetheless expect approximately the same result.

Fourth, the public expected that rates would be lowered as a result of the 1992 Cable Act. In fact, while some equipment rates were lowered, other rates, including the price of basic service, actually increased. Naturally, this has confused and angered many citizens. At this time, the Commission regulates basic service rates, while the FCC regulates expanded tiers of service. {No entity is authorized to regulate premium service rates.} Because of this, City officials have no authority to regulate rates and can direct citizens to those two agencies with such authority. However, if the City chooses to become involved in the Pilot Program, this will likely no longer be the case. At that point, the City will be in some position to regulate rates. If angry citizens call, the City must then accept some responsibility for the rates that were set and accepted by the City. Given the relatively small impact the City can make, the City must consider if the trade-off is really worth it.

Fifth, given the time-table for establishing the Pilot Program, it appears quite likely that the initial basic service and equipment rates in the City will have already been reviewed and set by the Commission. Therefore, the City's involvement in the Pilot Program may be to analyze and approve *future* rate increases, **not** Continental's initial rates. As you may know, the FCC has created a process for establishing future rate increases whereby the operator may increase the benchmark rate by an "FCC-established price cap formula." The FCC will use the Gross National Product fixed weight price index (GNP-PI) to establish allowable rate increases in the future. {Increases for rates subject to a cost-of-service showing may be more difficult to compute.} It appears, therefore, that verifying future increases, for benchmark rates, will be relatively simple and straight-forward. Given this, the City must consider if it isn't more efficient to simply allow the Commission to apply the inflator itself.

Sixth, while it is not a disadvantage per se, the City can already have input into the rate process by filing a so-called Statement of Clarification with the Commission. The Commission's rules, at 207 CMR 6.36, allow municipalities to file such statements, which can identify any inconsistencies contained in the operator's Form 393 or provide additional information that the municipality considers important to the Commission's review of the Form 393. While this is certainly less than a full-blown review of the operator's rates, it nonetheless affords the City an opportunity to review the Form 393 and provide information related to it to the Commission.

Alternatives

A number of Massachusetts municipalities have shown interest in regulating rates themselves, without the involvement or oversight of the Commission. To this end, several bills have been filed in the Legislature that would allow such municipalities to petition the

Commission in order to regulate rates on the local level. The latest bill is House Bill 5562, a copy of which I have enclosed. The Legislature is scheduled to consider House Bill 5562 on Wednesday, December 15, 1993. While some of the disadvantages listed above may apply to House Bill 5562, it is also true that municipalities would be able to regulate rates on their own, without the oversight, intervention and/or preemption of the Commission. The City might want to consider this possibility in greater detail.

Conclusion

Because Continental will likely be filing a cost-of-service showing for Cambridge, it is unclear, at this time, if the City is eligible for participation in the Commission's Pilot Program. This should be clarified in the Commission's Pilot Program Report and Order, which will be issued in the next week or so. Notwithstanding this, it appears that the disadvantages of the Pilot Program may outweigh any advantages. Because the Commission's Report and Order regarding the Pilot Program has not been released, this conclusion is necessarily based on available information today. However, it seems unlikely that the Commission will radically alter its initial proposal for the Pilot Program. I will certainly advise you of changes, if any, once I have reviewed the actual Report and Order.

Please let me know if you or any members of the City Council have any follow-up questions about the Pilot Program.

Very Truly Yours,

Peter

Peter J. Epstein

PJE/p
Enclosures

cc: Donald A. Drisdell, Esquire
Deputy City Solicitor

campilot

HOUSE BILL 5562
Introduced by Representative Teague

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-THREE

AN ACT TO PROTECT CABLE TV CONSUMERS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The first sentence of section fifteen of Chapter 166A of the General Laws is hereby deleted and the following two new sentences are inserted in its place:

"Upon request of any issuing authority, the commission may regulate the basic service and equipment rates in such community in accordance with the Cable Television Consumer Protection and Competition Act of 1992 and the regulations of the Federal Communications Commission promulgated thereto. Notwithstanding any other provision of this section, the commission is hereby authorized to grant any waiver request, submitted by an issuing authority, authorizing said issuing authority to regulate the basic service and equipment rates in said community, in accordance with all such applicable federal laws and regulations, provided that said issuing authority certifies that it will comply with applicable federal rate regulations, that is has the personnel to administer such rate regulations and that it will allow input from interested parties."

NOTE — Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.

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CITY OF CAMBRIDGE
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TEL 349-4300
FAX 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

December 13, 1993

To The Honorable, The City Council:

Please find attached a communication received from Attorney Peter J. Epstein relative to the Rate Regulation Pilot Program, for your information.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev

Consent Agenda #7 F-227

Transmitting Comm. from R.W. Healy relative
to Information on the Rate Regulation Pilot
Program.

IN City Council December 13, 1993

Placed on file