



**REMARKS OF PETER CANTU
MAYOR OF PLAINSBORO AND NEW JERSEY LEAGUE OF
MUNICIPALITIES IMMEDIATE PAST PRESIDENT**

**Before The Senate Economic Growth Committee
10:00 A.M., Monday, March 13, 2006
Committee Room 6, First Floor, State House Annex, Trenton, New Jersey**

**Re: SCS - S-2912
Authorizing a System-Wide Franchise for
Certain Providers of Cable Television Service**

For more than a year, the League has been meeting and working with the Cable Telecommunications Association, Verizon, and municipal officials to explore the implications of a system-wide franchise such as the one embodied in the bill before us.

All sides agree that New Jersey should benefit from more competition in the area of cable television. In the past, the League has vigorously supported legislation which would help bring about cable competition or at least foster more productive cable franchise negotiations.

BALANCING HOME RULE

Although on the face of it, systemwide franchising seems to reduce home rule by reducing the individual municipality's administration during franchising, on balance the League finds important local benefits unique to New Jersey, which must be taken into account.

The League believes this type of franchise will create competition to the ultimate benefit of the consumer, and it may benefit municipalities by enumerating specific franchise commitments which would otherwise be subject to negotiation.

Most important is the creation, now, of a competitive cable TV environment. The benefits of creating wireline competition today include lower rates (FCC report released February 4, 2005 Docket No. 92-266) and incentive to respond to consumer demands regarding programming and service. These are perennial cable issues that we are all familiar with.

Municipalities could benefit through statutory commitments the bill includes in the systemwide franchise such as PEG access stations, access equipment and assistance, and cable service for municipal buildings. These, and other, basic commitments are enforceable by the BPU. In addition, this bill establishes a franchise fee which, at three and a half percent (3.5%) of gross revenue, is closer to the national benchmark. However, it is still well below the Federal ceiling of 5%. The League appreciates the increase in both the base on which the fee is determined (all cable revenue), and the percentage of the fee. These changes would help municipalities control property taxes at a time when budgets are under significant pressure.

THE BILL IS NOT WITHOUT ITS FLAWS

There are sections of this bill which need further review and development.

Dealing with Existing Franchise Agreements

In new section 20, incumbent cable operators are given the option of converting to the systemwide franchise without the consent of the municipality. Existing local franchise agreements can include installments of equipment, assistance, funding and other benefits which would be lost if the BPU granted such operators systemwide franchises, without municipal consent. Municipalities must be given to option of keeping the current franchises until those franchises expire.

Effects of Competition Must Be Monitored

In order to assure the benefits of systemwide franchises are achieved, we will need to assess the real effects on consumers. After 36 months, the BPU will conduct a study and

document the effects. We will carefully review that study to assure consumer benefits are being maximized.

Franchise Fee Rate Should be Optional Based on Competition

In municipalities where there is no wireline competition, local governments should have the option of petitioning for lower franchise fees.

The current bill confuses the line extension issue, alternating between requiring buildout under the state's policy and under the company's policy. We ask that the state policy be the reference for all line extension issues.

FURTHER REFINEMENTS

The League is anxious to continue working on the important issue of developing competition in video franchises. Local officials understand that changing technology requires changing statutes and regulations to manage the demands it places on our municipalities and maximize its benefits to our residents.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 3 of the Cable)	
Television Consumer Protection and Competition)	MM Docket No. 92-266
Act of 1992)	
)	
Statistical Report on Average Rates for Basic)	
Service, Cable Programming Service, and)	
Equipment)	

REPORT ON CABLE INDUSTRY PRICES

Adopted: January 14, 2005

Released: February 4, 2005

By the Commission: Commissioners Copps and Adelstein concurring and issuing a joint statement.

I. INTRODUCTION

1. Section 623(k) of the Communications Act, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),¹ requires the Commission to publish a statistical report on cable prices, or more specifically, average rates for the delivery of basic cable service, cable programming service, and equipment.² The Act also requires the Commission to compare the average rates of cable operators subject to effective competition with those of operators not subject to effective competition. This 2004 Report is issued in compliance with those statutory obligations.

2. The information and analysis provided in this Report are based on the Commission's 2004 Survey of cable industry prices ("Survey").³ The Survey requested data from cable operators pertaining to monthly cable rates in communities selected as part of a random sample. We requested data as of January 1, 2004, and limited amounts of data as of January 1, 2003, and January 1, 2002. The Survey enables the Commission to examine the change in cable rates nationwide. In addition, the Survey enables the Commission to compare cable rates charged by cable operators in two groups of cable communities: (1) communities where operators do not face effective competition (herein referred to as the

¹ Section 623(k) was adopted as Section 3(k) of the 1992 Cable Act, Pub. L. No. 102-385, 106 Stat. 1460, codified at 47 U.S.C. § 543(k).

² See 47 U.S.C. § 543(k). The term "service tier" refers to a group of video channels for which the operator charges a separate rate. See 47 U.S.C. § 522(17). The 1992 Cable Act defines basic service as the tier that includes the retransmission of local television broadcast signals. See 47 U.S.C. § 543(b)(7). Cable programming service consists of any video programming other than that carried on the basic service tier and other than programming for which the operator charges a per channel or per program fee. See 47 U.S.C. § 543(k)(1)(2). Equipment refers to a converter box, remote control, and other equipment necessary to access programming. See 47 U.S.C. § 543(b)(3).

³ The Commission directed cable operators to respond to certain data requests, pursuant to Section 623(k) of the Communications Act, 47 U.S.C. § 543(k). See *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Prices for Basic Service, Cable Programming Services, and Equipment*, 19 FCC Rcd 325 (2004).

“noncompetitive group”); and (2) communities where operators are deemed to face effective competition (the “competitive group”). The competitive group is limited to those communities where a cable operator has sought and obtained a Commission finding of effective competition.⁴

3. We rely on the Commission’s formal legal decisions regarding effective competition, based on the statutory definition of that term, in order to compile our list of communities in which cable operators face effective competition. Because of this, we are unable to take into account those areas of the country where there may be sufficient competition to reach effective competition status, but no finding to that effect has been made. For example, there may be areas where sufficient direct broadcast satellite (DBS) competition exists to support a finding of effective competition, but if no formal ruling to that effect has been requested or obtained, we cannot include those areas in our list of communities facing effective competition.⁵ We also are unable to take into account situations where a finding of effective competition has been made but, although the criteria for effective competition no longer are satisfied, the local franchise authority has not filed for recertification.

4. To compare average monthly rates of cable operators serving noncompetitive and competitive communities, we selected a sample from each group. Further, to gain more precise estimates, we divided the competitive group by type of cable “overbuild.”⁶ We also included a category for communities in which a finding of effective competition was based on the low-penetration test. We selected a portion of the competitive sample from each subgroup. The competitive subgroups are: (1) wireline overbuilds (cable subscribers in this subgroup represent an estimated 39 percent of the total in the competitive group); (2) DBS (30 percent of subscribers); (3) wireless overbuild (27 percent of subscribers); and (4) findings of effective competition through the low penetration test (4 percent of subscribers). The wireline overbuild subgroup contains the incumbent cable operator as well as the rival cable operator. The other subgroups include only the incumbent cable operator because DBS and wireless operators are not part of the Survey, and because the low-penetration test depends on market share rather than the existence of a rival operator.

5. The Survey collected information about monthly cable rates for the basic service tier and the

⁴ The Commission grants petitions for determinations of effective competition for any cable operator that meets one of four tests in a community: (1) fewer than 30 percent of households subscribe to the cable operator’s service (herein referred to as the “low penetration test”); (2) at least two multi-channel video programming distributors (“MVPDs”) serve 50 percent or more of households and at least 15 percent of those households take service other than from the largest MVPD (the “50/15 test”); (3) a municipal MVPD offers service to at least 50 percent of households (the “municipal test”); or (4) a local exchange carrier (“LEC”) or its affiliate (or any using the facilities of the LEC or its affiliate) offers MVPD service (other than direct broadcast satellite service) comparable to the service of an unaffiliated MVPD (the “LEC test”). See 47 U.S.C. § 543(l)(1)(A-D). As of January 1, 2004, the competitive group consisted of 997 communities, or 3 percent of cable communities nationwide, serving an estimated 8 percent of cable subscribers nationwide. Cable operators are not subject to rate regulation in communities where the Commission has made a finding of effective competition. In other communities, local franchise authorities may regulate the rates of the basic service tier and cable equipment. See 47 U.S.C. § 543(l)(2).

⁵ DBS penetration now exceeds 20 percent of television households in some 30 states, and 30 percent in five states. See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 17 FCC Rcd 1273 (2002).

⁶ The term “overbuild” describes the situation in which a second cable operator enters a local market in direct competition with an incumbent cable operator. In these markets, the second operator, or “overbuilder,” lays wires in the same area as the incumbent, “overbuilding” the incumbent’s plant, thereby giving consumers a choice between cable service providers. The “wireline overbuild” subgroup includes effective competition findings under the 50/15 test, the municipal test, and the LEC test, unless the finding involves (1) a wireless MVPD in which case that community is included in the “wireless overbuild” subgroup; or (2) a DBS operator in which case that community is included in the “DBS” subgroup.⁶ See also note 4.

major cable programming service tier ("expanded basic service").⁷ Basic service includes local broadcast stations and any public, educational and governmental (PEG) access channels. In addition, cable operators usually elect to include a few additional local or satellite channels in basic service.⁸ Expanded basic service consists of channels other than basic service, premium, pay-per-view including video on demand, or mini-tier channels. Subscribers must purchase basic service in order to subscribe to expanded basic service. About 90 percent of cable subscribers take both basic and expanded basic services; the remaining 10 percent take basic service only. A small percentage of cable operators offer basic service but not expanded basic service, locating all cable programming services on the basic service tier except for premium and pay-per-view channels. Finally, basic and expanded basic services refer predominately to analog service, but may be digital when the cable system is a fully-digital system.

6. In addition to monthly cable rates for basic and expanded basic services, the Survey sought information on number of channels in order to determine how much subscribers pay on a per channel basis. The Survey also collected information on monthly charges for equipment, consisting of a television set-top converter and remote control. The Survey, further, gathered information at the cable system level on other factors that may affect cable rates and competition in the multi-channel video programming distribution market, including: (1) number of cable subscribers; (2) number of digital cable service subscribers; (3) number of cable Internet access subscribers; (4) number of telephony subscribers; (5) cable system capacity in MHz; (6) cable programming revenues; (7) cable programming costs; and (8) system operating costs. Below, we summarize the major findings of the Survey.

II. SUMMARY OF FINDINGS

7. *Average rate changes for all communities.* The Survey shows that the average monthly rate for cable service increased by 5.4 percent, from \$42.99 to \$45.32, over the 12 months ending January 1, 2004. This increase is lower than the 7.8 percent increase for the year ending January 1, 2003, and the 7.5 percent 5-year average annual rate of change over the period beginning July 1, 1998 and ending on January 1, 2004.⁹ The average number of channels on basic and expanded basic increased from 67.5 to 70.3 channels, a 4.1 percent increase for the year ending January 1, 2004, which is lower than the 6.3 percent 5-year average. To account for changes in the number of channels, we calculated average price per channel.¹⁰ The price per channel increased by 1.2 percent, from 65.2 cents per channel to 66.0 cents per channel, compared with the 5-year average of 0.4 percent.

8. The monthly cable rate consists of both programming and equipment charges and the measured annual rate of increase reflects individual changes in these components. Examining the overall 5.4 percent increase as a breakdown of its components, we observe: (1) a 5.4 percent increase in the programming charge, from \$38.95 to \$41.04, which is lower than the 7.4 percent 5-year average; and (2) a

⁷ Expanded basic service typically meets two criteria among the cable programming service tiers that a cable operator may offer: (1) it is the tier with the greatest number of channels; and (2) after the basic tier, it is the tier with the highest number of subscribers.

⁸ Herein, "local channels" refer to: (1) local broadcast stations carried either through must-carry requirement or retransmission agreement; (2) PEG access; (3) commercial leased access; and (4) other channels of local origination or that cover issues that, predominately, affect the specific community, county, or state. "Satellite channels" refer to, primarily, nationally-delivered cable networks that are, predominately, delivered by satellite to the cable headend, but also include regional news or sports networks that, in a few cases, are delivered terrestrially.

⁹ Throughout the Report, the "5-year average" refers to the compounded annual rate of change during the five and one-half year period starting July 1, 1998 and ending on January 1, 2004.

¹⁰ We calculate the price per channel by dividing the monthly cable rate by the number of channels. Ideally, when calculating price changes, we would like to take into account changes in the quantity and quality of service provided. In the case of cable rates and quality, however, that is difficult to do because there is no readily available measure of service and programming quality.

5.9 percent increase in the equipment charge, from \$4.04 to \$4.28, which is lower than the 9.1 percent 5-year average. Regarding individual programming tiers, the charge for basic service increased 2.6 percent, from \$13.45 to \$13.80 (compared with a 5-year average of 2.6 percent), and the expanded basic charge increased 6.8 percent, from \$25.50 to \$27.24 (compared with a 5-year average of 10.4 percent).

9. The Bureau of Labor Statistics (“BLS”) publishes a Consumer Price Index (“CPI”) that measures price inflation related to all goods and services for all urban consumers.¹¹ By this measure, inflation increased by 1.1 percent over the 12 months ending January 2004, and by an average of 2.1 percent over the past five years. BLS also publishes price indices for many components of the overall CPI, including a price index for a basket of cable services (“cable CPI”).¹² The cable CPI increased by 3.8 percent over the year ending January 2004, and by an average of 4.6 percent over the past five years. Because it covers a different mix of services, the cable CPI cannot be compared directly with the results of our Survey.¹³

10. *Average rate changes for noncompetitive communities.* For the noncompetitive group (communities without an effective competition finding), the monthly cable rate increased by 5.6 percent, from \$43.14 to \$45.56, for the year ending January 1, 2004.¹⁴ This increase is lower than the increases of 7.9 percent and 7.5 percent, respectively, for the prior year and the 5-year average. The number of channels on basic and expanded basic increased from 67.3 to 70.1 channels, a 4.2 percent increase for the year ending January 1, 2004, which is lower than the 6.3 percent 5-year average. The price per channel increased by 1.2 percent, from 65.7 cents per channel to 66.5 cents per channel, compared with a 5-year average increase of 0.4 percent.

11. *Average rate changes for competitive communities.* For the competitive group (the communities where effective competition was found to be present), the monthly cable rate increased by 3.6 percent, from \$40.99 to \$42.48, for the year ending January 1, 2004. This increase is lower than the 5.3 percent annual increase for the prior year and the 7.4 percent 5-year average. The number of channels on basic and expanded basic increased from 69.7 to 72.5 channels, a 4.0 percent increase for the year ending January 1, 2004, compared with the 5.5 percent 5-year average. The monthly price per channel decreased from 60.1 cents per channel to 59.9 cents per channel, a decrease of 0.3 percent, compared with the 5-year average increase of 0.9 percent.

12. *Competitive differential.* The competitive differential in monthly cable rates (the percentage difference between the noncompetitive group and the competitive group) was 7.3 percent on January 1, 2004. The competitive differential in the price per channel was 11.0 percent. The degree of difference varied by competitive subgroup. The highest differentials were associated with wireline overbuild competition. For communities in this subgroup, the monthly cable rate and price per channel were, respectively, 15.7 percent lower and 27.2 percent lower than those averages for the noncompetitive group.

¹¹ BLS, All Urban Consumers, U.S. City Average (data extracted August 17, 2004), Series ID CUUR0000SA0, All Items Less Food and Energy, Base Period 1982-84=100 (CPI).

¹² BLS, All Urban Consumers, U.S. City Average (data extracted August 17, 2004), Series ID CUUR0000SERA02, Cable and Satellite Television and Radio Service, Base Period December 1983=100 (Cable CPI). This index predominately reflects cable service although it includes elements of satellite television and radio service.

¹³ First, the Cable CPI includes all cable television services, while the monthly cable rate consists of basic service, expanded basic, and equipment. Second, because the CPI measures change in what consumers pay for a fixed basket of goods and services, BLS adjusts the cable CPI to reflect estimated changes in cable services.

¹⁴ Throughout this Report, there is only a slight difference, if any, in the overall average and the average for the noncompetitive group. This is because the group of operators that have received a specific Commission “effective competition” finding represents a relatively small group of cable subscribers, an estimated eight percent of the total nationwide, and thus there is only a slight effect from this group on the overall average.

13. Section III discusses the survey methodology. Section IV describes survey findings and provides summary tables. These findings include average monthly cable rates and other averages as of January 1, 2004, as well as the annual rate of change in those averages. Section V presents additional analysis. Section VI presents our conclusions. Attachment 1 provides details on the communities in each sample group and subgroup. Other detailed statistics can be found in Attachments 2 through 19.

III. SURVEY METHODOLOGY

A. Sampling Procedure

14. Attachment 1 provides information related to the sample selection process. To estimate the levels of monthly cable rates, we selected a random sample of cable communities. We divided communities into two groups – the noncompetitive group (those without a finding of effective competition) and the competitive group (those deemed to face effective competition) -- and selected a sample from each group. To determine the number of observations needed for statistical precision in our samples, we applied a statistical formula.¹⁵ Based on this formula, the noncompetitive sample size equals 415 of the 32,510 noncompetitive communities, and the competitive sample size equals 250 of the 997 competitive communities.¹⁶ To make these samples representative with respect to the typical subscriber and to gain statistical precision, we used subscriber weights in selecting the samples. In addition, to represent all types of competition, we divided or 'stratified' the competitive sample into subgroups or 'strata'.¹⁷

15. To select the 415 observations from the group of noncompetitive communities, we assigned each community a weight depending on the size of the cable system serving the community.¹⁸ A sample that was not stratified by system size would have placed a disproportionately greater emphasis on small cable systems that serve a small percentage of subscribers nationwide. Each system was given a weight equal to its percentage of the total of all cable subscribers nationwide. Because a system may serve more than one community, we also assigned a weight to each community within the cable system. Each community's weight depended on the number of subscribers in the community relative to the other communities in the cable system. Therefore, the selection probability for any community depended on both the system weight and community weight.

16. In the competitive sample, we included each category of effective competition. From the wireline overbuild category we chose one community from each effective competition filing, and we selected both the incumbent and rival cable operators. If the finding involved multiple communities, we selected one community at random depending on the number of subscribers relative to all communities in the filing. We used this same procedure to select for the DBS stratum. The remaining observations were allocated among the wireless overbuild and low-penetration test categories, in a manner that produced the smallest standard error considering historical price variance in each subgroup.¹⁹ Because communities in

¹⁵ See B. J. Mandel, *Statistics for Management* (1984) at 258. This formula requires the user to choose a limit on allowable error in terms of the degree and probability that the average for the sample of prices may differ from the actual price average. We limited the allowable error to within 50 cents of actual price with a 95-percent probability.

¹⁶ The competitive sample includes a relatively higher percentage of competitive communities, because this group is relatively small and the sampling formula requires a minimum number for statistical precision.

¹⁷ For an explanation of stratified sampling methods, see, e.g., G. W. Snedecor and W. G. Cochran, *Statistical Methods*, 7th ed. (1980) at 435-59 (Snedecor and Cochran).

¹⁸ System size equals total subscribers in the communities served from the same cable headend. A cable headend is a facility for receiving television signals for processing and distribution over the cable television system consisting of one or more communities. The Commission assigns each cable headend a physical unit identifier and each community served by that headend a community unit identifier. See 47 U.S.C. § 76.1801.

¹⁹ See Snedecor and Cochran at 464.