



CITY OF CAMBRIDGE

Office of the City Solicitor
City Hall

795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Tel. (617) 349-4121
Fax. (617) 349-4307

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Birge Albright
Legal Counsel

Gail S. Gabriel
Legal Counsel

Diane Wynshaw-Boris
Legal Counsel

Laura H. Yager
Legal Counsel

Linda A. Stamper
Legal Counsel

Arthur J. Goldberg
Legal Counsel

June 2, 1993

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: **Council Order #02**
Hearings Held By FCC Regarding Rate Regulations
In Accordance With The 1992 Cable Act

Dear Mr. Healy:

This opinion is in response to an order from the City Council requesting information on the procedure for rate regulation for basic cable and how the City will be responding to the new act. These issues were addressed as part of Council Order #27, but will be repeated here for convenience. A copy of the 1992 Cable Television Consumer Protection and Competition Act is on file in the Law Department for review. We have ordered the full Report and Order of the Cable Act, which only recently became available.

CABLE SUBSCRIBER RATES

The full report and order issued on May 3, 1993 but will not go into effect until it is

OFFICE OF THE CITY MANAGER
93 JUN -2 AM 11:47

published in the Federal Register. Attached to this opinion is the summary of the rate regulations, which was distributed to the public in April.

Before the 1992 Act, local franchising authorities had no power to regulate the rates of cable companies. Under the new rules, the rates for basic service can be regulated by local authorities. Rates for services, other than basic, will be governed by the FCC.

Under the 1992 Act, local franchising authorities have to assert their jurisdiction to regulate rates. In Massachusetts (and in some other states) the state legislature gave the Community Antenna Television Commission (known as the Massachusetts Cable Commission) the power of rate regulation in M.G.L. C.166 §15. This means that local authorities, such as the City of Cambridge, can not assert jurisdiction themselves. They have the right to request the Cable Commission to exercise jurisdiction on their behalf or to have no rate regulation. The Cable Commission is in the process of promulgating new rules and procedures in accordance with the 1992 Act with the goal of allowing as much local input as possible. I will forward a copy of the new state procedures when they are available.

The following is a description of what the Massachusetts Cable Commission must do to assert jurisdiction under the new rules. (In states where an agency was not given the power of rate regulation, the local franchising authority must follow these procedures.)

To implement the right to regulate the basic service, it is necessary for the Cable Commission to file a certificate with the FCC. A standard certification filing form will be made available by the FCC and can be filed 30 days or later, after publication of the rate regulation order in the Federal Register. Certification forms are scheduled to be available around June 15, 1993, after their approval by the federal Office of Management and Budget.

publication of the order) unless the FCC finds that the local franchising authority does not qualify. One prerequisite for qualification is that there is no effective competition in the franchising area. This fact is presumed under the 1992 Act but opponents of the certification can try to rebut the presumption.

Once certified, and after adopting regulations consistent with the FCC guidelines, the Cable Commission can request rate rollbacks and refunds. Most rate increases made by cable operators since the October, 1992 passage of the 1992 Act will be eliminated. The Cable Commission will also be eligible to request a 10% rollback of basic cable rates under certain conditions.

The FCC conducted a survey of cable rates across the country as of 9/30/92 and found that prices for service were 10% lower in systems where there was effective competition. They devised a complicated calculation to determine what is considered a "reasonable rate" using a benchmark figure. Rate reductions are initially limited to a rollback to the benchmark figure or to 10% below the actual 9/30/92 rates, whichever is less. To provide time for implementation, the 1992 Act has temporarily frozen all cable rates (except premium channel and pay per view rates) for 120 days from April 5, 1993.

Some cable equipment, including converter boxes, remote controls, additional outlets and wiring are covered by rate caps imposed by the FCC, but enforced on the local level. We will need to wait for the state regulations to see what role municipalities can take in enforcing these caps in Massachusetts.

Future cable rate increases will be approximately tied to the rate of inflation. Cable operators will be able to pass through to consumers, external costs and increases beyond

their control, such as taxes or franchise fees. These pass through costs must be justified by a cost of service analysis.

Application of the 1992 Act regarding all other cable programming services (all services other than basic, premium and pay per view) is complaint driven. The FCC will not take action unless a formal complaint is made.

Members of the public, as well as the local franchising authority and the Cable Commission have the right to file a complaint with the FCC, if it is believed that the service rates are unreasonable. The complaint need only make a minimum showing of unreasonableness and must be filed within a certain amount of time.

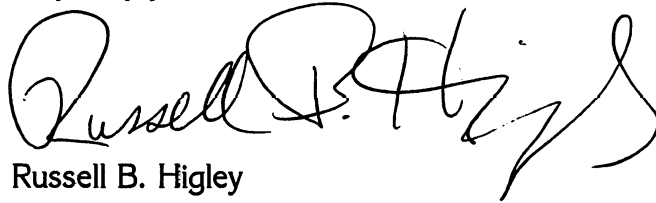
Challenges to existing rates may only be made during the 180 days period following the effective date of regulation, which is thirty days after publication of the rate regulation order in the Federal Register. For example, if the order is published on June 15, 1993, the effective date of regulation is approximately July 15, 1993. Therefore challenges to existing rates could only be made up until January 15, 1994.

After the 180 day period has passed, rate complaints must be made to the FCC within 45 days of subscribers' billing for the new rate. A standardized complaint form will be developed by the FCC and must be served on the cable operator. The FCC will use their benchmark formula plus cost of service in determining whether the rate is reasonable.

The 1992 Act helps to protect local franchising authorities from any claims related to regulation of cable service. If a lawsuit is brought, the City is immune from monetary damages. The City would still be subject to orders for injunctive or declaratory relief.

In summary, the City of Cambridge should remain in close contact with the Massachusetts Cable Commission to be apprised of the effective date of the new rules. Cambridge must then request the Cable Commission to file for certification on the City's behalf so that it will be able to take advantage of rate regulation which may result in lower prices for our citizens.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell B. Higley". The signature is written in a cursive style with large, sweeping loops.

Russell B. Higley

Enclosure:

SUMMARY OF CABLE RATE REGULATION REPORT AND ORDER

(MM DOCKET NO. 92-266)

Temporary Freeze of Regulated Cable Rates

1. Cable service and equipment rates not subject to effective competition will be frozen for 120 days effective April 5, 1993. This action will prevent cable operators from raising rates before the Commission's rules become effective and will enable local governments and cable subscribers a reasonable period of time to start the rate regulation process before new rate increases are implemented. During the freeze, the average monthly subscriber bill for regulated services and equipment may not increase above the average monthly subscriber bill for such services and equipment as calculated under rates in effect on April 5, 1993. The freeze does not preclude operators from adding subscribers, retiering services, unbundling services and equipment, or providing additional services and equipment, as long as cable operator does not intend to evade the freeze and the average monthly subscriber bill does not increase over the April 5, 1993 level.

Standards and Procedures for Identifying Cable Systems Not Subject to Effective Competition

Definitional Issues:

2. Cable service and equipment rates may only be regulated under the Cable Consumer Protection and Competition Act of 1992 ("1992 Act") if the cable system is not subject to effective competition. Under the statute, "effective competition" exists if: (a) fewer than 30 percent of households in the franchise area subscribe to the cable system; (b) (i) the franchise area is served by at least two unaffiliated multichannel video programming distributors ("multichannel distributors"), each of which offers comparable programming to at least 50 percent of households in the franchise area, and (ii) the number of households subscribing to programming services offered by multichannel distributors other than the largest multichannel distributor exceeds 15 percent of households in the franchise area; or (c) the franchise authority itself is a multichannel distributor and offers video programming to at least 50 percent of the households in the franchise area.

3. When applying this definition, multichannel distributors will include cable systems, MMDS operators, SMATV systems, DBS operators, TVRO distributors and video dialtone service providers. Programmers using leased access channels on cable systems will not be considered multichannel distributors.

4. A multichannel distributor's service is "offered" in a franchise area if the service is both technically and actually available, with no regulatory, technical or other impediments to households taking service. Service will be deemed to be "technically available" when the multichannel distributor is physically able to deliver the service to a household wishing to subscribe, with

only minimal additional investment by the distributor. A service will be considered "actually available" if subscribers in the franchise area are reasonably aware through marketing efforts that the service is available.

5. The term "household" is defined as each separately billed or billable customer, except that individual residents of multiple dwelling units will be treated as separate households.

6. For purposes of applying the 15 percent threshold in the second effective competition test, subscribership of alternative multichannel distributors will be calculated on a cumulative basis; however, only those multichannel distributors that offer programming to at least 50 percent of households in the franchise area will be included in the 15 percent cumulative measurement.

7. A multichannel distributor will be deemed to offer "comparable programming" to that provided by a cable system if it offers at least twelve channels of video programming, including at least one nonbroadcast channel.

Finding of Effective Competition:

8. For purposes of implementing rate regulation by local franchising authorities, cable operators will be presumed not to be subject to effective competition. Franchising authorities may rely on this presumption when filing a certification to regulate basic rates with the Commission. The cable operator will then have the burden of rebutting this presumption with evidence demonstrating that effective competition does in fact exist.

9. To ensure that cable operators have access to the data they need to mount a successful challenge to the presumption against effective competition, alternative multichannel distributors will be required to respond, within 15 days, to requests from cable operators for relevant information. Responses by the alternative distributors may be limited to the numerical totals needed to calculate the distributor's reach and penetration in the franchise area.

Assertion of Jurisdiction over Basic Service and Equipment Rates

Division of Jurisdiction Between FCC and Local Governments:

10. The 1992 Cable Act requires local authorities wishing to regulate basic service and equipment rates to certify in writing to the Commission that (1) its rate regulations will be consistent with the rate regulations we prescribe; (2) it has the legal authority to adopt, and the personnel to administer, rate regulations; and (3) its procedural rules provide an opportunity for consideration of the views of interested parties.

11. Under the statute, local franchising authorities and the Commission have shared jurisdiction over the regulation of basic service and equipment rates. However, the Commission will not exercise its jurisdiction unless either (a) a local franchising authority's certification is denied or revoked, or (b) the franchising authority requests us to regulate basic rates because it has insufficient resources to regulate or it lacks the legal authority to do so.

Franchising authorities requesting Commission intervention on the basis of insufficient funds must submit a showing explaining why the franchise fees it obtains cannot be used to cover the cost of rate regulation at the local level. The Commission will not regulate basic rates where a local government voluntarily chooses not to seek certification because it is satisfied with the rates charged by the local cable operator.

Preemption Issues:

12. Franchising agreements that prohibit rate regulation are preempted by the 1992 Cable Act. By contrast, state laws that preclude rate regulation are not preempted, although in such cases the Commission will assume jurisdiction over basic service and equipment rates. Similarly, state laws that prohibit local governments from engaging in rate regulation are not preempted; in these cases, basic rate regulation will be conducted at the state level.

The Certification Process:

13. Franchising authorities intending to regulate basic rates must first submit a form certification with the Commission. This form, which will be available from the FCC, will certify that the franchising authority has met the statutory requirements (set forth above) for seeking certification and will further certify that, to the best of the franchising authority's knowledge, effective competition does not exist in the franchise area.

14. Franchising authorities may begin filing certifications with the Commission 30 days after publication of the Report and Order in the Federal Register, although there is no deadline by which a franchising authority must seek certification. Under the statute, a certification will go into effect in 30 days unless Commission finds that it is defective. However, franchising authorities will not be able to begin regulating rates until they have adopted regulations consistent with those adopted by the Commission in the Report and Order and have implemented rules which give interested parties a reasonable opportunity to comment during the rate regulation process.

Certification Challenges:

15. The Commission recognizes that cable operators are likely to challenge franchising authority certifications on a number of grounds. The most serious challenge is the assertion that effective competition exists and thus rate regulation is not permitted under the Act. Cable operators who believe they currently face effective competition (as defined by the Act) should file a petition for reconsideration of the franchising authority's certification request. Such petitions may be filed any time within the 30 day period after a certification has become effective. An operator filing a petition for reconsideration on the ground that it is subject to effective competition will be granted an automatic stay of rate regulation until resolution of the petition, subject to refund liability back to the date the petition was filed if the Commission subsequently determines that there is no effective competition. Cable operators that file frivolous effective competition petitions to take advantage of the automatic stay provision will be subject to forfeitures.

16. If a cable operator that is not now subject to effective competition later faces such competition, it may petition the franchising authority for a change in its regulatory status. The burden will be on the cable operator to prove that effective competition now exists.

17. If an operator believes that a franchise authority cannot be certified due to other defects (e.g., it does not have the legal authority, it lacks adequate resources or its rate regulations are not consistent with ours), the operator may file either a petition for reconsideration (which would be filed within 30 days after the certification becomes effective) or a petition for revocation (which could be filed at any time). Operators filing such petitions will not be entitled to an automatic stay of regulation.

18. Where the Commission denies a certification on other than effective competition grounds, the franchising authority will be notified and informed of any modifications that must be made in order to obtain Commission approval. If, after this opportunity to cure, the authority still fails to meet the certification requirements, its certification will be revoked.

Rate Regulation Procedures Used by Local Franchising Authorities:

19. Once a franchising authority has been certified and has adopted the appropriate rules, it must notify the cable operator that these requirements have been met and that it intends to regulate basic service rates. The cable operator will then have 30 days to file its basic rate schedule (and any supporting material concerning the reasonableness of its rates) with the franchising authority.

20. Upon receipt of the operator's basic rate schedule, the franchising authority will have 30 days either to find that the rates are within the FCC's benchmarks, that the rates are outside the benchmark, or that it cannot make that determination on the basis of the material before it. In either of the latter two cases, the franchising authority will issue a brief order to that effect and will have additional time in which to reach a final decision.

21. If the franchising authority finds the rates to be unreasonable, it may order a reduction of those rates to the maximum level permitted by the Commission's benchmarks and caps. Reductions below the benchmarks may be ordered based upon a cost-of-service showing. The franchising authority also may prescribe a reasonable rate above the benchmark where appropriate. If the franchising authority orders a rate reduction, it may also order refunds (including interest) dating back to the effective date of the Commission's rules or one year, whichever is shorter.

22. The same two-step review process will be used on a going-forward basis when a regulated cable operator seeks a rate increase.

Appeals of Local Franchising Authority Rate Decisions:

23. Appeals of a local franchising authority's rate decision that involve questions of whether or not the decision is consistent with the Commission's rate regulations will be resolved by the Commission; other challenges will be appealed

to local courts. Subscribers and other interested parties who participated in the local rate proceeding will have standing to appeal rate decisions.

Assumption of Jurisdiction by the Commission:

24. If the Commission denies or revokes a franchising authority's certification, it will exercise the franchising authority's jurisdiction over basic rate regulation until the authority requalifies.

Regulation of Basic Service and Equipment Rates

Components of the Basic Service Tier Subject to Rate Regulation:

25. The 1992 Cable Act requires cable operators to offer subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. The basic tier must include, at a minimum, all must-carry signals, all PEG channels, and all television signals other than superstations. The cable operator may add other channels of programming to its basic tier at its discretion. The statutory definition preempts provisions in franchise agreements that require additional services to be carried on the basic tier.

26. Subscribers must purchase the basic service tier in order to gain access to video programming offered on a per-program or per-channel basis. Purchase of the basic tier is not required in order to buy non-video programming services such as cable radio.

27. Cable operators subject to rate regulation may have only one "basic" tier which must be unbundled from all other tiers; multiple basic tiers will not be permitted for rate regulation purposes.

Regulation of Basic Service Tier Rates:

The Benchmark System:

28. A benchmark system will be used to regulate basic service tier rates, with cost-of-service showings available only to allow cable operators to justify rates above the benchmark. Local franchising authorities may not elect cost-of-service as their primary form of rate regulation but must apply the FCC benchmark system.

29. The same benchmark structure and rate levels will be adopted for the basic and cable programming service tiers. This approach will decrease incentives to create "stripped down" basic tiers and cost-shift between tiers in an effort to justify rates above the benchmark levels.

30. The Commission's survey of September 30, 1992 cable rates reveals that, on average, the rates charged by cable systems facing no effective competition are approximately 10 percent higher than rates charged by similarly-situated systems that do face competition. The data further reveal that this "competitive differential" occurs across the industry.

31. The Commission survey results have been used to develop a benchmark formula that will enable regulators to approximate what the competitive rates should be for a given cable system with particular characteristics. This formula will be used to calculate what the competitive rate should be for an individual system.

32. When assessing the reasonableness of a cable system's rates, local franchising authorities may not require systems whose September 30, 1992 rates were below the competitive benchmark to reduce rates below that level. However, the current reasonable rate for the system will be calculated by taking the system's September 30, 1992 rates and adjusting those rates forward for inflation. Regulated systems whose September 30, 1992 rates are above the competitive benchmark will be required to reduce their September 30, 1992 rates to the benchmark or by 10 percent, whichever is less. Their current reasonable rate will then be determined by adjusting the reduced rate forward for inflation. Cable systems not making the 10 percent rate reduction will be required to justify the higher rate to a regulating franchise authority by using a cost-of-service showing.

Special Scrutiny for "Outliers":

33. After August 1, 1993, the Commission will begin investigating the rates of "outlier" systems. Systems subject to investigation will be selected from among those systems, identified by local franchising authorities or subscriber complaints, whose September 30, 1992 rates were substantially above the competitive benchmark. An outlier system subject to such an investigation will have to demonstrate that its high rates are justified by high costs. This enforcement scheme will put systems whose September 30, 1992 rates were well above the benchmark on notice that they face investigation by the FCC. If the Commission finds that their rates are not cost-justified, the systems could be ordered to reduce their rates to whatever level is found to be appropriate, even if that level is below the benchmark.

Rate Increases:

34. Increases in basic service rates regulated by local franchising authorities will be capped by a Commission-established price cap formula. In particular, requested increases may not exceed the GNP fixed weight price index (GNP-PI), which reflects general increases in the cost of doing business and measures changes in overall inflation. Limited exceptions will be made for increases in external costs that are beyond the cable operator's control, such as taxes, franchise fees, the costs of other franchise requirements, and increases in programming costs which exceed the GNP-PI. A proposed rate increase that exceeds the permitted cap must be justified by a cost-of-service showing or will be disallowed.

Cost-of-Service Showings:

35. The Commission, not local franchising authorities, will set standards to govern cost-of-service showings. However, the record does not contain sufficient information for the Commission to adopt final standards at this time. Accordingly, a further Notice of Proposed Rulemaking is being issued to seek

additional comment on the development of appropriate standards. (See paragraphs 63-64, below.)

36. Until final cost-of-service standards are adopted, local franchising authorities will have the discretion to apply general cost-of-service regulatory principles to cost-of-service showings submitted by regulated cable operators. If the local authority's decision is appealed, the operator's cost-of-service showing will be reviewed by the Commission on a case-by-case basis.

Regulation of Equipment Used to Receive the Basic Service Tier:

37. The 1992 Act requires the Commission to establish standards for setting, on the basis of actual cost, the rate for installation and lease of equipment used by subscribers to receive the basic service tier, and installation and lease of monthly connections for additional television receivers.

38. The Commission concludes that equipment "used" to receive the basic service tier includes converter boxes, remote controls, connections for additional television sets and cable home wiring. Such equipment is subject to basic service rate regulation even if it is also used to receive cable programming services. However, equipment used only to receive cable programming services will be regulated by the Commission.

39. Operators must completely unbundle charges for all equipment, additional outlets and installations. Local franchising authorities regulating basic service equipment shall use the actual cost standards developed by the Commission.

Subscriber Bill Itemization:

40. Cable operators may identify as a separate line item on each subscriber bill the amount of any fee, tax, assessment or charge imposed by a government entity on the transaction between the operator and the subscriber.

Regulation of Cable Programming Service Rates and Equipment by FCC

Procedural Issues:

41. Under the 1992 Act, regulation of "cable programming service" rates and equipment is to be conducted by the Commission, not local franchising authorities. "Cable programming service" is defined broadly in the statute as all video programming provided over a cable system except that provided on the basic service tier or on a per-channel or per-program basis. The Commission will also exclude per-program and per-channel premium services offered on a multiplexed or time-shifted basis.

42. The 1992 Act provides that rate regulation of cable programming services and equipment will be a complaint-driven process -- i.e., the Commission will not regulate cable programming service rates until it receives a complaint that a particular operator's rates are unreasonable. Thus, the procedures adopted by the Commission for handling cable programming rate regulation are significantly different from those used to regulate basic service rates.

43. The 1992 Act permits subscribers, franchising authorities and other relevant government entities to file complaints about the rates for cable programming services and equipment. As required by law, complainants alleging that a cable operator's current cable programming rates are unreasonable will have 180 days from the effective date of the Commission's rules to challenge existing rates. On a going-forward basis, complainants must file complaints about cable programming service and equipment rates within 45 days from the time subscribers receive a bill that reflects the rate increase (that is, roughly 75 days from the announcement of the proposed rate increase).

44. In order to avoid dismissal of a complaint, the complainant must supply certain readily available factual information and must allege that the rate is unreasonable because it violates the Commission's rate regulations. Complainants must use the complaint form adopted by the Commission and serve a copy on the cable operator.

45. Subscribers need not obtain the franchising authority's concurrence before filing a complaint with the Commission. However, franchising authorities are encouraged to assist subscribers in completing complaint forms and subscribers are free to attach the views of the franchising authority when submitting a complaint to the FCC. Franchising authorities will not be permitted to formally review and adjudicate cable programming service complaints in the first instance.

46. Upon receipt of a cable programming service complaint submitted on the FCC form, the Commission will review the complaint to determine whether it meets the minimum showing needed to permit the complaint to go forward. The operator must respond to a complaint within 30 days of its receipt, unless the Commission notifies the operator that the complaint fails to satisfy the minimum showing requirement.

47. If cable programming service rates are found to be unreasonable, the Commission will order the operator to reduce the rates to a specific reasonable level and to reflect that reduction in prospective bills to customers. Generally, the rate specified as reasonable will be the applicable benchmark, although the Commission may specify a higher rate depending on an operator's cost-of-service showing. The operator will then be required to refund overages (plus interest) to subscribers, with refunds being calculated from the date the complaint was filed until the date the operator implements the reduced rate prospectively in bills to subscribers.

Substantive Issues:

48. The Commission does not believe that the 1992 Act mandates use of a "bad actor" test for cable programming service rates, and the Commission's standards for reviewing complaints about such rates will not be designed simply to reach those cable operators whose rates for cable programming services are "egregious." Rather, when assessing a complaint that a system's cable programming service rates are unreasonable, the Commission will use the same test of reasonableness adopted for basic service rate regulation.

49. As with basic service rates, the Commission will use a benchmark approach as the principal form of rate regulation for cable programming services, with cost-of-service showings used only by cable systems whose rates exceed the benchmarks. The same benchmark system developed for basic service rate regulation discussed above in paragraphs 28-34 will be applied when evaluating complaints about the alleged unreasonableness of cable programming service rates.

50. Complaints concerning the rates for equipment used to receive cable programming services also will be evaluated using the same "actual cost" approach developed for equipment used to receive the basic service tier. Operators whose cable programming service equipment rates are the subject of a complaint filed at the Commission will have to unbundle its equipment charges and establish that those charges comply with the Commission's "actual cost" standard.

Provisions Applicable to Cable Service Generally

Geographically Uniform Rate Structure:

51. A cable system must have a uniform rate structure throughout the franchise area. This requirement, however, does not preclude operators from establishing reasonable categories of customers and services. The reasonableness of such categories will be determined on a case-by-case basis by the governmental entity regulating rates.

Discrimination:

52. A cable operator may offer reasonable discounts to senior citizens and other economically disadvantaged individuals. For this purpose, an "economically disadvantaged individual" will be defined as a person who receives federal, state or local welfare assistance.

Negative Option Billing:

53. The 1992 Act provides that an operator may not charge a subscriber for "any service or equipment that the subscriber has not affirmatively requested by name." This limitation on so-called "negative option billing" applies whenever a new tier or single channel service is added. However, restructuring undertaken to respond to the Commission's new rate regulations will not bring the negative option billing provision into play as long as subscribers continue to receive the same number of channels and the same equipment, and the total price for the services does not change. On a going-forward basis, the provision does not apply to changes in the mix of channels in a tier, even when those changes are accompanied by a rate increase, unless the changes alter the fundamental nature of the service tier.

Further Notice and Survey of Cable Service and Equipment Rates:

54. The Commission will conduct detailed cost studies of selected cable operations to test the accuracy of its benchmark. In addition, next fall, the Commission will conduct another survey of a random sample of cable systems to collect information about equipment and program service rates. The results of this survey and the cost studies will be used to assess whether the benchmark

formula developed by the Commission should be further refined. Although the Commission will not at this time require all cable operators to file annual financial information, it will explore this issue further in the Further Notice on cost accounting and cost allocation rules.

55. The Commission observes that including all types of "competitive" systems, as defined under the 1992 Act, in its analysis of September 30, 1992 cable rates resulted in an average difference in prices between competitive and noncompetitive systems that was lower than if some competitive systems -- i.e., those with lower than 30 percent penetration -- were not included in the analysis. The Commission thus will issue a Further Notice to request further comment on whether there is a legal basis for excluding these low penetration systems from its analysis and, if so, whether they should be excluded and rates reduced even further.

Prevention of Evasions:

56. Prohibited "evasions" will be defined as any practice or action which avoids the rate regulation provisions of the 1992 Act or the Commission's rules contrary to the intent of the Act or its underlying policies.

Treatment of Small Systems:

57. Franchise authorities regulating small cable systems will be permitted to exempt those systems from having to file an initial rate schedule with the franchising authority. In such cases, the small system need simply certify to the authority that its rates for basic service and equipment are reasonable and are within the applicable benchmark formula. However, a small system whose rates exceed the benchmark, a small system proposing to increase its basic service rates or a small system answering a cable programming service complaint will not be exempted from the procedures the Commission has established. For these purposes, a "small system" is a system with fewer than 1,000 subscribers.

Grandfathering Existing Rate Agreements:

58. Franchising authorities already regulating rates pursuant to a franchise agreement executed before July 1, 1990 may continue to regulate basic service and equipment rates for the remainder of the franchise term without filing a certification with the Commission. Authorities with agreements signed after that date must be certified by the Commission. Moreover, franchising authorities regulating rates pursuant to grandfathered franchise agreements must nonetheless comply with the Commission's rate regulation procedures and standards.

Reports on Average Prices:

59. The 1992 Act requires the Commission to annually publish statistical reports regarding average cable rates and associated fees, including a comparison of such charges between those cable systems that are subject to effective competition and those systems that are not. The Commission will use the results of the survey described above in paragraph 54 to collect the information

necessary to compile this report.

Leased Commercial Access

60. The Communications Act requires that cable systems with 36 or more channels make available a portion of their channel capacity for lease by outside unaffiliated parties. The Commission is provided with expanded authority under the 1992 Act to determine the maximum reasonable rates that may be charged for use of these leased access channels. The rules adopted set a maximum channel rate based on the highest implicit fee charged to any nonaffiliated programmer within the same program category. The implicit rate is calculated by determining the amount paid per month by subscribers for the service and deducting from that the amount that is paid per month to the programming service vendor. The difference between the amount received and the amount paid is the implicit leased channel rate. Such rates are to be calculated separately for pay-per-program or pay channels, channels containing more than fifty percent direct sales (home shopping networks), and all other channels.

61. In accordance with the statutory provisions, up to 33 percent of a system's designated leased channel capacity may be used for qualified minority or educational programming purchased by the system operator rather than by leased channel programming. The operator may also be required to provide billing and collection services, unless the operator can demonstrate that third parties provide services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased programming.

62. Given the lack of focus on leased channel issues in this proceeding and the absence of Commission experience in administering rules of this type, the Commission will collect additional information regarding the functioning of the leased access rate rules and will revise the rules as necessary. An expedited complaint process will be used to address complaints regarding leased channel rate and access issues.

Further Notice of Proposed Rulemaking on Cost-of-Service Standards

63. The Commission has determined that it does not have sufficient information to adopt cost-of-service standards to govern cost showings by cable operators seeking to raise rates above capped levels. Cost-of-service standards will govern the level of cost averaging permitted and define the costs and level of earnings that will permit rate increases above capped levels.

64. The Commission thus seeks further comment on what level of cost averaging should be permitted in cost-of-service showings: franchise, system or company level. It also seeks comment on what determinations should be made with respect to allowable rate base, earning and depreciation of plant and equipment. Pending resolution of the further rulemaking, cable operators will be required in any cost-of-service showing to present costs averaged in accordance with current practices. Local authorities and the Commission will review cost-of-service showings in the interim on a case-by-case basis.



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL 349-4300
FAX 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

June 7, 1993

To The Honorable, The City Council:

With reference to Awaiting Report Item No. 29, regarding hearings held by FCC relative to rate regulations in accordance with the 1992 Cable Act, please find attached a response received from Russell B. Higley, City Solicitor.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev
attachment

S 270
Consent Agenda #7

RE: Awaiting Report #29 RE: hearings
held by FCC re: rate regulations

In City Council,
June 7, 1993

Placed on file