

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

In the Matter of:	)	
	)	
Request for Clarification of Rate	)	
Regulatory Rules	)	
Inside Wire Maintenance	)	CSR-5424
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 18, 2001**

**Released: January 22, 2001**

By the Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. Charter Communications ("Charter") has requested clarification that the monthly service fee for an inside wire maintenance service plan that covers all communications lines in a customer's home, including satellite, telephone and cable (the "whole house" plan), would not be subject to cable television rate regulation.<sup>1</sup> The Commission issued a Public Notice seeking comment on the request.<sup>2</sup> The National Cable Television Association ("NCTA") commented in support of the request.<sup>3</sup> No comments opposing the request were filed.

**II. PETITION**

2. Under Charter's "whole house" plan, it would provide inside wire maintenance to consumers as an alternative to telephone inside wire maintenance offered by local exchange carriers ("LECs").<sup>4</sup> However, the "whole house" plan would cover not only telephone inside wire maintenance, but would also extend to other home communications lines, such as cable television and satellite.<sup>5</sup> Charter states that consumers who choose Charter's "whole house" plan would pay a monthly fee for the service at "a lower price than telephone inside wire maintenance alone."<sup>6</sup> Charter indicates that it would continue to

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<sup>1</sup> Letter from Cole, Raywid & Braverman to Nancy Stevenson, dated January 15, 1999 (CSR-5424) ("Cole, Raywid letter"). Petitioners subsequently indicated orally that the request was filed on behalf of Charter Communications.

<sup>2</sup> Public Notice, DA 99-1735 (August 31, 1999).

<sup>3</sup> See comments of the National Cable Television Association.

<sup>4</sup> Cole, Raywid letter at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

offer consumers, who do not opt for the “whole house” plan, transactional cable wire maintenance at the regulated hourly service charge (“HSC”) under 47 C.F.R. § 67.923.<sup>7</sup>

3. Charter states that while the offering of telephone inside wire maintenance has been deregulated, there are still few products that compete with the LECs’ inside wire maintenance services.<sup>8</sup> Charter notes that the Commission has stated that the deregulation of telephone inside wiring was intended to “foster competition in the inside wiring installation and maintenance markets, to promote new entry into those markets, to produce cost savings that would be passed on to consumers, and to foster the development of an unregulated, competitive telecommunications marketplace.”<sup>9</sup> NCTA asserts that the “whole house” plan would not only result in lower prices for consumers but would also help reduce subscriber confusion over which communications provider to contact regarding wire problems.<sup>10</sup>

### III. DISCUSSION

4. The Cable Television Consumer Protection and Competition Act of 1992 (“1992 Act”)<sup>11</sup> provides that where competition is absent, cable rates are to be regulated to protect subscribers.<sup>12</sup> The legislative history of the 1992 Act states that the Commission should adopt policies that will protect consumers against the imposition of unnecessary charges, including, for example, charges for home wiring maintenance.<sup>13</sup> Accordingly, the Commission established a system of rate regulation for cable rates that used a cost-based formula for regulated equipment and installation services, including inside wiring, resulting in rates that are “comparable to those that would exist in a competitive environment.”<sup>14</sup> However, as explained below, the Commission has recognized limits or exceptions to the regulated status of equipment. These findings support a conclusion that Charter’s “whole house” wiring plan is not subject to rate regulation.

5. In previous decisions, including *Southeast Mississippi*, we explained that the regulatory treatment of inside wiring, and the costs associated with its maintenance, depend on who owns the wiring.<sup>15</sup>

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<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* citing *Memorandum Opinion and Order*, CC Docket No. 79-105, 1 FCC Rcd 1190, 1195 (1986).

<sup>10</sup> NCTA at 2.

<sup>11</sup> Pub. L. No. 102-385, 106 Stat. 1460.

<sup>12</sup> 47 U.S.C. Sec. 543(a). *See also*, TCI of Southeast Mississippi (“Southeast Mississippi”), 13 FCC Rcd. 11080 (1998).

<sup>13</sup> S. Rep. No. 92, 102d Cong., 1<sup>st</sup> Sess. 23 (1991).

<sup>14</sup> *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket 92-266, 8 FCC Rcd 5631 (1993); *Report and Order*, CS Docket 96-57, 11 FCC Rcd 6778 (1996); *First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking* (“Reconsideration Order”), MM Docket No. 92-266, 9 FCC Rcd. 1164, 1192 n.80 (1993) (“a competitive rate is generally one that reflects actual cost including a reasonable profit”).

<sup>15</sup> *Southeast Mississippi* at 11081. *See also* TCI TKR of Houston, Inc., 11 FCC Rcd 20929, 20937-38 (1996); TCI Cablevision of California, Inc., 11 FCC Rcd 11298, 11302-03 (1996); Continental Cablevision of Ohio, 11 FCC Rcd 508, 508 (1996); TCI Cablevision of Oregon, Inc., 10 FCC Rcd 12547, 12551 (1995); Comcast

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We found that a cable operator could offer to maintain the inside wiring of customers who own their wiring through a cost-based cable wire maintenance contract that is priced according to Commission rules, or through a similarly cost-based, as-needed, HSC-based repair option.<sup>16</sup> We noted that consumer owners of cable inside wiring could also maintain their wiring themselves or contract with an outside vendor for these services.<sup>17</sup> We stated that, if an operator offers a monthly cable wire maintenance contract, that contract should be subject to cable rate regulation even though the operator also offers a regulated, as-needed HSC option.<sup>18</sup> We so found because the service alternative in *Southeast Mississippi* (i.e., the regulated HSC) could not be expected to provide competitive pressures on prices for inside wiring maintenance contracts since the regulated, as-needed HSC option is not comparable to or competitive with monthly service fees under a maintenance contract.<sup>19</sup>

6. We recognized in *Southeast Mississippi* that the task of comparing the costs and benefits over time of purchasing an inside wiring maintenance plan for a flat monthly fee, versus relying on the HSC if and when inside wire maintenance or repair is needed, is a “difficult, if not amorphous, task.”<sup>20</sup> We stated that the analysis involved in this task would require a subscriber “to make assumptions about future events that even the cable operator may be unable to predict reliably for a particular subscriber.”<sup>21</sup> Accordingly, we concluded that the two types of maintenance, both offered by the cable company, were not comparable and could not be expected to exert competitive pressures upon one another.

7. However, in the instant case, Charter seeks to offer a “whole house” inside wiring maintenance plan which will be in direct competition with monthly maintenance plans offered by LECs. We believe that, unlike an as-needed HSC provided by the cable company, a LEC-offered telephone monthly maintenance plan will exert competitive pressure on the “whole house” monthly maintenance plan offered by the cable company. Consumers should have little difficulty comparing the monthly price of the LEC telephone maintenance plan to the monthly price of the cable operator “whole house” maintenance plan. We find that the comparability and competitive pressures that were not evidenced in *Southeast Mississippi* are present in the instant case.<sup>22</sup>

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Cablevision of Mount Clemens, Inc. v. City of Mount Clemens, MI, 10 FCC Rcd 11046, 11048 (1995); Comcast Cablevision of Tallahassee, Inc., 10 FCC Rcd 7686, 7698 (1995).

<sup>16</sup> *Id.* Because we have held that a cable operator may not charge a separate wire maintenance fee for operator owned wiring, and because the operator described in the Cole, Raywid letter currently offers a maintenance plan at the regulated HSC rate, we will assume that the inside wiring at issue here is subscriber owned.

<sup>17</sup> *Southeast Mississippi* at para. 14.

<sup>18</sup> *Id.* at para. 21.

<sup>19</sup> *Id.* at para. 18.

<sup>20</sup> *Id.* at para. 17.

<sup>21</sup> *Id.*

<sup>22</sup> See also, *In the Matter of SBC Media Ventures, Inc.*, 9 FCC Rcd. 7175, 7180 (1994), in which we concluded that A/B switches were not subject to rate regulation because, *inter alia*, “competitive sources for such switches exist in the community through which subscribers may obtain them.”

8. Charter will continue to offer consumers, who do not opt for the “whole house” plan, wire maintenance pursuant to the regulated HSC under 47 C.F.R. § 67.923. The 1992 Cable Act<sup>23</sup> and Commission rules require cable operators to offer equipment and installation services at rate levels that reflect actual costs.<sup>24</sup> Charter’s alternative, “whole house” offering, however, since it is subject to competition, is not subject to rate regulation. The Commission concluded similarly when confronted with the regulatory status of equipment offered both for lease and for sale. In the *Reconsideration Order*, the Commission found that when a cable operator offers the same equipment for lease and for sale, the lease price is subject to rate regulation and the sale price is not.<sup>25</sup> This finding was based on the fact that subscriber purchase of equipment is a close, competitive substitute for an equipment lease rate. Conversely, in *Southeast Mississippi*, we found that while a subscriber can readily ascertain the relative costs and benefits of a lease versus the purchase of equipment, the same could not be said for consumers analyzing a monthly service charge for cable wire maintenance versus an as-needed HSC. In the instant case, Charter’s “whole house” offering is subject to competition. In addition, Charter’s regulated, as-needed HSC service will provide a regulated wire maintenance option to safeguard consumers.

9. As evidenced by the above discussion, we find that the “whole house” maintenance plan is comparable to the LEC-offered telephone maintenance plans, and that the LEC-offered plans will exert competitive market pressure on the “whole house” plan. Consumers will continue to have the option of a cost-based HSC rate for cable wire maintenance.

10. Accordingly, IT IS ORDERED that Charter Communication’s “whole house” wire maintenance plan, as described in the Cole, Raywid & Braverman letter, is not subject to our cable rate regulations.

11. This action is taken pursuant to authority delegated by section 0.321 of the Commission’s rules. 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Deborah A. Lathen  
Chief, Cable Services Bureau

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<sup>23</sup> The Cable Television Consumer Protection and Competition Act of 1992 (“1992 Cable Act”), Pub. L. No. 102-385, 106 Stat. 1460.

<sup>24</sup> 47 U.S.C. § 543(b)(3); 47 C.F.R. § 76.923(a)(2).

<sup>25</sup> *Reconsideration Order* at 1192.