



offered over their systems, where economically viable.<sup>3</sup> Subsequently, we adopted an experimental upgrade incentive plan which would "permit an operator to enter into a social contract with its customers under which the operator would be given substantial flexibility in setting rates for new regulated services it introduces, such as new service tiers offering additional program channels."<sup>4</sup> In exchange, rates for existing services would be limited to changes permitted by the benchmark/price cap approach while the quality of existing services would be maintained, if not increased. These social contracts would remain in effect for a fixed period and would offer operators an opportunity to earn higher profits as an incentive for upgrading their cable systems and introducing new and improved regulated services.<sup>5</sup>

3. In accordance with these objectives, Continental's Social Contract resolved 377 cable rate cases, paid \$9.5 million in in-kind refunds to affected subscribers, created low-priced lifeline basic service tiers in all of Continental's systems, committed Continental to a capital investment of \$1.35 billion to upgrade the channel capacity and technical reliability of Continental's domestic cable systems, and established a plan to stabilize rates for the basic service tier ("BST") and for the cable programming services tier ("CPST") in all of Continental's franchises.

4. By letters dated October 12, 1995, October 18, 1995, and November 22, 1995, pursuant to special *ex parte* procedures available in certain rate proceedings, Continental requested relaxed *ex parte* treatment to enable it to discuss broad rate-related matters with Commission officials.<sup>6</sup> Consistent with these *ex parte* procedures, the Cable Services Bureau ("Bureau") and Continental negotiated the terms of the proposed Amendment. On March 6, 1996, the Commission approved the release of the draft of the proposed Amendment for public comment.

5. The Commission has reviewed and considered the comments it received in approving the terms and conditions of the Amendment and making modifications to it.

---

<sup>3</sup>Cable Television and Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992) § 2(b)(3).

<sup>4</sup>Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 93-215, Report and Order and Further Notice of Proposed Rulemaking, 9 FCC Rcd 4527, 4678 (1994)("Cost Order").

<sup>5</sup>Earlier this year, the Commission reaffirmed its decision to use social contracts in appropriate circumstances and concluded that it would not adopt specific conditions that must be part of every social contract. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 93-215, and Adoption of a Uniform Accounting System for Provision of Regulated Cable Service, CS Docket No 94-28, Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 2220, 2282 (1996) ("Final Cost Order").

<sup>6</sup>See Modification of *Ex Parte* Procedures in Certain Cable Rate Proceedings, 9 FCC Rcd 7812 (1994) ("Cable Ex Parte Order").

## B. Overview of the Amendment

6. The Amendment incorporates cable systems with approximately 987,000 subscribers acquired by Continental since we adopted the Social Contract ("the acquired systems"). Some of the Amendment's provisions apply only to the acquired systems while other provisions apply to all of Continental's systems.<sup>7</sup> The Amendment is for a period of four years. Continental is required to increase its investment from \$1.35 billion to \$1.7 billion for the upgrade of its cable systems, including the acquired systems. The upgrade will include deployment of fiber optic technology, increased channel capacity and improved system reliability and signal quality. At least 70 percent of all capital invested will be for the benefit of BST and CPST subscribers. Continental will add an average of 10 additional channels to the CPSTs of the upgraded systems. In no case will Continental add fewer than five channels. To fund this investment, Continental will be permitted to increase the monthly rate for the CPST by \$1.00 in the acquired systems in each year from 1996 through 1999 and by \$1.00 in Continental systems covered by the original Social Contract ("original systems") in each year from 1997 through 1999. However, Continental will not avail itself of the \$.20 per-channel adjustments allowed under the *Going Forward* rules for CPST channels added after the Amendment is adopted, except where Continental has upgraded or rebuilt an original system in 1996 and has not increased rates for programming channels added.<sup>8</sup>

7. The Amendment will resolve all CPST cases pending against Continental's acquired systems, including those cases where a la carte channel packages are at issue. This will resolve 162 complaints altogether. Continental will make cash refunds in the form of bill credits to current subscribers of the acquired systems totalling approximately \$1.67 million, including interest. Refund amounts which exceed \$1.00 per subscriber will be paid in the form of monthly credits of not more than \$1.00 and not less than \$.50 over a period not to exceed 12 months.

8. Continental will create a low-cost "lifeline" BST for 80 percent of the total number of subscribers in its acquired systems. On systems serving at least 80 percent of its total subscribers, Continental will reduce the current price on its BST by 15 to 20 percent no later than January 1, 1997, with a revenue neutral increase in the CPST rates. On the remaining systems where BST rates have not been reduced by at least 15 percent, Continental may streamline basic tiers that have a high number of channels. This re-tiering will consist of Continental moving channels from the BST to the existing CPST or to a newly created CPST or migrated product tier ("MPT") in a revenue-neutral manner.

---

<sup>7</sup>On February 27, 1996, Continental announced that it would merge with U S West Media Group. We note that all provisions of the Social Contract and Amendment that apply to the original and/or acquired systems will continue to apply after the closing of the merger.

<sup>8</sup>See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket Nos. 92-266, 92-215, Sixth Order on Reconsideration and Seventh Notice of Proposed Rulemaking, 10 FCC Rcd 1226 (1994) ("*Going Forward*").

9. Continental will provide a free cable connection to all of the public schools (grades K-12) located within 200 feet of the activated plant of its cable system. Continental will further provide a cable connection at cost to any other unserved K-12 public school located beyond 200 feet of the activated plant of its cable system but within its franchise area.<sup>9</sup> Also, Continental will provide a cable connection at cost to all secondary private schools within its franchise area that receive funding under Title I of the Education and Secondary School Act. BST and CPST services will be provided to each outlet in the connected public and private schools without cost. Continental will wire additional classrooms in existing schools at cost. For new public schools and existing public schools undergoing extensive rehabilitation, Continental will coordinate whenever possible with local officials and contractors to wire each of the classrooms in new schools free of charge. Continental will also provide the connected schools with free materials that explain the educational applications of Continental's cable services and with a monthly educational program guide containing curriculum support ideas. In addition, within one year after Continental has made its on-line personal computer service commercially available in a specific franchise area, it will offer this service to each connected school free of charge during the school year and also provide a free modem to access the service. Continental will provide additional modems at cost and free on-line service for each modem purchased. Continental will also sponsor local workshops and training materials for teachers.

10. In acquired systems that did not create a la carte channel packages between April 1, 1993 and September 30, 1994, and in all franchises formerly served by Cablevision of Chicago where no a la carte package currently exists, Continental will be permitted to create MPTs with up to four services migrated in a revenue-neutral manner from the BST and/or CPST. In accordance with Section 76.987(d) of the Commission's rules, Continental also will be permitted to move additional channels to the MPT as long as these channels were not offered on a BST or CPST prior to October 1, 1994.<sup>10</sup> There will be no limitation on the number of new channels that Continental may add to the MPTs at the price of up to \$.20 per channel and license fees.

11. On or after January 1, 1997, Continental may convert the MPTs created under the Social Contract to new product tiers ("NPTs"), by filing a notice with the Commission on or after January 1, 1997. In acquired systems that created either an "Expanded" package of a la carte channels (which generally consists of four a la carte channels) or a "Cable Plus" package with six or fewer channels, Continental will treat the a la carte package as an MPT with its initial price set at the current rate. Continental may convert the MPTs created under the Amendment to NPTs by filing a notice with the Commission on or after July 1, 1997. In acquired systems where both the Expanded and Cable Plus packages exist, Continental may maintain the channel configurations of such packages and set their initial rate at the current rate. These packages will be treated as

---

<sup>9</sup>The definition of "Cost" in the Amendment has been modified to clarify that Cost includes actual cost for materials plus a reasonable rate of return. See Amendment, II. E.

<sup>10</sup>47 C.F.R. § 76.987(d) (Operators may temporarily place new channels on CPSTs for marketing purposes and then move them to new product tiers ("NPTs") if the channels have not been offered on a BST or CPST prior to October 1, 1994.)

MPTs for the entire term of the Social Contract.

12. In the Naples, Florida systems where only a Cable Plus package of eight a la carte channels exists, Continental will return four channels to the CPST. The remaining four channels will be treated as an MPT and may be converted to an NPT after July 1, 1997 pursuant to the procedures provided in the Amendment. Continental will also implement a prospective rate reduction in the Naples franchise which will have the effect of lowering annual revenues by \$250,000.

13. Continental will allow subscribers to remove, to maintain, to replace or to rearrange their home cable wiring so long as it does not create signal leakage or interfere with Continental's ability to provide services and to collect revenues from subscribers. To facilitate this benefit, Continental will provide the necessary home wiring materials to subscribers at cost and will identify other sources for such equipment.

14. In line with the Social Contract, the Amendment provides that beginning with the 1997 FCC Form 1205 equipment and installation rate filing, Continental may use state or regional averaging in setting equipment and installation costs for each franchise in its acquired systems.

15. Finally, the modification and termination terms of the Social Contract remain unchanged in the Amendment. Accordingly, the Amendment may not be modified or terminated without the mutual agreement of both Continental and the Commission. In addition, Continental may petition the Commission to terminate the Contract if there is a material change in the applicable laws or regulations that would result in a material favorable financial impact to Continental.

### III. DISCUSSION

16. The Commission received numerous comments on several terms of the proposed Amendment. Support for the Amendment was expressed by 237 of 247 commenters. Only ten raised questions about or were critical of the Amendment. A list of commenters is attached as Appendix B. This section addresses the concerns of the commenters.

#### A. System Upgrades and CPST Price Cap Increases

##### (i) Terms of the Social Contract

17. The Amendment provides for Continental to increase its investment from \$1.35 billion to \$1.7 billion for the upgrade of its cable systems, including the acquired systems. The upgrade will include deployment of fiber optic technology, increased channel capacity and improved system reliability and signal quality. To fund this investment, Continental will be permitted to increase the monthly rate for the CPST by \$1.00 in the acquired systems in each year from 1996 through 1999 and by \$1.00 in original systems in each year from 1997 through 1999. This increase will serve as the only increase on the CPST with the exception of revenue-

neutral adjustments also provided under the Amendment and adjustments for inflation and external costs permitted under the Commission's rules. Continental waives its right to increase its CPST rates pursuant to the Commission's *Going Forward* rules, except where Continental has upgraded or rebuilt an original system in 1996 and has not increased rates for programming channels added. In addition, Continental will not implement the second round of *Going Forward* channel additions which the Social Contract currently allows for the years 1998 through 2000. CPSTs on the upgraded systems will have an average of 10 additional channels and in no case will a system have less than five additional channels. At least 70 percent of the capital cost of the upgrade will be used for regulated services. Continental waives its right to file cost-of-service showings to justify any rate increases during the term of the Amendment.

(ii) Comments

18. Most commenters support the proposed system upgrades, maintaining that subscribers will benefit from more advanced technology, access to the information superhighway and improved picture quality.<sup>11</sup> For example, Mayor Mort O'Ryan states that this "effort to bring the Information Superhighway to my community ... assures the residents and our schools of having access to the telecommunications needs of the 21st Century. The commitment of additional services, and the pledge of free connections and Internet access to the schools, means our community will keep up with the traffic on the Information Superhighway."<sup>12</sup> Many commenters support Continental's plans to cap CPST price increases and to phase in rate increases annually because it spreads the costs over a period of time and provides for rate certainty.<sup>13</sup>

19. Although commenters do not oppose the concept of system upgrades, some objections to certain aspects of the plan were raised. Some commenters argue that their systems already have been upgraded or that the upgrades would be required in any event because of the efforts of local franchising authorities ("LFAs") or competitive requirements.<sup>14</sup> Some commenters claim that the Commission's cost-of-service rulings require that the rate increase not be implemented before the upgrade is in service and that the rate increase will subsidize other Continental services such as unregulated non-video services.<sup>15</sup> Several commenters ask that Continental be required to submit a master plan of system upgrades which would include proposed dates of upgrades and

---

<sup>11</sup>See e.g., Comments of Carson, California at 1; Comments of New Hampshire State Board of Education at 2; Comments of Milford Cable Oversight Committee at 1.

<sup>12</sup>Comments of Mayor Mort O'Ryan of the City of Willoughby Hills, Ohio at 1.

<sup>13</sup>See, e.g., Comments of Eastlake, Ohio at 1; Comments of Calumet Park, Illinois at 1; Comments of Greater West Bloomfield Cable Advisory Board at 1.

<sup>14</sup>Comments of Lakewood, California at 1; Comments of Fairborn, Ohio at 1.

<sup>15</sup>Comments of Coachella, California at 11; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at 11.

rate increase justifications on a per upgrade basis.<sup>16</sup> Other commenters contend that upgrades would be better achieved through franchise renewal proceedings conducted at the local level.<sup>17</sup> Metropolitan Dade County requests permission from the Commission for LFAs to opt out of the \$1.00 rate increase and to negotiate the upgrades individually during their franchise renewal process.<sup>18</sup> St. Louis County comments that the Amendment permits Continental to increase the monthly rate by \$1.00 in all systems, but allows Continental to sell its St. Louis County system, the proposed sale of which has been announced, without implementing the upgrade provided in the Amendment.<sup>19</sup> Two commenters claim that the Social Contract requires Continental to implement two-way interactive capability in every system without passing on the cost to subscribers.<sup>20</sup> Finally, some commenters ask that the Commission release Bureau materials relating to the justification of the rate increase and refund amounts.<sup>21</sup>

20. In reply, Continental rejects the argument that system upgrades do not constitute a concession on its part. First, Continental contends that the Amendment requires it to upgrade all communities it serves as opposed to a minority of systems that may have been able to negotiate various upgrade commitments with Continental on their own.<sup>22</sup> Second, Continental maintains that it has agreed to forego its right to recover costs of system upgrades through cost-of-service filings. At the same time, Continental's capital spending commitment does not preempt existing franchise requirements or impair an LFA's right to negotiate additional or earlier upgrades.<sup>23</sup> Third, Continental claims that without the Amendment, the uncertainty created by the large number of pending rate cases and the potential impact of the Commission's rate rules on Continental's future cash flow would inhibit it from making major investments in its systems.<sup>24</sup>

21. Continental opposes the suggestion that it be required to submit a master plan of proposed system upgrades and rate increase justifications on a per upgrade basis. Continental

---

<sup>16</sup>Comments of Metropolitan Dade County, Florida at 2; Comments of Collier County Manager's Office at 2.

<sup>17</sup>Comments of Coachella, California at 11; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at 11.

<sup>18</sup>Comments of Metropolitan Dade County, Florida at 4.

<sup>19</sup>Comments of St. Louis County, Missouri at 1-2.

<sup>20</sup>Comments of Lauderhill, Florida at 1; Comments of Coral Gables, Florida at 2 - 3.

<sup>21</sup>Comments of Metropolitan Dade County, Florida at 3; Comments of Coachella, California at 12-14; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at 13 - 15; Comments of Collier County Manager's Office at 3 - 5.

<sup>22</sup>Continental Reply Comments at 55 - 56.

<sup>23</sup>Continental Reply Comments at 56.

<sup>24</sup>*Id.* at 56 - 57.

claims that no such plan exists and that decisions to upgrade will be based on: a particular system's current capacity and condition; that system's spare capacity, if any; the number of off-air must-carry channels in that system's market; consumer demand for additional services in the community; and consumer willingness to pay for the additional services.<sup>25</sup> Since these variables are fluid, Continental argues that it would be impossible for it to provide a pre-ordained upgrade plan.<sup>26</sup> Continental emphasizes that the Social Contract already requires it to distribute system upgrades in a nondiscriminatory manner and that the Social Contract also requires Continental to submit an annual progress report to the Commission and all LFAs so that they can properly assess how the upgrades and expenditures were distributed.<sup>27</sup> Thus, Continental contends that there are sufficient safeguards already in place to ensure that upgrades will take place in a reasonable, non-discriminatory manner.

22. Continental denies that its rate increase will be used to fund upgrades that will be used primarily for non-regulated, non-video services and further contends that the Commission already has reviewed its economic cost data to preclude cross-subsidies.<sup>28</sup> Continental claims that in order for its CPST rate mechanism to subsidize primarily non-video service such as telephony, the proposed rate increase would need to be several times greater than \$1.00 since a telephony-capable upgrade requires substantial additional expenditures for switches, network interface units, etc.<sup>29</sup>

23. Continental explains that it needs considerable funding from lenders to implement the proposed upgrades. However, in order to receive this funding, Continental must demonstrate sufficient operator cash flow and debt repayment ability -- factors which would not be present if Continental was required to complete the upgrades before recovering any of its upgrade costs as some commenters have suggested.<sup>30</sup>

24. Continental rejects suggestions that localities negotiate individual system upgrades and cites Congressional preference for national approaches to questions of system upgrades.<sup>31</sup> Continental urges the Commission to reject Metropolitan Dade County's request to opt out of the \$1.00 CPST provision and to allow the renewal process to govern cable operator upgrade

---

<sup>25</sup>*Id.* at 58.

<sup>26</sup>*Id.*

<sup>27</sup>*Id.* at 59 - 60.

<sup>28</sup>*Id.* at 70.

<sup>29</sup>*Id.*

<sup>30</sup>*Id.* at 72.

<sup>31</sup>*Id.* at 72 - 73 (citing legislative history of the Telecommunications Act of 1996, § 301(e), H.R. Rep. 204, 104th Cong., 1st Sess. 110 (1995)).



commitments.<sup>32</sup> Further, Continental states that St. Louis County has misstated the factual situation with respect to Continental's St. Louis County system. In that case, the transfer to another operator is scheduled to close before the end of 1996. The Amendment does not allow Continental to take the \$1.00 increase in 1996. St. Louis County subscribers will not be assessed such an increase prior to the scheduled sale of that system. Continental proposes, however, a further modification of the Amendment to ensure that subscribers to systems that are not increased to at least 550 MHz capacity and are sold while the Social Contract is in effect will be reimbursed for any such \$1.00 increases imposed by Continental or a subsequent owner. Finally, Continental denies that two-way capability is a requirement of the Social Contract and maintains that where an LFA requires Continental to include such functionality as part of a system upgrade, the Social Contract allows it to recover the incremental costs incurred in that specified upgrade.<sup>33</sup>

25. The majority of commenters express support for those provisions of the Amendment which require Continental to increase its investment from \$1.35 billion to \$1.7 billion for the upgrade of its domestic cable systems, including the acquired systems. Commenters support the deployment of fiber optic technology, increased system addressability, and improved reliability and picture quality.

(iii) Discussion

26. We believe that the Amendment's upgrade provisions represent a valuable benefit to subscribers in terms of advanced technology, improved reliability and picture quality, and increased programming choices. While upgrades may be implemented at various times during the course of the Social Contract, we believe that phasing in the upgrade costs over that period, in contrast to a one-time increase when the upgrade is completed, is preferable because it provides predictable rate increases and avoids rate shock. The Social Contract requires Continental to make an annual investment for upgrades in each year of the Contract which is at least equal to 120 percent of its average aggregate annual capital expenditures from 1990 to 1994. (Accelerated expenditures will be credited toward future years during the contract period.) Continental must submit annual progress reports to the Commission with copies to the LFAs showing it has done so. In addition, as Continental notes, financing requirements for the upgrades make implementation unlikely if Continental were required to complete the upgrades before recovering its costs. Under the Amendment, Continental agrees that at least 70 percent of all capital expended in connection with the upgrade commitment will be applied for the benefit of BST and CPST subscribers. Further, Continental is prohibited from recovering the costs of the system upgrades and rebuilds through a cost-of-service filing. As we recognized under the *Social Contract Order*, this represents a major concession from Continental. Finally, the Amendment will enhance Continental's ability to attract the necessary capital to invest in system upgrades.

---

<sup>32</sup>*Id.* at 74.

<sup>33</sup>*Id.* at 65.

27. Although Continental may have upgraded some systems recently or may have been required by LFAs to upgrade some sections of its system, the Amendment extends the technical specifications of the original Social Contract to the acquired systems and obliges Continental to provide an average of 10 additional services and a minimum of five such services in each community, so that all of its communities will benefit.<sup>34</sup> Those LFAs that individually have negotiated upgrade benefits will not be disadvantaged since they can continue to enforce local franchise agreements or negotiate future agreements which provide for upgrade benefits exceeding those under the Amendment.

28. We are mindful of the concerns expressed by some commenters that the \$1.00 CPST rate increase may be used to pay for Continental's plans to provide non-regulated, non-video services. We believe that the costs of the upgrade are reasonable and necessary and that Continental has fairly allocated the costs of the upgrade between its current regulated and non-regulated operations. If it is determined that Continental has not complied with its obligations under the Amendment, we may exercise any of the rights and remedies which are attendant to violations of a Commission order.

29. Commenters' contention that the rate increase will exceed the amount permitted under the *Going Forward* Order is misplaced. The *Going Forward* Order was intended to be an incentive for operators to add a small number of cable channels to existing systems. The increase under the Amendment, on the other hand, is intended to enable Continental to undertake a major system upgrade, which will modernize facilities to provide improved quality and efficiency and to add new tiers and types of services.<sup>35</sup> Consequently, the rate increase primarily is not for a small number of new services, but for improved quality of services as a result of modernization. The Amendment does not change the requirements of the Commission's rules governing the pass-through of external costs and inflation.

30. In exchange for committing to upgrade its systems, Continental will be permitted to increase the monthly rate for its CPST by \$1.00 in the acquired systems in each year from 1996 through 1999 and by \$1.00 in original systems in each year from 1997 through 1999. Continental will forego relief through the cost of service rules and those authorized by the going forward rules.<sup>36</sup> As noted, we have reviewed the \$1.00 increase and believe that the costs of the upgrades are reasonable and necessary. The \$1.00 increase is reasonable and justified by the magnitude of Continental's upgrade commitment. Tables A and B below indicate that Continental's rates under the Amendment will be within the parameters of the rates Continental would be authorized to implement under a typical cost-of-service analysis.

---

<sup>34</sup>See Amendment, III.A.2.

<sup>35</sup>See *Cost Order*, 9 FCC Rcd at 4677-4680.

<sup>36</sup>Except that Continental may avail itself of per-channel adjustments under the *Going Forward* rules where Continental upgraded or rebuilt a particular system in 1996 and had not previously added channels on such system in 1996 pursuant to the *Going Forward* rules. See Amendment, III. D. 2.

TABLE A. CONTINENTAL RATES UNDER THE AMENDMENT<sup>37</sup>

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
<u>Initial Regulated Rate</u>	<u>22.68</u>	<u>23.71</u>	<u>25.42</u>	<u>27.15</u>	<u>28.90</u>
<u>Inflation</u>	<u>00.68</u>	<u>00.71</u>	<u>00.73</u>	<u>00.75</u>	<u>00.77</u>
<u>Going Forward Increases</u>	<u>00.15</u>	<u>00.00</u>	<u>00.00</u>	<u>00.00</u>	<u>00.00</u>
<u>Surcharge Pursuant to Amendment</u>	<u>00.20</u>	<u>01.00</u>	<u>01.00</u>	<u>01.00</u>	<u>00.00</u>
<u>Year End Regulated Rate</u>	<u>23.71</u>	<u>25.42</u>	<u>27.15</u>	<u>28.90</u>	<u>29.67</u>

TABLE B. NO AGREEMENT: RATES BASED ON TYPICAL COST-OF-SERVICE JUSTIFICATION<sup>38</sup>

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
<u>Initial Regulated Rate</u>	<u>22.68</u>	<u>25.36</u>	<u>27.19</u>	<u>28.81</u>	<u>30.40</u>
<u>Inflation</u>	<u>00.68</u>	<u>00.73</u>	<u>00.76</u>	<u>00.78</u>	<u>00.81</u>
<u>Going Forward Increases</u>	<u>01.05</u>	<u>00.20</u>	<u>00.00</u>	<u>00.00</u>	<u>00.00</u>
<u>Surcharge Pursuant to COS</u>	<u>00.95</u>	<u>00.90</u>	<u>00.86</u>	<u>00.81</u>	<u>00.76</u>
<u>Year End Regulated Rate</u>	<u>25.36</u>	<u>27.19</u>	<u>28.81</u>	<u>30.40</u>	<u>31.97</u>

<sup>37</sup>The initial Regulated Rate for 1996 represents the average rate for BST and CPST service company wide. The inflation figure assumes three percent annually. The Going Forward increases are the maximum permitted by the Going Forward rule under the Amendment. The Surcharge indicated for 1996 represents an average increase of 80 cents net of Going Forward increases spread company wide.

<sup>38</sup>As noted, the initial Regulated Rate for 1996 represents the average rate for BST and CPST service company wide. The inflation figure assumes three percent annually. The Going Forward increases are the maximum permitted by the Going Forward rule exclusive of programming costs. The cost-of-service analysis is premised on construction being completed in equal increments over the five-year period and assumes an investment in a "typical" system, i.e., amortized over a 15-year period at an 11.25% rate of return, utilizing a 50% debt and 50% equity capital structure. The reduction in the surcharge from 1997 to 2000 largely results from the depreciation of assets associated with the upgrade. The 95 cent figure for 1996, for example, was calculated by dividing the \$1.7 billion investment by total subscribers to arrive at an investment per subscriber of \$360, which was divided by five years to determine the investment per year per subscriber of \$72. That figure was reduced by accumulated depreciation of 1/15th (\$4.80). Using the 11.25% rate of return provided in our cost-of-service rules, this resulted in a return on the rate base of \$7.56. The return on rate base (\$7.56), an income tax allowance (\$2.91), annual depreciation (\$4.80), and other estimated operating expenses (\$0.97) were totaled to arrive at an annual revenue requirement of \$16.24. That figure was divided by 12 to arrive at a monthly revenue requirement of \$1.35. The monthly revenue requirement attributable to regulated services (at 70 percent) is \$0.95.

31. The amendment offers a means to expand capacity and improve service, including additional programming and enhanced picture quality, in a manner that protects subscribers from unreasonable rate increases yet allows the commitment of substantial capital investment. We have stated that regulation should not hinder cable operators ability to make network improvements that could benefit subscribers.<sup>39</sup> Phasing in, through predictable increases, the cost of a substantial upgrade is a reasonable, if not expanded, alternative for an operator, instead of pursuing those allowed by a cost of service showing or the going forward rules. The subscriber, who essentially is participating in the investment, avoids the "rate shock" associated with a substantial rate increase subsequent to completion. Moreover, providing increased flexibility to the cable operator while at the same time ensuring that rates remain reasonable, is consistent with the emergence of increased competition in the video programming market.

32. Some commenters have expressed concern that the upgrades and rebuilds of the acquired systems may not take place in a reasonable, non-discriminatory manner and that the \$1.00 CPST rate increase may not be justified by Continental's upgrade costs. Certain protective provisions of the Social Contract will apply to the acquired systems. For example, the Social Contract requires Continental to invest in systems in a way that will not discriminate on the basis of the socio-economic status of subscribers.<sup>40</sup> In addition, if Continental does not invest at least 85 percent of the annual amount committed to infrastructure upgrades, then it will be required to make an in-kind refund equal to the amount by which that year's capital expenditure is less than the required investment.<sup>41</sup> Continental is also required to file an annual report whereby the Commission and LFAs can assess Continental's performance for upgrades and rebuilds.<sup>42</sup> Under the Amendment, all of these requirements will also apply to the acquired systems.<sup>43</sup> We conclude that sufficient safeguards exist to ensure that upgrades and rebuilds will take place as promised in a reasonable, non-discriminatory manner for the acquired systems without the need for Continental to submit a master plan of system upgrades or rate increase justifications on a per upgrade basis.

33. In addition, Continental has agreed to a modification to the Amendment which will apply generally to the issue raised by St. Louis County, which related to the imposition of a \$1.00 increase by Continental and the sale of a system before an upgrade is undertaken. Continental has agreed to post a performance bond at the time of sale or trade of a Continental system to ensure that refunds of any assessed \$1.00 increase are repaid to subscribers in a system

---

<sup>39</sup>Rate Order, 8 FCC Rcd at 5794.

<sup>40</sup>See Social Contract, III.E.3.

<sup>41</sup>See Social Contract, III.E.4.

<sup>42</sup>See Social Contract, III.J.

<sup>43</sup>See Amendment, I.

that is sold or traded while the Social Contract is in effect if the system is not at 550 MHz of capacity at the time of the sale or trade and is not upgraded to 550 MHz by any subsequent owner on or before December 31, 2000. This new provision is added to the Amendment in new section III.G. We approve the proposed modification.

34. With regard to requests for Bureau staff work papers and deliberations, as we held under the *Social Contract Order*, the Bureau's analysis and work papers relating to the calculation of the rate increase and refund amounts constitute intra-agency memoranda and other pre-decisional and deliberative materials which are exempt from public disclosure under Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(5).<sup>44</sup> Disclosures of such protected documents would undermine the process which the *Ex Parte Order* was designed to create.<sup>45</sup> We deny commenters' requests for release of such materials.

35. We agree with Continental's contention that neither the Social Contract nor the Amendment require Continental to implement active two-way capability within each system upgrade. Nothing in the Social Contract, Amendment, or negotiations with Continental suggests otherwise. Continental's commitment in section III.E.2 of the Social Contract to "utilize addressability or other suitable technology to make interactive services available to subscribers" was not intended to equate interactivity with active, two-way capability. In this context, interactivity may be achieved, for example, by downloading software to customer equipment for local interaction, by using a telephone return path to the cable headend, or by broadcasting information so quickly that interactivity is achieved by the customer's selection of information from the broadcast stream. Examples of "broadcasting information so quickly" are the Sega channel, videotext systems, and the new Intericast system of which Continental is a part.<sup>46</sup> By contrast, to make a cable plant two-way active requires additional investment in more sophisticated line equipment that is capable of sending signals upstream to the cable headend.

36. We deny Metropolitan Dade County's request to opt out of the \$1.00 CPST rate increase. Allowing covered communities to opt out of this provision would undermine CPST rate stability and the upgrade of Continental systems nationally, important purposes of the Amendment. The \$1.00 rate increase constitutes compensation for the upgrades to which Continental is committed under the terms of the Social Contract. It is contemplated in the *Cost Order*.<sup>47</sup> There is no notion in the *Cost Order* or in our rules that one can opt out of Commission approved rate increases. With respect to matters within the jurisdiction of LFAs, we have

---

<sup>44</sup>See *Continental Social Contract Order* at n. 7.

<sup>45</sup>See *Modification of Ex Parte Procedures in Certain Cable Rate Proceedings*, 9 FCC Rcd 7812 (1994) ("Ex Parte Order").

<sup>46</sup>Intericast sends Internet Web pages related to a video picture in the vertical blanking interval to home computers, so, for example, a customer can refer to a player's statistics in a baseball game.

<sup>47</sup>See *Cost Order*, 9 FCC Rcd at 4677-4680.

permitted LFAs to decide independently whether to opt out of those provisions of the Social Contract where the Commission determined rates and refund liability for the BST.<sup>48</sup> Similarly, in the Amendment, we allow LFAs to opt out of refunds which include BST rate liability.<sup>49</sup> In contrast, the \$1.00 rate increase concerns the CPST, which lies outside the scope of an LFA's jurisdiction.<sup>50</sup>

## **B. Equipment and Installation Averaging**

### **(i) Terms of the Social Contract**

37. As with its original systems under the Social Contract, Continental may average broad categories of equipment and various installation costs for its acquired systems on a statewide or regional basis. This will be accomplished by Continental filing FCC Form 1205 (Equipment Form) with the Commission on an annual basis beginning in 1997. The geographic regions used for averaging are shown on Exhibit 1 of the Amendment. The Commission will verify the filing's accuracy and establish rates applicable to that specific state or region.

### **(ii) Comments**

38. Some commenters claim that Commission regulation and averaging of equipment rates violate the 1992 Cable Act.<sup>51</sup> In its reply comments, Continental notes that the Commission granted Continental a waiver under the Social Contract to permit it to aggregate equipment and installation costs on a state or regional basis and that it is not requesting anything additional here.<sup>52</sup> Continental also argues that the 1992 Cable Act leaves the precise level of local versus federal authority over equipment and installation rates to the Commission's discretion.<sup>53</sup>

### **(iii) Discussion**

39. As we concluded in the Order approving the Social Contract, the 1992 Cable Act leaves the level at which equipment rates are set (i.e., the franchise, system, regional, or company

---

<sup>48</sup>See Social Contract, III.I.

<sup>49</sup>See Amendment, III.E.2.

<sup>50</sup>See also In the Matter of TCI Communications, Inc., Final Resolution of Cable Programming Service Rate Complaints, FCC 96-187 (released April 26, 1996)("TCI Order").

<sup>51</sup>Comments of Coachella, California at 10; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at 10; Comments of Lakewood, California at 2.

<sup>52</sup>Continental Reply Comments at 42.

<sup>53</sup>Continental Reply Comments at 43.

level) to the Commission's discretion.<sup>54</sup> Until very recently, our rules provided that rates for installation and equipment may be aggregated only in a manner consistent with the accounting practices of the operator.<sup>55</sup> We granted a waiver of our equipment rules to Continental in the Social Contract.<sup>56</sup> We concluded that equipment averaging will minimize drastic rate increases as upgrades take place and will reduce the administrative burden on Continental to prepare rates on a franchise basis.<sup>57</sup> The Telecommunications Act of 1996<sup>58</sup> now requires that we allow operators to aggregate their equipment costs on franchise, system, regional, or company levels.<sup>59</sup> The terms of the Amendment are consistent with both the 1992 Cable Act and the 1996 Act. Accordingly, no waiver of our rules is required in order to permit Continental to average broad categories of equipment and various installation costs for all of its systems on a statewide or regional basis. Nor does this provision of the Amendment violate section 624 of the 1992 Cable Act which directs 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 BST.<sup>60</sup> Continental's equipment rates will continue to be based on actual cost. We will continue the waiver we granted Continental in the Social Contract with respect to review by LFAs of the equipment rate form. Those forms will be reviewed by the Commission for the reasons stated in the Social Contract.<sup>61</sup>

### C. Lifeline Basic Tier Rates

#### (i) Terms of the Social Contract

40. Under the Amendment, Continental agrees to create a low-cost "lifeline" BST for 80 percent of its acquired systems. On systems serving at least 80 percent of its total subscribers, Continental will reduce the current price on its BST by 15 to 20 percent no later than January 1, 1997, with a revenue neutral increase in the CPST rates. On the remaining systems where BST rates have not been reduced by at least 15 percent, Continental may streamline basic tiers that have a high number of channels. This retiering will consist of Continental moving channels

---

<sup>54</sup>*Social Contract Order* at ¶ 30.

<sup>55</sup>*See Implementation of Section 301(j) of the Telecommunications Act of 1996 - Aggregation of Equipment Costs by Cable Operators*, FCC 96-257 (released June 7, 1996).

<sup>56</sup>*Social Contract Order* at ¶ 31.

<sup>57</sup>*Id.*

<sup>58</sup>Pub. L. No. 104-104, 110 Stat. 56, 118 (1996)

<sup>59</sup>Telecommunications Act of 1996, § 623(a)(7)(A), 47 U.S.C. § 543(a)(7)(A).

<sup>60</sup>47 U.S.C. § 544.

<sup>61</sup>*See Social Contract Order* at ¶ 29-31.

from the BST to the existing CPST or to a newly created CPST or MPT in a revenue-neutral manner.

(ii) Comments

41. Many commenters support the creation of a lifeline BST and emphasize that low basic cable rates are essential to persons on a fixed or low income.<sup>62</sup> Of those commenters who expressed opposition, the concerns are that a large number of CPST users will subsidize a low basic cable rate for a few BST-only subscribers and that the BST is not important in those communities where the reception of broadcast television is clear.<sup>63</sup> In its reply comments, Continental contends that a low-priced BST will benefit all subscribers, not just BST-only consumers.<sup>64</sup>

(iii) Discussion

42. We approved the establishment of a low-cost lifeline BST for Continental's original systems under the Social Contract. There we noted that the creation of a lifeline BST increases the option of all subscribers and increases competition for services on the upper tiers.<sup>65</sup> We also explained that any increase in rates for subscribers that receive both the BST and the CPST would be *de minimis*.<sup>66</sup> It is our belief that the acquired systems will also benefit from the valuable public benefits resulting from the establishment of a low-cost lifeline BST. We approve this provision of the Amendment creating a lifeline BST for Continental's acquired systems.<sup>67</sup>

#### D. Home Wiring

---

<sup>62</sup>See, e.g., Comments of Lemont, Illinois at 1; Comments of Hamtramck, Michigan at 1; Comments of Lockport, Illinois at 1.

<sup>63</sup>Comments of Coachella, California at 9; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at 9.

<sup>64</sup>Continental Reply Comments at 66.

<sup>65</sup>*Social Contract Order* at ¶ 48.

<sup>66</sup>*Id.* at ¶ 47. The Amendment requires creation of a lifeline basic in which the lower BST rates are offset by higher rates for the CPST in a revenue neutral manner. Because Continental has more subscribers receiving only BST than subscribers receiving both BST and CPST, the aggregate amount from the BST reduction must be spread over a slightly smaller subscriber base.

<sup>67</sup>The Commission recently proposed that all rate-regulated operators be allowed rate flexibility in pricing service tiers. Under the proposal, an operator that decreases its BST rate below the maximum permitted rate for that tier would be permitted to increase its CPST rate to offset the lost BST revenue. See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, and Cable Pricing Flexibility, CS Docket No. 96-157, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 96-316 (released August 15, 1996).



(i) Terms of the Social Contract

43. Continental will allow subscribers to remove, to maintain, to replace or to rearrange their home cable wiring so long as it does not create signal leakage or interfere with Continental's ability to provide services and to collect revenues from that subscriber or other subscribers in a multiple dwelling. To facilitate this benefit, Continental will provide the necessary home wiring materials to subscribers at cost and will identify other sources for such equipment. Subscribers will be responsible for the cost of remedying any improper installation.

(ii) Comments

44. We did not receive any comments opposing this provision of the Amendment.

(iii) Discussion

45. We find that the Amendment's home wiring provision benefits subscribers since it allows subscribers to make changes in their cable wiring without incurring additional costs. This will enable customers to make rational choices regarding their home wiring.<sup>68</sup>

**E. Resolution of Pending Cases**

(i) Terms of the Social Contract

46. The Amendment will resolve all CPST cases pending against Continental's acquired systems and those BST cases where a la carte channel packages are at issue. In resolution of these cases, Continental agrees to pay cash refunds totalling approximately \$1.67 million, including interest, to subscribers in the franchise areas shown in Exhibits 2 and 3 of the Amendment. The cash refunds will be paid in the form of credits on subscribers' cable bills. Refunds will continue to accrue interest until the date that the refunds are actually paid. LFAs may elect to opt out of the refund plan, in which case an LFA individually may calculate refunds from BST overcharges under our rules. The Amendment vacates a Letter of Inquiry ("LOI") ruling and four orders which held that certain a la carte packages were not legitimate a la carte offerings and therefore must be treated as regulated offerings. All of the acquired systems' pending petitions for reconsideration of the Commission's rate decisions on the CPST complaints are vacated as well.<sup>69</sup>

---

<sup>68</sup>See also Social Contract for Time Warner, FCC 95-478 at ¶ 76 (released November 30, 1995), petition for review pending, *New York City Dep't of Information Technology and Telecommunications, et al., v. FCC*, D.C. Cir. No. 96-1027 ("Time Warner Social Contract Order").

<sup>69</sup>*Dynamic Cablevision of Florida, Ltd.*, LOI-93-43, DA 94-1546 (released January 23, 1995); *Colony Cablevision of Florida*, DA 95-624 (released March 29, 1995); *Colony Cablevision of Florida*, DA 95-820 (released April 18, 1995); *Dynamic Cablevision of Florida, Inc.*, DA 95-860 (released April 21, 1995); *Dynamic Cablevision of Florida, Inc.*, DA 95-1143 (released May 26, 1995).

## (ii) Comments

47. Many commenters express support for the Amendment's resolution of the pending rate cases as a way to avoid lengthy and burdensome administrative proceedings.<sup>70</sup> Some commenters, however, contend that complainants have the statutory right to have their complaints adjudicated individually on the record, that the negotiation of the Amendment between Continental and the Commission constituted a violation of the Commission's *ex parte* rules.<sup>71</sup> In addition, two commenters request an explanation of the calculation of interest on the proposed refunds.<sup>72</sup> Finally, Brighton, Michigan asks the status of its petition for special relief filed with the Commission in which it requested, pursuant to 47 C.F.R. § 76.933(d), Commission adjudication of the operator's BST rates which were supported by a cost-of-service showing.

48. In its reply comments, Continental cites Commission orders, court cases, and Congressional authority that establish the right of the Commission to resolve pending cable rate cases through a global rate settlement.<sup>73</sup> In response to comments that Section 623(c)(1)(A) of the Communications Act requires the Commission to adjudicate CPST rate cases on an individual basis, Continental points out that the plain language of the section simply directs the Commission to identify criteria for determining when CPST rates are unreasonable and contains no reference to the types of procedural mechanisms (such as social contracts, for example) that the Commission must use to apply these criteria to CPST rates.<sup>74</sup> Continental stresses that the Amendment eliminates the time, expense, and administrative burdens required of all parties to adjudicate complex rate disputes, while also providing reasonable refunds to subscribers. Continental denies that the Amendment was negotiated in violation of the Commission's *ex parte* rules, and, as evidence thereof, submits FCC date-stamped copies of letters requesting a meeting and relaxed *ex parte* treatment for any specific pending rate proceedings involving the acquired systems.<sup>75</sup> Continental provides a detailed explanation of the calculation of the interest on the proposed refunds.<sup>76</sup> Finally, Continental agrees to incorporate in the Amendment the review by the Commission of its BST rates for its acquired system in Brighton, Michigan.

---

<sup>70</sup>See, e.g., Miami Springs, Florida at 1; Massachusetts Cable Television Commission at 2.

<sup>71</sup>Comments of Coachella, California at 2 - 9; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at 2 - 8; Comments of Lakewood, California at 1.

<sup>72</sup>See Comments of Metropolitan Dade County at 4; Comments of Collier County Manager's Office at 5.

<sup>73</sup>See Reply Comments of Continental at 26 - 34.

<sup>74</sup>Reply Comments of Continental at 27 - 29.

<sup>75</sup>*Id.* at Appendix B.

<sup>76</sup>*Id.* at 51 - 52.

## (iii) Discussion

49. We conclude that proper procedures were followed with respect to the Amendment. As an initial matter, we find that the Commission has the requisite authority to approve the Amendment. The Communications Act of 1934 provides the Commission with wide discretion to resolve rate cases.<sup>77</sup> Section 4(i) of the Communications Act authorizes the Commission to "perform any and all acts ... not inconsistent with [the] Act, as may be necessary in the execution of its functions."<sup>78</sup> Section 4(j) of the Communications Act provides that the "Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice...."<sup>79</sup> As we have held in prior orders, we believe that Sections 4(i) and 4(j) of the Communications Act allow us to consider cable operators' proposals to resolve rate complaints.<sup>80</sup>

50. Moreover, the 1992 Cable Act directs the Commission to create "fair and expeditious procedures for the receipt, consideration and resolution of complaints."<sup>81</sup> Congress has also charged the Commission with establishing "the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable."<sup>82</sup> Pursuant to these Congressional mandates, the Commission adopted rules in its *Cost Order* providing for the use of social contracts as one method of setting cable rates.<sup>83</sup> We note that nothing in our *Cost Order* prohibits the resolution of past overcharges under a social contract and, as noted above, such resolutions are within our Section 4 (i) and 4 (j) authority. A significant purpose of our *Cost Order* is to promote the formation and implementation of innovative plans that will encourage operators to upgrade their systems.<sup>84</sup> Global rate resolutions are one such plan. Otherwise, some cable operators might have little to no incentive to enter into social contracts, and the upgrade incentive

---

<sup>77</sup>Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. ("Communications Act").

<sup>78</sup>47 U.S.C. § 154(i).

<sup>79</sup>47 U.S.C. § 154(j).

<sup>80</sup>See *TCI Order* at ¶ 8; *Comcast Cable Communications, Inc.*, FCC 95-482 (released December 1, 1995), petition for review pending, *City of Tallahassee v. FCC*, 11th Cir. No. 95-3722.

<sup>81</sup>47 U.S.C. § 543(c)(1)(B).

<sup>82</sup>47 U.S.C. § 543(c)(1)(C).

<sup>83</sup>*Cost Order*, 9 FCC Rcd at 4677 - 4680.

<sup>84</sup>*Cost Order*, 9 FCC Rcd at 4678 - 4679.

plans contemplated by the *Cost Order* would remain a mere idea.<sup>85</sup> To exclude global rate settlements from a social contract simply because they are not listed in the *Cost Order*, as argued by some commenters,<sup>86</sup> could mean that other beneficial provisions such as home wiring and free services to schools also might be excluded since they, too, are not listed in the *Cost Order*. Moreover, in *Cost Order II*, the Commission adopted the social contract approach as part of its final rules and reaffirmed its intent to "remain flexible with respect to the scope and terms of such [social contract] arrangements."<sup>87</sup>

51. There is no statutory requirement that each rate complaint be adjudicated individually. Rather, the Commission is required by Congress to establish procedures that resolve rate complaints and provide refunds of excessive charges.<sup>88</sup> The courts have long recognized that regulatory agencies have broad discretion to choose among ratemaking methods and procedures in ratemaking determinations.<sup>89</sup> As we held in the *TCI Order*, the lengthy process of adjudicating each rate complaint and litigating those rulings through the court system is not in the public interest when an alternative procedure, such as global rate settlement, would ensure reasonable rates, provide immediate refunds to subscribers, and fulfill the Commission's Congressional mandate to ensure that challenged CPST rates are not unreasonable.<sup>90</sup> We believe that Congress' desire to streamline cable rate regulation, as demonstrated by the passage of the Telecommunications Act of 1996,<sup>91</sup> supports the adoption of the most expeditious means of resolving complaints that will afford adequate protection for subscribers.<sup>92</sup> To the extent that we have diverged from the Commission's rules<sup>93</sup> by adopting the Amendment, we find good

---

<sup>85</sup>See also Reply Comments of Continental at 30 ("Resolving pending rate cases clearly provides cable operators with the incentive and ability to upgrade their systems and services.").

<sup>86</sup>See Comments of Coachella, California at n. 7; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at n. 7.

<sup>87</sup>Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 93-215, Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 2220, 2282 (1996) ("*Cost Order II*").

<sup>88</sup>See 47 U.S.C. § 543(c)(1)(C).

<sup>89</sup>See *FERC v. Pennzoil Producing Co.*, 439 U.S. 508, 517 (1979); *Permian Basin Area Rate Cases*, 390 U.S. 747, 797 (1968).

<sup>90</sup>See *TCI Order* at ¶ 9.

<sup>91</sup>See *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>92</sup>See also Comments of Edward M. Kennedy, U.S. Senator (MA) at 1 and Representative Ken Calvert, U.S. Representative (CA), at 1 in support of the Amendment.

<sup>93</sup>See 47 C.F.R. §§ 76.922, 76.950-76.963.

cause to waive these rules pursuant to Section 1.3 of our rules.<sup>94</sup> Such a waiver furthers the p u r p o s e o f t h e r u l e s and advances the public interest in that the Amendment will more effectively achieve the objectives of the 1992 Cable Act by ensuring the expeditious resolution of rate complaints while protecting consumers from unreasonable CPST rates.

52. In the *Cable Ex Parte Order*, we held that relaxed *ex parte* rules apply to discussions that are general to the cable operator as a whole although they potentially implicate pending rate proceedings "such as company-wide applications of the cable rules that impact specific rate proceedings."<sup>95</sup> A party wishing to take advantage of the modified *ex parte* procedures under the *Cable Ex Parte Order* must submit a written request to meet with the Bureau and a request for the relaxed *ex parte* treatment, receive Bureau approval of the requests, serve all parties to each affected pending rate complaint and/or appeal proceeding with the final version of the specific company-wide proposed resolution, and allow all parties at least 30 days for comment. We conclude that these requirements were complied with here. By letters dated October 12, 1995, October 18, 1995, and November 22, 1995, Continental requested relaxed *ex parte* treatment in order to discuss broad rate-related matters with Commission officials. The Bureau subsequently granted the requests. All complainants and affected LFAs were served with a copy of the proposed Amendment and given 45 days to comment. The Commission has reviewed the comments, which, in some instances, have resulted in changes to the Amendment. LFAs and other affected parties have been given ample opportunity to participate in this procedure. We conclude that the Commission's *ex parte* procedures in this case have been fully complied with.<sup>96</sup>

53. The *Cost Order* states that when a cable operator submits a proposed upgrade incentive plan to the Bureau, it should include statements from affected LFAs.<sup>97</sup> In the *Continental Social Contract Order*, the Commission waived its requirement that a statement be filed by the local LFA at the time an upgrade proposal is made to the Bureau.<sup>98</sup> Instead, LFAs were given the opportunity to make statements at the time the proposed Social Contract was released publicly. The Commission recognized that the comment period provided ample opportunity for LFAs "to express their concurrence with or opposition to the proposed agreement" and that "the *Cable Ex Parte Order* contemplated this type of process, with the final proposal

---

<sup>94</sup>47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion...if good cause therefor is shown.").

<sup>95</sup>See Modification of Ex Parte Procedures in Certain Cable Rate Proceedings, 9 FCC Rcd 7812 (1994) ("Cable Ex Parte Order") at ¶ 10.

<sup>96</sup>*Cf.* Comments of Coachella, California at 6 - 7; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at 6 - 7. In addition, the Commission also has authority to enter into discussions to resolve matters before it pursuant to 47 C.F.R. § 1.1208(b)(7). The Amendment could be considered under that provision of our rules also.

<sup>97</sup>*Cost Order*, 9 FCC Rcd at 4680.

<sup>98</sup>*Continental Social Contract Order* at ¶ 70.

being offered for comment."<sup>99</sup> The same situation exists here, except that in addition to the interests of LFAs from the original systems, the concerns of numerous LFAs from the acquired systems are also involved. The comment period has provided ample opportunity for LFAs and other affected parties to express their views as to the Amendment and to participate in its finalization.<sup>100</sup> In keeping with the *Social Contract Order*, and on our own motion and for good cause shown, we waive the requirement that LFA statements be included in the submission of Continental's amended upgrade incentive proposal.

54. In reaching a resolution of the rates and refunds in the acquired systems, we evaluated the pending complaints and found that most of Continental's refund liability results from a la carte packages, primarily in the Florida systems it acquired from the Providence Journal. The adjustments to liability we made emanate from a review of the circumstances involving these a la carte channels. The 1992 Cable Act, which established cable rate regulation, exempted video programming provided on a per program or per channel basis from regulation as a cable programming service<sup>101</sup> yet directed the Commission to take steps to prevent evasions of rate regulation resulting from retiering services.<sup>102</sup> The Commission adopted rules and guidelines to implement this mandate<sup>103</sup> and, in response to complaints, the Bureau sent letters of inquiry (LOI) to cable operators who had created packages of a la carte channels on the eve of rate regulation.

55. An LOI was sent to the acquired system in Hialeah, Florida. The Hialeah operator had created two packages of a la carte channels on September 1, 1993, Cable Plus with six channels and the Expanded package with four channels. They continued to offer a substantial CPST. The LOI focused on the perspective that exempting particular packages from rate regulation provided an opportunity to engage in evasive maneuvers inconsistent with the policies of the 1992 Cable Act. Specifically, the question was whether the operator was allowed to remove the entire Cable Plus tier from rate regulation and the additional channels that were removed with the Expanded package. After the restructuring, customers automatically continued receiving the CPST packages and few changed to a la carte offerings. In its ruling<sup>104</sup>, the Bureau

---

<sup>99</sup>*Id.*

<sup>100</sup>See also *Time Warner Social Contract Order* at ¶ 49.

<sup>101</sup>Communications Act of 1934, as amended, 47 U.S.C. 543(1)(2)(B).

<sup>102</sup>*Id.*, 47 U.S.C. 543(h).

<sup>103</sup>See *Going Forward*, 10 FCC Rcd at 1241-1244; Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119, 4210-4216 (1994); MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5911, 5915-17 (1993).

<sup>104</sup>*Dynamic Cablevision of Florida, Ltd.*, LOI-93-43, 10 FCC Rcd 2191 (C.S.B. 1994) ("LOI ruling").

concluded that the per channel offerings were not realistic service offerings, and were therefore subject to rate regulation. It applied this determination to all of the Providence Journal Florida systems in rate orders<sup>105</sup> for Hialeah<sup>106</sup> and Coral Gables, which offered the same packages, and Naples and surrounding parts of Collier County, which both offered a single eight-channel Cable Plus package. The rate orders added the a la carte channels to the number of regulated channels, and resulted in increased refund liability for the operators.<sup>107</sup> The Bureau ordered refunds through May 14, 1994 and adjustment of the benchmark rates, but stayed the effective dates of the rate orders pending action on the operator's petition for reconsideration of the LOI ruling, because "our resolution of the issues pending . . . could require revisions to our analysis . . . ." <sup>108</sup>

56. Not addressed by the Bureau in either the ruling or rate orders was the degree of subscriber penetration of a particular a la carte package. Subscriber penetration is an element to be considered in a social contract context in determining whether a package should be returned to rate regulation. Returning channels to rate regulation, while allowing the subscriber to receive what was removed, also requires the subscriber to pay for those channels returned. As low subscriber penetration evidences lack of interest in programming, the impact of returning channels to rate regulation may result in offerings subscribers do not want to receive, much less pay for. Our review of the a la carte ruling and rate orders for the Florida acquired systems in this context included evaluating the degree of subscriber penetration for the packages involved.

---

<sup>105</sup>*Dynamic Cablevision of Florida, Inc.*, CUID Nos. FL0202, FL0427, FL0553, FL0422, FL0429, FL0675, FL0428, FL0675, FL0428, FL0416, 10 FCC Rcd 9345 (C.S.B. 1995) (Hialeah, *et al.*); *Dynamic Cablevision of Florida, Inc.*, Coral Gables, Florida, CUID-No. FL0674, 10 FCC Rcd 8662 (C.S.B. 1995); *Colony Cablevision of Florida*, Naples, Florida, CUID No. FL0051, 10 FCC Rcd 6123 (C.S.B. 1995); *Colony Cablevision of Florida*, Collier County, Florida, CUID Nos. FL0348, FL0098, FL0050, 10 FCC Rcd 5144 (C.S.B. 1995) (collectively "Bureau rate orders").

<sup>106</sup>The Hialeah system included Hialeah, Hialeah Gardens, Medley, Miami Springs, Sweetwater, Virginia Gardens, West Miami, and unincorporated parts of Dade County.

<sup>107</sup>Compare *Nashoba Cable Services*, Danvers, Ma. LOI-93-23, DA 94-1547, 10 FCC Rcd 994 (C.S.B. 1994) (6 channel a la carte package not clearly unreasonable); *Falcon Cable TV*, Port Orchard, Wa. LOI-93-50, DA 94-1548, 10 FCC Rcd 998 (C.S.B. 1994) (same); *Chattanooga Cable TV Company*, Chattanooga, TN, LOI-93-51, DA 94-1427, 10 FCC Rcd 1519 (C.S.B. 1994) (same); with *Vision Cable Television Co., Inc.*, Fort Lee, NJ, LOI 93-32, DA 94-1554, 10 FCC Rcd 2207, 2210 (C.S.B. 1994) (a la carte packages totaling 8 channels not reasonable); *Vision Cable of North Carolina, Inc.*, Charlotte and Mecklenburg County, NC, LOI 93-24, DA 94-1552, 10 FCC Rcd 2203, 2206 (C.S.B. 1994) (same); *Falcon Cable TV*, Southern Shores, NC, LOI 94-2, DA 94-1551, 10 FCC Rcd 1002 (C.S.B. 1994) (10-channel a la carte package not reasonable).

<sup>108</sup>E.g., *Dynamic Cablevision of Florida, Inc.*, 10 FCC Rcd at 9346 ¶ 11.

57. The Cable Plus package had low penetration everywhere except the Naples area.<sup>109</sup> Subscription to the package was not tied to subscription to any other CPST. The operator continued to offer a substantial CPST, attracting a far greater percentage of the system's subscribers than Cable Plus. Returning an a la carte package that attracted little interest to rate regulation could increase costs subscribers as they would pay for channels they had disregarded when offered a la carte. There is a reasonable perspective that the goal of subscriber choice was enhanced, or at least not reduced, by the Cable Plus package. Because of the low subscriber penetration, and because a la carte packages with six channels have not been found to have clearly evaded rate regulation,<sup>110</sup> we determined not to include six Cable Plus channels in the a la carte refund calculations as called for in the LOI ruling and the Bureau rate orders, even though in the situation addressed in the LOI ruling Cable Plus was converted to an a la carte package on the same day the Expanded package was created.<sup>111</sup> We are not according the same refund treatment, however, to the Expanded package where it was offered along with Cable Plus, because of the substantial penetration of the Expanded package and the cumulative impact on rates.<sup>112</sup>

58. In reviewing complaints about Continental's other systems offering a la carte packages of more than six channels in the aggregate, we are excluding six channels from the refund calculation. A la carte packages involving only a small number of channels generally have not been found to be unreasonable, and for equitable reasons cable operators have not been subjected to refund liability for small a la carte packages, including packages of six channels.<sup>113</sup> Subscribers have benefitted from the choice multiple packages provide and have had the choice of paying for them only if they chose to subscribe to them. Although Bureau rate orders have generally treated small a la carte packages as NPT whose rates are not regulated, in this case a la carte packages will be converted to migrated product tiers and subject to rate regulation for the

---

<sup>109</sup>In addition to the Florida communities, a similar situation obtained in the other systems identified in Exhibit 2.

<sup>110</sup>See n. 104, *supra*.

<sup>111</sup>Concerned that its rules did not provide operators with sufficient incentives to expand capacity and provide new services to customers, the Commission created a new category of service, the new product tier ("NPT"), that would be considered CPST but would not have regulated rates. See *Going Forward*, 10 FCC Rcd at 1234, *et seq*. Operators were permitted flexibility in marketing strategies to develop audiences for new channels, including the offering of packages of a la carte channels under the conditions specified for NPT, but could not condition subscription to an NPT on subscription to any tier other than BST. *Id.* at 1243.

<sup>112</sup>See generally *Adelphia Communications Corp. v. FCC*, No. 95-1026, slip op. at 14 (D.C. Cir. July 23, 1996) ("it is not unreasonable for the agency to suppose that the most egregious transgressors were also the most obvious."). The court found the Commission's use of a "small-number rule" to be reasonable.

<sup>113</sup>See, e.g., *Nashoba Cable Services*, Danvers, MA, 10 FCC Rcd 994, 997 (C.S.B. 1994) (not equitable to subject cable operator to refund liability for 6 channel a la carte tier).



duration of the Social Contract.<sup>114</sup> Under these circumstances and in the context of the overall Social Contract, this resolution of the refund issues is reasonable.

59. In determining refunds, we decided that inflation data should not be refreshed and that any CPST undercharges should be offset against BST and a la carte liability.<sup>115</sup> In the context of a universal resolution of all rate complaints for the acquired systems and obtaining the other benefits of the amendment, adding the inflationary adjustments applicable in individual rate determinations would have prolonged resolution as it would have implicated a number of offsetting issues. Allowing CPST undercharges to offset BST and a la carte liability in this case moves to resolution all these categories, while ensuring that subscribers received refunds for charges in excess of the overall rate allowed by our rules.

60. In response to the requests for an explanation of the interest rate applied to the refunds, we note that the Amendment defines "interest" as "the Internal Revenue Service rate of interest for tax overpayments," which is also the interest rate provided in our rules for the payment of refunds.<sup>116</sup> Continental's refund obligations already include interest calculations through July 1, 1997 (for the a la carte-related refunds) and through April 1, 1997 (for the non a la carte-related refunds). Continental will pay additional interest charges, calculated identically, on any refunds not paid by the respective dates through which interest has been calculated until the refunds are actually paid.

61. Finally, resolution of the Brighton, Michigan BST case will be added to the Amendment. Previously, we had proposed the resolution of a single cost-of-service BST rate case involving the Westerly, Rhode Island Providence Journal system which had been referred by the LFA to the Commission for a decision. In that case, we found the BST rate reasonable. In the Brighton, Michigan (CUID MI0207) case, after review of the BST cost-of-service showing by Columbia Associates, L.P., the prior owner of the Brighton system, we find that the BST rate in Brighton is not justified by the cost-of-service showing. A refund liability of \$5.00 per subscriber is indicated. There are 2,475 subscribers in the Brighton franchise area. Total refund liability is \$12,375. The Brighton refund liability will be added to Exhibit 3, which increases Continental's total refund liability in the communities listed in that Exhibit to \$108,575.

## F. Migrated Product Tiers

### (i) Terms of the Social Contract

---

<sup>114</sup>We are excluding six channels from the refund calculations and are allowing all systems with a la carte packages other than the Naples system to convert their packages to migrated product tiers. For the Naples system, we are allowing conversion of four channels. See discussion of migrated product tier, *infra* ¶ 62.

<sup>115</sup>This review included Bureau rate orders in *Cablevision of Chicago*, 10 FCC Rcd 11443 (C.S.B. 1995) (DA 95-2108), and *Cablevision of Chicago*, 10 FCC Rcd 11441 (C.S.B. 1995) (DA 95-2097).

<sup>116</sup>See Amendment, § IV.E.5. See also, 47 C.F.R. § 76.942 (e).

62. Under the Proposed Amendment, in acquired systems that did not create packages of a la carte channels between April 1, 1993 and September 30, 1994, and in all formerly Cablevision of Chicago franchises where no a la carte package currently exists, Continental will be permitted to create MPTs with up to four services migrated in a revenue-neutral manner from the BST and/or CPST. There will be no limitation on the number of new channels that Continental may add to the MPTs at the price of up to \$.20 per channel plus license fees.<sup>117</sup> On or after January 1, 1997, Continental may convert the MPTs created under the original Social Contract to new product tiers ("NPTs") by filing a notice with the Commission on or after that date. In acquired systems that created either an "Expanded" package of a la carte channels (which generally consists of four a la carte channels) or a "Cable Plus" package with six or fewer channels, Continental will treat these a la carte packages as MPTs with the initial price set at the current rate. Continental may convert an MPT created under the Amendment to an NPT by filing a notice with the Commission on or after July 1, 1997. In acquired systems where both the Expanded and Cable Plus packages exist, Continental may maintain the channel configurations of such packages and set their initial rates at current rates. These packages will be treated as MPTs for the full term of the Contract.<sup>118</sup> In the Naples, Florida systems where the Cable Plus package consists of eight a la carte channels, Continental will return four channels to the CPST. The remaining four channels will be treated as an MPT subject to conversion to an NPT.

(ii) Comments

63. Several commenters oppose this provision of the Amendment.<sup>119</sup> In its reply comments, Continental notes that these commenters do not criticize any specific aspect of the Amendment's MPT provision nor do they challenge the Commission's authority to allow MPTs to be created. Instead, the commenters merely assert, without any explanation, that the MPTs in general will not benefit subscribers.<sup>120</sup>

(iii) Discussion

64. Treatment of the Expanded and Cable Plus packages is consistent with our treatment

---

<sup>117</sup>See also, *supra*, ¶ 10, confirming application of 47 C.F.R. § 76.987(d) which permits the movement of additional channels from the BST and/or CPST to MPTs as long as the channels were added to the system after September 30, 1994.

<sup>118</sup>As does the Social Contract, the Amendment provides for the creation of an MPT and requires Continental to, among other things, restructure its rates. As a consequence, Continental has prepared a modified rate form for implementation of the Amendment. We have reviewed the modified form and find that it accurately reflects the requirements of the Amendment.

<sup>119</sup>Comments of Lakewood, California at 2; Comments of Coachella, California at 10; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at 10.

<sup>120</sup>Reply Comments of Continental at 49.

of comparable packages in other rate resolutions.<sup>121</sup> In addition, the Cable Plus package is low-penetrated, except in the Naples, Florida systems. Consequently, our decision to permit Continental to continue to offer that package, except in Naples, is consistent with our intention to promote choice for subscribers. Were we to require Continental to return the low-penetrated Cable Plus package to a regulated tier, subscribers would be offered less choice and required to pay more for the tier to which the package was added. We have previously determined that the creation of MPTs and NPTs is beneficial to subscribers since it will expand subscribers' programming choices and better enable subscribers to purchase only the services they want.<sup>122</sup> The CPST will continue to be offered as well as an MPT and subscribers will have the choice to take either or both tiers. We note that the provision prohibits Continental from requiring subscribers to purchase the CPST in order to obtain MPT or NPT service. Because multiple packages offer subscribers more choice, and allow subscribers to pay only for what interests them, we accepted Continental's proposal to preserve the benefits of the a la carte packages through MPTs, which will have regulated rates and will be retained for the duration of the Social Contract for the acquired systems. We believe that, under these circumstances, consumers will benefit more from this provision of the Amendment than if the Cable Plus and Expanded packages were converted to CPST. Consistent with allowing MPTs, the a la carte channels permitted in MPTs were not counted as regulated channels for purposes of determining the maximum permitted benchmark rates and evaluating current rates.<sup>123</sup> Vacating the Bureau Rate orders in this regard is necessary to permit MPTs for the Florida systems and also for Continental's Cablevision of Chicago franchises.<sup>124</sup>

## G. Service to Schools

### (i) Terms of the Social Contract

65. Under the Amendment, Continental will provide a free cable connection to all of the public schools (grades K-12) located within 200 feet of the activated plant of its cable system. Continental will also provide a cable connection at cost to any other unserved K-12 public school located beyond 200 feet of the activated plant of its cable systems but within its franchise area. Continental will further provide a cable connection at cost to all secondary private schools within its franchise area that receive funding under Title I of the Education and Secondary School Act.

---

<sup>121</sup>See, e.g., Cablevision Industries Corporation: Final Resolution of Cable Programming Service Rate Complaints, FCC 96-262 (released June 11, 1996).

<sup>122</sup>See *TCI Order* at ¶ 23.

<sup>123</sup>This is specified in Amendment, IV.D.8. for BST rates. With the exception of the Naples system where a rate reduction is being ordered, the current rates for the Acquired Systems are justified.

<sup>124</sup>Because of the high penetration of the Cable Plus package on the Naples, FL systems, we are allowing only a four channel MPT, which is consistent with what we have permitted in other rate resolutions. See, e.g., *Garden State Cablevision, L.P.*, 11 FCC Rcd 7327, 7328, 7331 (1996); see generally *Comcast Cablevision*, LOI 93-2, FCC 95-341 (released Aug. 15, 1995) (reasonable for Bureau to treat 4 channel a la carte package as new product tier).

BST and CPST services will be provided without cost to each outlet in the connected public and private schools. Continental will wire additional classrooms in existing schools at cost. For new public schools and existing public schools undergoing extensive rehabilitation, Continental will attempt to coordinate with local officials and contractors to wire each of the classrooms in new schools free of charge.

66. Continental will also provide the connected schools with free materials which explain the educational applications of Comcast's cable services and with a monthly educational program guide containing curriculum support ideas. In addition, within one year after Continental has made its on-line personal computer service commercially available in a specific franchise area, it will offer this service to each connected school free of charge during the school year and also provide a free modem to access the service. Continental will provide additional modems at cost and free on-line service for each modem purchased. Continental will also sponsor local workshops and training materials for teachers.

(ii) Comments

67. The vast majority of comments overwhelmingly support this educational provision of the Amendment because it provides children with the necessary tools to compete in a technological world.<sup>125</sup> The Collier County Public Schools express their belief that the Amendment will ensure "that the schoolchildren of America are not left behind on America's information super highway."<sup>126</sup> Jacksonville Cities in Schools, Inc. states that "Continental Cablevision's work to enhance the technological capabilities of our schools will truly be of significant benefit to the youth of our community."<sup>127</sup> Lincoln Unified School District informs the Commission that they have "worked on numerous projects with Continental in the past and fully support and appreciate the opportunity to continue this partnership."<sup>128</sup> Several commenters request that the proposed services be expanded to local governments, which would include local libraries and parks.<sup>129</sup> Elmhurst, Illinois proposes that Continental provide a free service connection to each school building rather than to each school.<sup>130</sup> Elmhurst, Illinois also proposes several revisions to the wording of the provision in order to specify Continental's exact

---

<sup>125</sup>See, e.g., Comments of Duval County Public Schools at 1; Comments of Newport-Mesa Unified School District; San Joaquin County Office of Education at 1.

<sup>126</sup>Comments of Collier County Public Schools at 1.

<sup>127</sup>Comments of Jacksonville Cities in Schools, Inc. at 1.

<sup>128</sup>Comments of Lincoln Unified School District at 1.

<sup>129</sup>See e.g., Comments of Elmhurst, Illinois at 6; Comments of Metropolitan Dade County at 2 - 3; Comments of Collier County Manager's Office at 2 -3.

<sup>130</sup>Comments of Elmhurst, Illinois at 5.

commitments to the schools.<sup>131</sup> One commenter asks that Continental commit to supply the schools with a "multi-user broadband-to-ethernet modem providing data throughput at 4 Mbps or higher."<sup>132</sup> Several commenters argue that the Amendment's educational benefits are already required by most franchise agreements or soon will be under franchise renewal agreements.<sup>133</sup> Fairborn, Ohio contends that the Amendment will not benefit its schools since they already independently subscribe to the Internet service.<sup>134</sup>

68. In its reply comments, Continental rejects Elmhurst, Illinois' proposal that Continental provide a free service connection to each school building rather than to each school. Continental points out that it already is making a substantial financial commitment by agreeing to provide free service connections to more than 5,000 schools without recovering the cost for these connections as external or other costs.<sup>135</sup> Continental argues that since it will provide free BST and CPST service to all additional outlets, as well as free access to its on-line service to each cable modem in the school, the entire school complex (including multiple buildings) will benefit.<sup>136</sup> For the same reason that it would be financially unrealistic for Continental to commit to an extension to all school buildings, Continental rejects proposals to modify the educational provision of the Amendment to include local government entities.<sup>137</sup> Continental accepts, however, several revisions proposed by Elmhurst, Illinois to the wording of the school commitment provision and supports modification of the Amendment accordingly.<sup>138</sup> These revisions include a clarification that the cable modem and access to the on-line service will be available during the summer months as long as schools are open. These revisions are contained in the modified Amendment at section III.B.

(iii) Discussion

---

<sup>131</sup>Comments of Elmhurst, Illinois at 1 - 4.

<sup>132</sup>Comments of Donald Shapiro at 1.

<sup>133</sup>Comments of Coachella, California at 11; Comments of Cypress, La Palma, La Quinta and Palm Desert, California at 12.

<sup>134</sup>Comments of Fairborn, Ohio at 1.

<sup>135</sup>Reply Comments of Continental at 46.

<sup>136</sup>*Id.* at 47.

<sup>137</sup>*Id.* at 48.

<sup>138</sup>*See* Reply Comments of Continental at Appendix C. Specifically, Elmhurst, Illinois requested a modification of the defined term "Cost", an amendment of section III.B.4 to specify that a school may copy the program listing at its own expense; an amendment of section III.B.5 to provide that Continental will provide a set of school materials to each "connected school building"; and an amendment of section III.B.6 that specifies that Continental will provide on-line services during the summer if the school offers summer sessions.

69. We believe that the educational services which Continental has agreed to provide are a significant part of the Amendment. The enthusiastic endorsement of these provisions by numerous commenters confirms this belief. While the Amendment does not, and is not intended to, include local government entities or all school buildings, it does bring new or improved educational opportunities to both public and private schools. The cost of these services will be borne by Continental and is not included within the upgrade costs that form the basis for the rate increase authorized under the Amendment. We believe that these educational benefits will enable many students to enter the information age and to receive the expertise necessary to succeed in today's highly technical environment.

70. The educational services provision purposefully avoids specific technical parameters with respect to the modems to be supplied by Continental since the technology used to provide high-speed data service using a cable system is changing so rapidly. Technical specifications could be counterproductive to the extent they lock in a commitment to an older technology. Regardless of the precise technical parameters of the modems ultimately supplied by Continental, all modems will support advanced uses, such as multiple, simultaneous connections to the Internet via a school's own internal network, or to a school-installed Internet server for student and faculty e-mail or Web pages.

71. Finally, we accept the modifications proposed by Elmhurst, Illinois to the educational services provision which clarify the educational benefits Continental will provide under the Amendment. Continental has agreed to these changes.<sup>139</sup>

## H. Waivers

72. The Amendment furthers the Commission's policy goals of ensuring that cable operators expand the capacity and programs offered over their systems where economically viable, and reducing regulatory burdens and other policy objectives specified in the 1992 Cable Act, while still ensuring that cable rates are reasonable. As we have noted previously, several aspects of the Social Contract do not conform precisely to the Commission's rules.<sup>140</sup> As a result, we concluded that special circumstances warranted a deviation from the Commission's generally applicable rules and that a waiver of such rules is in the public interest. Accordingly for the reasons stated in the *Social Contract Order*, we extend the waivers granted in that Order to the Amendment as well.<sup>141</sup> Continental also asks that we waive our requirement that cable operators file their FCC Forms 1205 two months after the effective date of the new rules implementing

---

<sup>139</sup>See Reply Comments of Continental at Appendix C for modifications to the Amendment based on the proposals of Elmhurst, Illinois. See also footnote 111, *supra*.

<sup>140</sup>See *Social Contract Order* and Continental Social Contract Implementation Order, DA 95-2160 (released October 17, 1995).

<sup>141</sup>See *Social Contract Order* at 11-12.

Section 301(j)(7)(A) of the Telecommunications Act of 1996.<sup>142</sup> Without this waiver, Continental would be required to restructure equipment rates prior to January 1, 1997, even though Continental may not restructure its BST and CPST rates under the Amendment until January 1, 1997. We believe that permitting Continental a deferral of the Form 1205 filing deadline to make a one-time restructuring of rates furthers the goal of reducing administrative burdens and subscriber disruption.

73. In addition, Continental seeks a waiver of 47 C.F.R. §§ 76.922 and 76.923 to allow adjustment of CPST rates by the \$1.00 adjustment set forth in Section III.D. of the Amendment in lieu of the two rounds of Going Forward adjustments permitted by the Social Contract. We believe that this waiver is in the public interest and should be granted. First, as noted above, the Commission has verified that the costs of the Continental upgrades are reasonable and necessary, that the \$1.00 adjustment is an appropriate mechanism for recovering the costs for such nationwide upgrades, and that CPST rates resulting from the \$1.00 adjustment will be reasonable. Second, as we have stated previously, we believe that the \$1.00 cost recovery mechanism is beneficial to consumers in that it provides orderly and predictable rate increases, thus avoiding "rate shock".<sup>143</sup>

74. Accordingly, we find good cause to waive the above provisions of the Commission's rules and believe that such waivers will expedite the significant benefits that will be provided by implementation of the Amendment.

### **I. Preemption of State and Local Notice Requirements**

75. Continental has asked the Commission to preempt, on a one-time basis, local franchise rules which require more than 30 days advance notice of rates and service charges to subscribers in connection with its implementation of the Amendment. Continental explains that without the exemption, it will be unable to comply with both the January 1, 1997 rate restructuring deadline mandated by the Amendment and the 60 or 90 day advance notice requirement set by some LFAs.

76. We think that prompt implementation of the Amendment will best serve the public interest. We believe that preemption is necessary here since state and local notice requirements may hinder Continental's ability to implement rate adjustments uniformly pursuant to the terms of the Amendment by January 1, 1997. In order to realize the Amendment's goal of providing rate stability to subscribers, it is imperative that Continental implement the upgrade surcharge provided for under the Amendment by January 1, 1997. Therefore, to allow Continental to

---

<sup>142</sup>See Extension of Time to File FCC Equipment Form 1205 Pursuant to Sections 76.922, 76.923 of the Commission's Rules, DA 96-259 (released February 27, 1996); See also, Implementation of Section 301(j) of the Telecommunications Act of 1996 - Aggregation of Equipment Costs by Cable Operators, CS Docket No. 96-57 (released June 7, 1996).

<sup>143</sup>See *Time Warner Social Contract Order*, FCC 95-478 (released November 30, 1995), at ¶ 32.

implement the rate restructuring and MPT provisions of the Amendment, any local franchise agreement or any state or local law or regulation is preempted on a one-time basis to the extent that it requires Continental to give greater than 30 days advance notice of rate and service charges to subscribers.<sup>144</sup> Such preemption shall be limited to the period prior to January 1, 1997, although we encourage Continental to notify subscribers of the implementing rate adjustments as soon as possible.

#### J. Clarification Of The Definition Of "Current Rates"

77. Continental has requested that the definition of "current rates" in the Amendment be revised to make it clear which BST rate Continental will use as the beginning rate for the lifeline basic tier restructuring.<sup>145</sup> Continental believes that such an approach will help to avoid disputes at the time of restructuring.

78. Under its proposal, in most cases, Continental will use the actual BST rate as of March 6, 1996 as the beginning BST rate for the lifeline basic tier restructuring. In cases where an acquired system had given notice to subscribers and/or filed a Form 1210 regarding a BST rate increase prior to January 1, 1996, the increased BST rate will be used as the beginning BST rate. If, however, the increased rate cannot be used for the lifeline basic tier restructuring because the LFA had issued a tolling order that is still in effect on the restructuring date, Continental will use the actual BST rate in effect on March 6, 1996 for the restructuring, subject to the LFA's ultimate decision on the increased rate. After the LFA issues its decision, Continental will set the lifeline rate in accordance with section IV.A.6. of the Amendment. If the LFA-ordered rate is higher than the actual BST rate, Continental may adjust the lifeline BST rate accordingly. We believe Continental's proposal is reasonable and will avoid unnecessary implementation disputes. Accordingly, we modify the Amendment's definition of "current rates" as follows:

" 'Current rates' means the rates in effect in the franchises of the Acquired Systems as of ~~the Amendment Publication Date March 6, 1996,~~<sup>146</sup> or the rates that will become effective after ~~the Amendment Publication Date March 6, 1996~~ and for which notice was given to subscribers *and/or for which a Form 1210 was filed on or before January 1, 1996.*" [Italics reflect new language.]

#### K. Other Issues

##### (i) Comments

79. One commenter claims that the comment period was too short and requests an

---

<sup>144</sup>See *Time Warner Social Contract Order* at ¶¶ 21 - 22.

<sup>145</sup>See Amendment, II.F.

<sup>146</sup>We note that March 6, 1996 was the date on which the Amendment was placed on Public Notice.



extension of time to file comments.<sup>147</sup> Another commenter, Madison Heights, Michigan, alleges that Continental impermissibly changed its rates subsequent to the issuance of a final local rate order.<sup>148</sup>

(ii) Discussion

80. We have allowed two months for comments and reply comments on the Amendment, and have accepted all late-filed comments. We think that this period of time correctly balances the need for public comment with the need to make the public benefits of the Amendment available as soon as possible and that there was adequate opportunity to comment. We also note that of all the parties that filed comments,<sup>149</sup> only one complained that the comment period was too short. We therefore deny commenter's request for an extension of the comment period.

81. This order is limited to the Amendment and issues thereunder. Any comments unrelated to the Amendment are outside the scope of this proceeding. We cannot consider the comments of Madison Heights, Michigan in this order and reserve the right to consider its claim in a separate, individual proceeding.

#### IV. CONCLUSION AND ORDERING CLAUSES

82. For the reasons discussed above, we conclude that it is in the public interest to adopt the Amendment of the Social Contract between Continental and the Commission as modified above.

83. Accordingly, for the reasons set forth above, IT IS ORDERED that the Amendment attached to this Order as Appendix A, including the modifications noted in this Order IS ADOPTED.

84. IT IS FURTHER ORDERED that the waiver of any Commission rule that is necessary to effectuate the terms of the Amendment, including but not limited to 47 C.F.R. §§ 76.309(c)(3)(i)(B); 76.922; 76.923; 76.924(c); 76.930; 76.933; 76.942(d)(2); 76.950-963; 76.964; and 76.987(b)(2), IS GRANTED.

85. IT IS FURTHER ORDERED that all proceedings pending review before the Bureau and the Commission with respect to rate complaints against the CPST rates of Continental and which are the subject of the Amendment ARE RESOLVED.

86. IT IS FURTHER ORDERED that the orders issued by the Bureau with respect to

---

<sup>147</sup>Comments of Downers Grove, Illinois at 1 - 2.

<sup>148</sup>Comments of Madison Heights, Michigan at 1 - 4.

<sup>149</sup>See Appendix B for list of commenters.

CPST rate complaints against Continental and which are the subject of this Amendment ARE VACATED AND SUPERSEDED by this resolution.

87. IT IS FURTHER ORDERED that preemption of any local franchise agreement or any state or local rule or regulation that requires Continental to give more than 30 days' notice of rate and service changes to subscribers for the period prior to January 1, 1997 IS GRANTED.

88. IT IS FURTHER ORDERED that the Cable Services Bureau is given delegated authority to oversee implementation of this Order.

89. IT IS FURTHER ORDERED that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

**APPENDIX A**

**CONTINENTAL CABLEVISION, INC.  
AMENDMENT TO SOCIAL CONTRACT**

## TABLE OF CONTENTS

## PAGE NO.

I.	SCOPE OF AMENDMENT .....	1
A.	Cablevision of Chicago Systems .....	1
B.	Consolidated Cablevision System .....	1
C.	Providence Journal Systems .....	2
D.	Columbia Associates, L.P. Systems .....	2
E.	N-COM Systems .....	2
II.	DEFINITIONS .....	2
III.	AMENDMENTS TO THE SOCIAL CONTRACT THAT APPLY TO ALL CONTINENTAL SYSTEMS, INCLUDING THE ACQUIRED SYSTEMS .....	3
A.	Additional System Upgrade Commitments .....	3
B.	School Commitments .....	4
C.	Cable Home Wiring Commitments .....	7
D.	CPST Rates Subject to Price Cap .....	8
E.	Migrated Product Tiers and New Product Tiers .....	9
F.	Uniform BST and CPST Service Rates .....	9
G.	Acquired and Divested Systems .....	10
IV.	AMENDMENTS TO THE SOCIAL CONTRACT THAT APPLY ONLY TO THE ACQUIRED SYSTEMS .....	11
A.	Creation of a Low-Cost, Lifeline Basic Tier in Acquired Systems .....	11
B.	Procedures for Filing and Review of Social Contract Rates .....	14
C.	Equipment and Installation Rates .....	14
D.	Migrated Product Tiers and New Product Tiers .....	14
E.	Settlement of Pending CPST Rate Cases and Refunds .....	17

F.	Term of this Amendment . . . . .	21
G.	Service on Interested Parties . . . . .	21

## I. SCOPE OF AMENDMENT.

Pursuant to section III.H.1. of the Social Contract for Continental Cablevision, Inc. ("Continental") (FCC 95-335, approved August 1, 1995) ("Social Contract"), this Amendment incorporates certain systems recently acquired by Continental into the Social Contract. The following systems ("Acquired Systems") are covered by this Amendment:

- A. *Cablevision of Chicago Systems.* This acquisition closed on August 4, 1995. The Cablevision of Chicago systems pass approximately 206,000 homes and serve approximately 92,000 subscribers in 31 franchise areas near Chicago, IL.
- B. *Consolidated Cablevision System.* This acquisition closed on September 7, 1995. The Consolidated Cablevision system passes approximately 37,000 homes and serves approximately 12,000 subscribers in 14 franchise areas near Fresno, CA.
- C. *Providence Journal Systems.* This acquisition closed on October 5, 1995. The Providence Journal systems pass approximately 1,251,000 homes and serve approximately 753,000 subscribers. Systems are located in California, Florida, Idaho, Massachusetts, Minnesota, New York, Rhode Island, Washington, and Wisconsin. A total of 157 franchise areas are included in these systems.
- D. *Columbia Associates, L.P. Systems.* This acquisition closed on October 15, 1995. The Columbia Associates, L.P. systems pass approximately 122,000 homes and serve approximately 76,000 subscribers in 16 franchise areas in Washtenaw and Livingston counties, MI.
- E. *N-COM Systems.* This acquisition closed on December 27, 1995. The N-COM systems pass approximately 90,000 homes and serve approximately 54,000 subscribers in 28 franchise areas in Wayne and Washtenaw counties, MI.

Some of the modifications to the Social Contract specified in this Amendment apply solely to the Acquired Systems. Others apply to all Continental systems, including the

Acquired Systems. The scope of each of the provisions is indicated. All provisions of the Social Contract not specifically modified by this Amendment will remain in effect with respect to all Continental systems, including the Acquired Systems.

## II. DEFINITIONS.

For purposes of this Amendment, the following definitions shall apply. When used throughout this Amendment, these terms are capitalized.

- A. "Acquired System Eligible Subscribers" means all non-bulk, residential subscribers of record in the Continental franchises listed in Exhibits 2 and 3 to this Amendment as of the date bills are issued reflecting Refunds.
- B. "Amendment Effective Date" means the date on which the Commission adopts the Amendment Order.
- C. "Amendment Order" means a Commission order regarding the terms of this Amendment.
- D. "Amendment Publication Date" means the date on which this Amendment is placed on public notice by the Commission.
- E. "Cost" means actual dollars used to purchase or acquire materials as documented on invoices, statements, canceled checks, etc., to which shall be added an amount equal to 11.25% of the actual dollar cost as and for a reasonable rate of return (profit), overhead, and administrative expenses. Where applicable, "Cost" shall also include labor costs calculated at the applicable Hourly Service Charge as defined by 47 C.F.R. § 76.923(d).

- F. "Current Rates" means the rates in effect in the franchises of the Acquired Systems as of March 6, 1996, or the rates that will become effective after March 6, 1996 and for which notice was given to subscribers and/or for which Form 1210 was filed on or before January 1, 1996.
- G. "Implementation Date" means the date, prior to January 1, 1997, on which Continental implements in a particular franchise area the Lifeline Basic tier restructuring and other rate adjustment provisions contained in sections IV.A. and IV.D. of this Amendment and initiates the payment of Refunds specified in section IV.E. of this Amendment. The Implementation Date may vary from franchise area to franchise area.
- H. "Interest" means the Internal Revenue Service rate of interest for tax overpayments.
- I. "Regulated Services" means services added to a CPST or MPT, provided the latter does not become an NPT before January 1, 2001.
- J. "Refunds" means credits on subscriber bills as provided in this Amendment.

**III. AMENDMENTS TO THE SOCIAL CONTRACT THAT APPLY TO ALL CONTINENTAL SYSTEMS, INCLUDING THE ACQUIRED SYSTEMS.**

**A. Additional System Upgrade Commitments.**

Continental makes the following additional infrastructure upgrade commitments beyond those set forth in section III.E. of the Social Contract:

1. Continental will increase the capital investment commitment specified

in section III.E.1. of the Social Contract from \$1.35 billion to \$1.7 billion to upgrade its systems, including the Acquired Systems, to the technical specifications set forth in section III.E.2. of the Social Contract.

2. From the date of commencement of the Social Contract to the end of the Social Contract, on average, Continental systems (weighted by BST subscribers) will contain 10 additional Regulated Services, but in no event will any Continental system contain fewer than five additional Regulated Services.
3. At least 70% of all capital expended in connection with Continental's system upgrade commitment will be applied for the benefit of BST and/or BST and CPST subscribers.

**B. School Commitments.**

1. Continental will provide a service connection at one outlet in all public schools (grades K-12) located within 200 feet of the activated plant of its cable systems. Such connections will be made free of charge and as promptly as possible to all unserved schools requesting such a connection. Upon request, Continental will provide, at Cost, such a service connection to any other unserved K-12 public school located within its franchise areas but beyond 200 feet of the activated plant of its cable systems. If any internal wiring installation is requested to serve additional outlets in any public school, it will be provided at Cost; provided, however, that such internal wiring will be provided without charge if



Continental is able to coordinate with other comparable electrical wiring installation in cases of new construction or substantial rehabilitation of existing schools in Continental's franchise areas.

2. Continental will provide a service connection, including any requested internal wiring for additional outlets, to any unserved private secondary school (as defined by, and which receives funding pursuant to, Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 241a et seq., as amended) located within its franchise area. Such connections will be provided at Cost and as promptly as possible to all such schools requesting such a connection.

3. Any public or private school connected pursuant to subparagraphs 1 or 2 may elect to install its own internal wiring and to bear the cost thereof. Free BST and free CPST service will be provided to each outlet in all connected public and private schools.

4. Continental will provide a free monthly educational program listing to each connected school. Additional copies of such program listings will be provided, if requested by a school, at Cost, but the school may also copy same at its own expense for its internal use. Such educational program listing will identify and describe programming on the Continental system that is appropriate for use in the classroom and will provide suggested curriculum support ideas.

5. Continental will develop and provide to each connected school materials for teachers that explain the educational applications of Continental's broadband cable systems and services. The materials will include a self-explanatory notebook and video.

One free copy of each set of such materials will be provided to each and every connected school building. Additional copies of such materials will be provided, upon request, at Cost.

6. Within one year after Continental makes an on-line service for personal computers commercially available in a specific franchise area, Continental will, upon request by the local school department, provide schools within such franchise area with one free connection to such on-line service. At a minimum, such on-line service will provide access to the Internet. Upon request, each connected school will receive one free cable modem and free, unlimited access to the Continental on-line service for use during the school year. Additional cable modems and operational support and services (for example, assisting connected schools in setting up and maintaining reliable Internet connections), will be provided to connected schools at Cost, upon request. Free access to the Continental on-line service will be provided through each such modem for use during the school year, which school year includes summer months if the school offers any classes during the summer months. In addition, Continental will sponsor local workshops at a convenient location in each region to educate teachers about its on-line service and to provide connected schools with an opportunity for hands-on training concerning all educational services being provided by Continental.

7. Continental agrees not to seek to recover the cost for these connections as external or other costs.

8. Nothing herein shall affect the enforceability of any otherwise valid preexisting local franchise agreement, ordinance, local law, or regulation which provides

benefits which exceed those provided in the Social Contract relating to system upgrades or the wiring of schools, nor shall LFAs be restricted in their authority to negotiate for such additional benefits after the Amendment Effective Date.

**C. Cable Home Wiring Commitments.**

1. Prior to a customer's termination of cable service, Continental will not restrict the ability of a customer to remove, replace, rearrange, or maintain any cable wiring located within the interior space of the customer's dwelling unit, so long as such actions do not interfere with the ability of the Continental system to meet Commission technical standards or to provide services to, and collect associated revenues from, that customer or from any neighboring customer in a multiple dwelling context. Continental's ownership rights to such cable home wiring shall be no less than that provided by applicable law or regulation.

2. Upon commencement of cable service, and annually thereafter, Continental will notify customers of their rights and options relating to cable home wiring. Such notice will advise customers that they may either: (a) remove, replace, rearrange, or maintain the cable home wiring themselves; (b) select a qualified third-party contractor to perform these services; or (c) request the Continental system to provide such services at Cost.

3. Such notice will inform customers that if any cable home wiring is installed or rearranged by anyone other than Continental, and any harmful or improper signal leakage occurs as a result, the customer may be held responsible for the cost of rectifying the

problem. Continental recognizes that it is required by Commission rules to terminate service to any location where signal leakage problems are not corrected.

4. Such notice will encourage Continental customers to use high-quality home wiring materials to avoid signal leakage and to maintain signal quality. Continental will offer such materials to customers at Cost.

5. Prior to disseminating the notice to Continental customers, Continental will provide a model of the notice to the Commission for its approval. Such approval shall not be unreasonably withheld.

**D. CPST Rates Subject to Price Cap.**

1. All Continental systems other than the Acquired Systems may increase monthly CPST rates by \$1.00 in each of 1997, 1998, and 1999, and all Acquired Systems may increase monthly CPST rates by \$1.00 in each of 1996, 1997, 1998, and 1999. These rate increases have been established at a level designed to recover solely those costs allocable to BST and CPST subscribers.

2. During the term of the Social Contract, the only other permitted increases to regulated CPST rates will be for inflation, increases in external costs, and any other adjustments permitted by the Social Contract, as amended, or by Commission rules. However, Continental will not avail itself of any per-channel adjustment permitted by the Going-Forward rules for any programming channels added to the CPST after the Amendment Effective Date, except where Continental has upgraded or rebuilt a particular system during 1996 which is not an Acquired System and has not previously added any channels on such

system during 1996 pursuant to the Going-Forward rules. In addition, Continental will not implement the second round of Going-Forward channel additions from 1998 through 2000 pursuant to section III.C.2. of the Social Contract. As of the Amendment Effective Date, the second sentence of section III.C.2. of the Social Contract will be superseded by this Amendment.

3. Any per-channel adjustments implemented pursuant to the Going-Forward rules by any Acquired System for services added in 1996 shall be netted against the initial \$1.00 CPST adjustment. Upon implementation of any such net initial CPST adjustment, such Acquired Systems will be allowed to concurrently adjust CPST rates to reflect any license fees not already passed through to subscribers associated with any such services added to such systems in 1996.

**E. Migrated Product Tiers and New Product Tiers.**

Continental may convert the MPTs created under the Social Contract to NPTs by filing a notice with the Commission and with affected LFAs of its intention to do so on or after January 1, 1997. Continental may convert the MPTs created under this Amendment (except for the MPTs created under section IV.D.3. of this Amendment) to NPTs by filing a notice with the Commission and with affected LFAs of its intention to do so on or after July 1, 1997. If Continental does not file such NPT notice with respect to a particular MPT, such MPT will retain its MPT regulatory status (including the limitation on price increases to the recovery of inflation and external costs and \$.20 plus license fees for all new MPT services), and the services added to such MPT will be counted as Regulated Services as defined in this

Amendment.

**F. Uniform BST and CPST Service Rates.**

If the Commission adopts new rules allowing cable operators to restructure their regulated rates to achieve pricing uniformity on a regional or statewide basis, Continental will be permitted to implement such restructurings in all of its systems, including the Acquired Systems.

**G. Acquired and Divested Systems.**

1. If Continental sells or trades any cable system that is covered by the terms of the Social Contract (including all amendments thereto) prior to December 31, 2000, and Continental had implemented the \$1 price cap mechanism in such system pursuant to section III.D.1 of this Amendment, the subscribers of such system will be eligible for refunds of the increases, in the event that: (a) the system is not at 550 MHz of capacity at the time of such sale or trade; and (b) the system is not upgraded to 550 MHz on or before December 31, 2000 by any subsequent owner of such system. Such refunds will be paid in the form of bill credits to CPST subscribers of such system existing at the time refunds are distributed.

2. Any such refunds will: (a) be based on all funds collected by Continental through the \$1 increases prior to such sale or trade; and (b) be offset by any increases to which Continental would have been entitled, but which it did not implement, relating to the \$0.20 per-channel "Operator's Cap" component of the Going-Forward Rules, including, after December 31, 1997, the Operator's Cap component of the second round of

Going-Forward increases permitted by section III.C.2 of the Social Contract, for any CPST channels added to such system by Continental prior to such sale or trade.

3. At the time of the sale or trade of any such Continental system, Continental will post a performance bond or obtain a letter of credit or other equivalent security in the amount of the funds that would be due under the previous subparagraph (including any applicable offsets for Going-Forward channel additions), plus Interest calculated at the current rate of Interest as of the time of sale or trade and applied through December 31, 2000.

4. The last sentence of section III.H.2 of the Social Contract is amended: (a) by replacing "section III.E.1," with "section III.E."; and (b) by inserting "(but not systems acquired through direct purchase)" after the words "system trade".

5. Section III.E.2 of the Social Contract is amended by adding a new provision or "bullet" after the third existing bullet as follows: "At least two million Continental subscribers will be served by a system with a capacity of at least 550 MHz and at least two million Continental subscribers will be served by a system with a capacity of at least 750 MHz."

#### **IV. AMENDMENTS TO THE SOCIAL CONTRACT THAT APPLY ONLY TO THE ACQUIRED SYSTEMS.**

##### **A. Creation of a Low-Cost, Lifeline Basic Tier in Acquired Systems.**

In order to provide subscribers with the option to purchase a low-cost basic service tier, Continental will create a Lifeline Basic tier in the Acquired Systems as set forth below.

The minimum reduction for a Lifeline Basic tier will be 15% from the Current Rate for BST. In order to achieve uniform BST rates in a given system, Continental may reduce BST rates up to an additional 5% for a maximum reduction of 20%.

1. No later than January 1, 1997, Continental will reduce the Current Rate for BST by 15%-20% in franchise areas serving at least 80% of the total number of subscribers in the Acquired Systems.

2. In any franchise area in which the BST rate was not reduced pursuant to the previous subparagraph, Continental may, at its option, create a Lifeline Basic tier by reducing the BST rate by 15%-20%. In order to create the Lifeline Basic tier pursuant to this subparagraph, Continental will be permitted to restructure the BST. Such restructuring will include shifting BST channels to an existing or newly created CPST (or MPT as permitted by section IV.D.5. of this Amendment) in a revenue-neutral manner pursuant to Commission rules, except that Continental may not move channels that are required by statute to be on the BST. Such revenue-neutral restructuring shall not be deemed to be a "fundamental change" of any affected service tier, and Continental shall not be required to re-market any of the services or tiers affected or created by such restructuring.

3. In franchise areas in which a Lifeline Basic tier is created pursuant to this Amendment, Continental may, on the franchise's respective Implementation Date, adjust the reduced BST rate for: (a) unrecovered external costs for the five calendar quarters beginning on April 1, 1995; (b) unrecovered inflation for the year ended June 30, 1995; and (c) an adjustment to reflect channels carried on the BST in the franchise area as of the



Implementation Date. In franchise areas in which a Lifeline Basic tier is not created pursuant to this Amendment, Continental may, on the franchise's respective Implementation Date, adjust the Current Rate for BST in such franchises as specified in this subparagraph.

4. In franchise areas in which a Lifeline Basic tier is created pursuant to this Amendment, Continental may, on the franchise's respective Implementation Date, adjust the Current Rate for CPST by: (a) an amount which yields the total revenues foregone by the 15%-20% Lifeline Basic rate reduction; (b) unrecovered external costs for the five calendar quarters beginning on April 1, 1995; (c) unrecovered inflation for the year ended June 30, 1995; (d) an adjustment to reflect the channels carried on CPST in the franchise area as of the Implementation Date; and (e) the adjustment permitted by section III.D. of this Amendment. In franchise areas in which a Lifeline Basic tier is not created pursuant to this Amendment, Continental may, on the franchise's respective Implementation Date, adjust the Current Rate for CPST in such franchise areas as specified in this subparagraph, except for item (a).

5. Continental will adjust rates in franchise areas of the Acquired Systems, if necessary, to comply with the Commission's November 9, 1995 Public Notice concerning inflation recovery in transition systems (DA 95-2295) upon the earlier of the creation of a Lifeline Basic tier in a franchise area, or the next filing with respect to service rates in such franchise area.

6. In any franchise area of an Acquired System where: (a) a Lifeline Basic tier is created; (b) the BST rate is the subject of a pending review as of the Amendment

Publication Date; and (c) a lower maximum permitted BST rate is ultimately ordered, Continental will, in its next rate filing in such franchise area, set its Lifeline Basic tier rate (after the ordered BST rate is no longer subject to review or appeal), so that the resulting BST rate level is at least 15% below the Current Rate for BST (plus all applicable adjustments for inflation and external costs), unless the ordered BST rate is lower than the reduced Lifeline Basic tier rate, in which case the ordered BST rate shall be deemed the Lifeline Basic tier rate.

**B. Procedures for Filing and Review of Social Contract Rates.**

The procedures outlined at ¶¶ 17-23 of the Bureau's Order released on October 17, 1995 in *In the Matter of Social Contract for Continental Cablevision, Inc.* (DA 95-2160) shall govern LFA review of the initial BST rates as restructured and adjusted pursuant to section IV.A. of this Amendment. The relevant sections of this Bureau order are attached to this Amendment as Exhibit 4.

**C. Equipment and Installation Rates.**

Equipment and installation rates in the Acquired Systems will be governed by the provisions set forth in sections III.B.2.d. and III.C.3. of the Social Contract. However, these provisions will only apply to the Acquired Systems beginning with the 1997 annual equipment and installation rate filing. Exhibit 6 of the Social Contract has been modified to incorporate into Continental's operating regions the states in which the Acquired Systems operate. The modified version is attached to this Amendment as Exhibit 1.

**D. Migrated Product Tiers and New Product Tiers.**

1. Certain Providence Journal systems have been providing packages of *a la carte* channels which were created between April 1, 1993 and September 30, 1994. Two different packages of *a la carte* channels were offered under the names of "Expanded Package" and "Cable Plus Package." The Expanded Package is an *a la carte* package generally consisting of four (but no more than five) *a la carte* channels, including up to three superstations in certain franchises. The Cable Plus Package is a low-penetrated *a la carte* package which generally consists of six to eight *a la carte* channels. Six Providence Journal systems offer both packages.

2. In Providence Journal franchises in which only the Expanded Package exists or only a Cable Plus Package with six or fewer channels exists, such package will be treated as an MPT as of the Amendment Effective Date. The initial price of any such MPT will be the Current Rate of the package.

3. In all Providence Journal franchises in which both an Expanded Package and a Cable Plus Package exist, Continental may maintain the channel configurations of such packages and will set the initial rate of such packages at the Current Rate. These packages will be treated as MPTs in all such franchises, including unregulated franchises, for the entire term of the Social Contract. Continental will issue Refunds to Acquired System Eligible Subscribers in the franchises listed in Exhibit 2 to this Amendment, as described in section IV.E. of this Amendment.

4. On their respective Implementation Dates, for all Providence Journal franchises in the Naples, FL system that are listed in Exhibit 2 of this Amendment (in which

an eight-channel Cable Plus Package was created) (CUIDs FL0050, FL0051, FL0096, FL0098, FL0345, FL0348), Continental will select four services from the Cable Plus Package to return to CPST. The services not returned to CPST from the Cable Plus Package will be offered as a single MPT. The net effect of the rebundling of the four Cable Plus Package services and the adjustment of BST, CPST, and MPT prices pursuant to Commission rules and the terms set forth in this subparagraph will be a prospective annualized rate reduction of \$250,000 in the Naples, FL franchises. Continental will implement this prospective rate reduction at the same time it implements the other rate adjustments described in sections III.D. and IV.A. of this Amendment.

5. In all franchises of the Acquired Systems in which no *a la carte* packages were created between April 1, 1993 and September 30, 1994, and in all Cablevision of Chicago franchises where a four-channel *a la carte* package was created but then eliminated, Continental may move a maximum of four existing BST and/or CPST services, in a revenue-neutral manner, to a single MPT per franchise.

6. Continental may not require the subscription to any tier, other than the BST, as a condition for subscribing to an MPT/NPT created under the terms of this Amendment, and may not require subscription to an MPT/NPT as a condition for subscribing to a CPST. Continental may add any number of new services to an MPT and may increase the price for the MPT only as provided in section III.F. of the Social Contract.

7. On its own motion, the Cable Services Bureau, consistent with the terms set forth herein, hereby reconsiders its Letter of Inquiry ("LOI") ruling involving

Providence Journal's Hialeah, FL system (LOI-93-43), as well as its four orders which relied on the Hialeah LOI ruling in finding that the *a la carte* packages in such systems must be treated as regulated tiers (DA 95-624; DA 95-820; DA 95-860; and DA 95-1143). The Amendment Order will vacate this LOI ruling and Bureau orders. As of the vacating of the LOI ruling and the four Bureau orders, any pending petitions for reconsideration of the LOI ruling and the four Cable Services Bureau orders will be deemed to be withdrawn.

8. Except as provided in section IV.E.3. of this Amendment, for purposes of review of BST rates which are or which may at some future time become regulated, the *a la carte* channels permitted to be included in the MPTs created under this section shall not be counted as regulated channels for purposes of determining the maximum permitted BST rates under the Commission's benchmark rate rules.

**E. Settlement of Pending CPST Rate Cases and Refunds.**

1. This Amendment finally resolves all CPST rate cases filed under FCC Forms 393, 1200, 1210, and 1220 pending as of the Amendment Publication Date against the Acquired Systems.

2. In settlement of all pending CPST rate cases of the Acquired Systems and of the various issues regarding *a la carte* packages described in section IV.D. of this Amendment, Continental shall issue Refunds to Acquired System Eligible Subscribers in the communities and in the amounts set forth in Exhibit 2. Such Refunds already include all applicable Interest through July 1, 1997. Except as provided in the next subparagraph, and subject to the right of LFAs to opt out under this subparagraph, such Refunds account for

and finally resolve all amounts owed to subscribers as a result of the creation of *a la carte* packages by the Acquired Systems. Specifically, such Refunds cover BST and CPST rates for both rounds of the Commission's rates rules (*i.e.*, September 1, 1993 through July 15, 1994, and July 15, 1994 through the final date of Refund payment). Except as provided herein, Continental may not be required to pay any additional refunds as a result of the creation of such *a la carte* packages by the Acquired Systems. An LFA that is listed in Exhibit 2 may elect to opt out of the Refunds established under this subparagraph and set forth in Exhibit 2 by providing notice to the Commission and Continental no later than 30 days following the Amendment Effective Date. Such notice shall: (a) be in writing; (b) be addressed to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, with a copy to Continental Cablevision, Inc., The Pilot House, Lewis Wharf, Boston, MA 02110, attention: Margaret Sofio, Vice President and Counsel; (c) identify the local franchising authority and the community unit identification number for the franchise area; and (d) reflect the clear intent to opt out of the Refund provision of this subparagraph. However, such notice need not meet any other requirements and may be in letter form. An election by an LFA to opt out of the Refunds under this subparagraph shall not otherwise affect the applicability of the remaining provisions of this Amendment or the Social Contract in such community, except that if an LFA in the Naples, FL system that is listed in Exhibit 2 elects to opt out under this subparagraph, such LFA shall also be deemed to opt out of its subscriber-based pro rata share of the \$250,000 prospective rate reduction specified in section IV.D.4. of this Amendment. The \$250,000

prospective rate reduction will be proportionately reduced by the share of any LFA that opts out.

3. The Refunds described in the previous subparagraph exclude and will have no effect on the refunds included in the resolution concerning *a la carte* package issues adopted by the Los Angeles Board of Information Technology Commissioners in October 1995 and approved by the Los Angeles City Council on December 12, 1995. The Los Angeles order calculates refunds due for the period of September 1, 1993 through July 15, 1994 in the Sylmar and Sunland/Tujunga franchises (CUIDs CA0188 and CA0219). However, the terms of this Amendment shall govern the calculation of the number of regulated channels and the amount of refunds due in these franchises for the period beginning on July 15, 1994.

4. Providence Journal previously filed refund plans to comply with orders issued by the Cable Services Bureau in cases not involving *a la carte* packages. In accordance with those plans, Continental will pay Refunds to all communities listed in Exhibit 3 in the amounts indicated in this Exhibit. Such Refunds already include all applicable Interest through April 1, 1997.

5. The Refunds described in subparagraphs 2 and 4 of this section will be reflected as monthly credits of a maximum of \$1.00 and a minimum of \$.50 on subscriber bills until full payment is made, except that the last payment may be credited in an amount less than \$.50 on subscriber bills. In all cases, the Refund payment period shall not exceed 12 months. Continental will provide the first installment of the Refunds to Acquired System

Eligible Subscribers on the franchise's respective Implementation Date. In the event the Refund amounts are not fully paid by the dates through which Interest has been calculated (as noted in subparagraphs 2 and 4 of this section), Continental shall be required to calculate and pay additional Interest through the date on which all Refunds are fully paid.

6. The Commission finds that the CPST rates in the Naples, FL system as modified pursuant to section IV.D.4. of this Amendment and the Current Rates for CPST in all other Acquired Systems are not unreasonable. Continental will be permitted to adjust such rates in the Acquired Systems at any time after the Amendment Effective Date without prior Commission approval, subject to Commission rules, the terms of the Social Contract, the terms of this Amendment, and any future review by the Commission of a new CPST complaint.

7. The Cable Services Bureau has reviewed the BST cost-of-service case and FCC Forms 1210 filed by Providence Journal for the Westerly, RI system in response to complaints in Westerly, RI (CUID RI0001) and Charlestown, RI (CUID RI0035) and referred by the LFA to the Commission for a decision. The Commission finds that the Current Rate for BST in the Westerly system is reasonable and that the Current Rate for CPST in the Westerly system is not unreasonable.

8. The Cable Services Bureau has reviewed the BST cost-of-service case filed by Columbia Associates, L.P., for the Brighton, MI franchise (CUID MI0207) in response to a request by the Brighton LFA to conduct this review. Based on this review, the Bureau has resolved this BST rate case. In resolution of this case, Continental will pay



Refunds to Brighton subscribers in the amount of \$12,375. Such Refunds already include all applicable Interest through June 30, 1997, and are reflected in the Refund schedule set forth in Exhibit 3.

9. The Cable Services Bureau has reviewed the CPST cost-of-service filings for the Columbia Associates, L.P. systems. The Commission finds that the Current Rate for CPST in these systems is not unreasonable.

10. On its own motion, the Cable Services Bureau hereby reconsiders two orders -- DA 95-2097 and DA 95-2108 -- concerning the maximum permitted CPST rate for certain Cablevision of Chicago franchises (CUIDs IL0473, IL0520, and IL0601). The Amendment Order will vacate these two Bureau orders. As of the vacating of these orders, any pending petitions for reconsideration concerning these orders will be deemed to be withdrawn.

11. This settlement is without a finding by the Commission of any wrongdoing by Continental or any of the Acquired Systems and does not constitute an admission by Continental or any of the Acquired Systems of any violation of, or failure to conform to, the 1992 Cable Act, Commission rules, or any other applicable law, rule, or policy.

**F. Term of this Amendment.**

This Amendment will become effective on the Amendment Effective Date and shall continue through December 31, 2000, subject to section III.K. of the Social Contract regarding modification and termination, and to section III.G. of the Social Contract regarding

franchises subject to effective or price-constraining competition.

**G. Service on Interested Parties.**

Continental will serve a copy of this Amendment, the Public Notice announcing this Amendment, and the Social Contract on all Continental LFAs and on all parties to any pending CPST rate case in the Acquired Systems. In addition, within 30 days of the adoption of this Amendment, Continental will serve a copy of Section III, B, ("School Commitments") of this Amendment on all school superintendents responsible for schools in Continental's franchise areas.

IN WITNESS WHEREOF, this Amendment to the "Social Contract for Continental Cablevision, Inc." (FCC 95-335) has been duly executed and delivered by or on behalf of the parties hereto as of the Amendment Effective Date as defined herein.

CONTINENTAL CABLEVISION, INC.

By: \_\_\_\_\_  
Name: Robert J. Sachs  
Title: Senior Vice-President  
Corporate and Legal Affairs

FEDERAL COMMUNICATIONS COMMISSION

By: \_\_\_\_\_  
Name: William F. Caton  
Title: Acting Secretary

**EXHIBIT 1**  
**CONTINENTAL CABLEVISION, INC.**  
**EQUIPMENT REGIONS**  
**PAGE 1 OF 1**

**Northeast:** Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island

**Southeast:** Florida, Georgia, Virginia

**Midwest:** Michigan, Ohio

**Central:** Illinois, Iowa, Minnesota, Missouri, Wisconsin

**Western:** California, Nevada

**Northwest:** Idaho, Washington

**NB:** This Exhibit modifies Exhibit 6 of the Social Contract. New states in which the Acquired Systems operate are indicated by underline.

**EXHIBIT 2**  
**A LA CARTE REFUND COMMUNITIES**  
**PAGE 1 OF 1**

**TOTAL REFUND  
WITH INTEREST**

**CALIFORNIA**

1.	Sundland/Tujunga, CA0219 .....	\$43,812
2.	Sylmar, CA0188 .....	17,710

\$61,522

**FLORIDA**

3.	Coral Gables, FL0674 .....	\$109,160
4.	Hialeah, FL0202 .....	361,720
5.	Hialeah Gardens, FL0675 .....	26,040
6.	Medley, FL0429 .....	1,830
7.	Miami Springs, FL0427 .....	32,590
8.	Naples -- Collier County - upgrade, FL0050, FL0098, FL0348 .....	346,080
9.	Naples -- Lee County Fort Myers Beach - upgrade, FL0096 .....	25,740
10.	Naples - upgrade, FL0051 .....	79,400
11.	Naples -- Sanibel - upgrade, FL0345 .....	33,370
12.	Sweetwater, FL0422 .....	21,420
13.	Virginia Gardens, FL0428 .....	5,710
14.	West Miami, FL0553 .....	11,000
15.	Unincorporated Dade County, FL0416 .....	167,320
16.	Unincorporated Dade County - Coral Gables, FL0416 .....	6,490

\$1,227,870

**MASSACHUSETTS**

17.	Chelmsford, MA0147 .....	\$96,900
18.	Fall River, MA0099 .....	53,434
19.	Tewksbury, MA0145 .....	79,350

\$229,684

**MINNESOTA**

20.	Central St. Croix Valley, MN0392, MN0393, MN0394 .....	\$8,784
21.	Denmark Township, MN0399 .....	78
22.	Hastings, MN0309, MN0310 .....	6,586
23.	South Washington County, MN0395, MN0396, MN0397, MN0400, MN0401, MN0533 .....	26,942

\$42,390

**WISCONSIN**

24.	Hudson, WI0502, WI0503 .....	\$4,610
25.	River Falls, WI0510 .....	3,752

\$8,362

\$1,569,828

**EXHIBIT 3**  
**NON-A LA CARTE REFUND COMMUNITIES**  
**PAGE 1 OF 1**

**TOTAL REFUND  
WITH INTEREST**

<b><u>CALIFORNIA</u></b>		
1.	Costa Mesa, CA1173 .....	\$13,252
2.	Cypress, CA1203 .....	20,896
		<hr/>
		\$34,148
	<b><u>MINNESOTA</u></b> .....	\$52,578
	The total refund in Minnesota systems will be distributed to Eligible Subscribers in the following franchises:	
3.	Brooklyn Center, MN0279	
4.	Brooklyn Park, MN0271	
5.	Crystal, MN0292	
6.	Golden Valley, MN0294	
7.	Maple Grove, MN0311	
8.	New Hope, MN0291	
9.	Osseo, MN0280	
10.	Plymouth, MN0307	
11.	Robbinsdale, MN0293	
	<b><u>NEW YORK</u></b>	
12.	East Fishkill, NY0275 .....	\$4,850
13.	Wappingers Falls, NY0278 .....	1,166
		<hr/>
		\$6,016
	<b><u>WASHINGTON</u></b>	
14.	City of Kittitas, WA0172 .....	\$2,516
15.	County of Kittitas, WA0175 .....	942
		<hr/>
		\$3,458
	<b><u>MICHIGAN</u></b>	
16.	City of Brighton, MI0207. ....	\$12,375
		<hr/>
		\$108,575

# EXHIBIT 4 - SECTIONS FROM SOCIAL CONTRACT IMPLEMENTATION ORDER

DA 95-2160

Federal Communications Commission Record

10 FCC Red No. 24

## C. Remedies

17. The Social Contract states that "in order to allow subscribers the full benefit of a low-cost lifeline basic rate, local franchising authorities will not be permitted to toll the effective date of the restructured basic service tier rates."<sup>34</sup> Continental has requested that we clarify the procedural mechanism that applies if the basic service tier rates and/or the cable programming service tier rates are restructured incorrectly.<sup>35</sup> Continental suggests that in order to preserve the right to order rate reductions and/or refunds, a local franchising authority should issue a written accounting order to Continental by the date the restructuring becomes effective.<sup>36</sup> Continental also suggests that any refunds ordered by local franchising authorities or the Commission commence no earlier than the date rates were restructured under the Social Contract.<sup>37</sup> Furthermore, Continental suggests that refunds for overcharges should be based on the difference between the corrected rates and the originally implemented restructured rates.<sup>38</sup> Finally, Continental suggests that prospective reductions in the basic service tier rate or cable programming service tier rate should be limited to what the restructured rates should have been had the restructuring been implemented correctly.<sup>39</sup>

18. The Social Contract sets forth who will review restructured rates. As the Commission indicates in the Social Contract, "we recognize . . . a certain level of

uncertainty with respect to the jurisdictional responsibilities of the local franchising authorities. Therefore, we have negotiated a modification to the Social Contract to clarify that the jurisdictional division set forth in the 1992 Cable Act and implemented by our rules has been retained."<sup>40</sup> Local franchising authorities will review the basic service tier rate and the Commission will review the cable programming service tier rates that Continental establishes.<sup>41</sup>

19. Local franchising authorities should follow the same procedures in reviewing restructured rates to preserve their authority to order reductions and/or refunds as they would use to review other rates subject to certain modifications that we believe are appropriate to implement the Commission's order approving the Social Contract. These procedures incorporate the protections of the current rules and the new procedures recently adopted by the Commission. *In the Matter of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Thirteenth Order on Reconsideration, FCC 95-347 (released September 22, 1995) ("Thirteenth Reconsideration Order")*. Specifically, as provided by our rules, local franchising authorities will have a 30-day review period to evaluate the reasonableness of Continental's initial restructured basic service tier rate, after Continental provides notice of the rate restructuring.<sup>42</sup> In the order approving the Social Contract, the Commission held that local franchising authorities will not be permitted to toll the effective date of the restructured basic service tier rate.<sup>43</sup>

20. In order to implement the Commission's order with a minimum of difficulty, if the local franchising authority has not reached a decision in the initial 30-day review period, the local franchising authority need not issue an accounting order to preserve its right to require a refund after the 30-day review period. Thus, a local franchising authority may order refunds with respect to the initial restructured rate for the lesser of the period from the effective date of the restructured rate to the date of its rate order or the 12 month period preceding the date of its rate order. However, at any time before the local franchising authority issues a rate order, Continental may inquire as to whether the local franchising authority is continuing to review Continental's initial restructured rate. If Continental makes such an inquiry, the local franchising authority must respond to Continental within 15 days of receiving the inquiry. If the local franchising authority fails to respond within 15 days to Continental, the local franchising authority will lose its ability to issue refunds with respect to the initial restructured rate after the initial 30-day review period. If the local franchising authority does respond, it need only indicate whether it is continuing to review Continental's filing. Such response will preserve its right to order a refund.

<sup>35</sup> August 30, 1995 letter at 7.

<sup>36</sup> *Id.* at 8.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Social Contract Order*, slip op. at ¶ 74.

<sup>41</sup> *Id.*

<sup>42</sup> 47 C.F.R. § 76.933(a).

<sup>43</sup> *Social Contract Order*, slip op. at ¶ 44, n.75. Suspension of the tolling requirement will provide subscribers the full benefit of a low-cost lifeline basic rate.

<sup>34</sup> *Social Contract Order*, slip op. at ¶ 44 n.75.

21. Finally, Continental seeks clarification that where a local franchise authority or the Commission orders a reduction in the basic service tier rate or cable programming services tier rate that originally become effective pursuant to the restructuring requirement and that affects the revenue neutral restructuring provisions of the Social Contract, Continental may increase the other tier rates in a revenue-neutral manner to offset such reduction.<sup>44</sup> Additionally, Continental seeks to clarify that it will be liable for refunds only to basic-only subscribers in cases where Continental's initial restructured rates for the basic service tier were reduced because Continental implemented incorrect rates.<sup>45</sup>

22. Under the provisions of the Social Contract, the initial basic service tier rate and the cable programming services rate are linked. As part of the initial restructuring of rates, Continental is required to reduce the basic service tier rate by 15% to 20% to create the lifeline basic tier. The Social Contract provides that such reduction shall be offset by an adjustment to the cable programming service tier rate to create a revenue neutral rate restructuring. Because the initial rates for the basic service tier and the cable programming services tier are related, an error in setting the basic service tier or the cable programming service tier rates affects this rate relationship. Therefore, we clarify that Continental may correct the initial basic service tier rate or cable programming service tier rate, if Continental initially restructures rates incorrectly.

23. We further clarify that if it is determined that the initial basic service rate has been implemented incorrectly, any refunds ordered are limited to basic-only subscribers. This clarification only applies to the initial restructured rate. Changes in the rates due to externals and inflation are subject to review under our existing procedures. Although the basic service tier rate would decrease in this situation, Continental would be permitted to make an upward adjustment to the cable programming service tier rate to maintain the revenue neutral requirements of the Social Contract. Subscribers receiving both the basic service tier and the cable programming services tier would experience a decrease in the basic service tier rate and an upward adjustment in the cable programming service tier rate, if the revenue neutral requirements of the Social Contract were violated.

---

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*



**APPENDIX B**  
**COMMENTERS**

**STATES/CITIES/CABLE COMMITTEES**

1. Amherst, OH, City of
2. Atlantic Beach, FL, City of
3. Avon Lake, OH, City of
4. Baldwin, FL, Town of
5. Bay Village, OH, City of
6. Beecher, IL, Village of
7. Bellflower, CA, City of
8. Brighton, MI, City of
9. Burbank, IL, City of
10. Calumet Park, IL, Village of
11. Cambridge, MA, Chamber of Commerce
12. Carson, CA, City of
13. Chelmsford, MA, Town of
14. Clinton Cable TV Committee, Clinton, MA
15. Coachella, CA, City of
16. Collier County Manager's Office, FL
17. Coral Gables, FL, City of
18. Corcoran, CA, City of
19. Corona, CA, City of
20. Corona, CA, City Council
21. Costa Mesa, CA, City of
22. Crest Hill, IL, City of
23. Culver City, CA, City of
24. Cities of Cypress, La Palma, La Quinta, and Palm Desert, CA
25. Dade County, FL
26. Dolton, IL, Village of
27. Downers Grove, IL, Village of
28. Dunsmuir, CA, City of
29. East Hazel Crest, IL, Village of
30. Eastlake, OH, City of
31. Eaton Rapids, MI, City of
32. El Dorado Hills, CA, Community Services District Board of Directors
33. Elmhurst, IL, City of
34. Exeter, NH, Town of
35. Exeter Area, NH, Chamber of Commerce
36. Fairborn, OH, City of
37. Fall River, MA, City of
38. Fernandina Beach, FL, City of
39. Fishkill, NY, Town of

40. Frankfort, IL, Village of
41. Freeport, IL, City of
42. Fresno, CA, City of
43. Greater Portsmouth, NH, Chamber of Commerce
44. Greater West Bloomfield, MI Cable Advisory Board
45. Hamtramck, MI, City of
46. Hanover, MA, Town of
47. Haverstraw, NY, Town of (Howard T. Phillips, Jr. -- Director of Finance)
48. Haverstraw, NY, Town of (Phillip J. Rotella -- Supervisor)
49. Hinsdale, IL, Village of
50. Huber Heights, OH City of
51. Hull, MA, Town of
52. Ipswich, MA, Town of
53. Jackson, MI, City of
54. James City County, VA
55. Justice, IL, Village of
56. Kings County, CA
57. Lakewood, CA, City of
58. La Mirada, CA, City of
59. Lansing, MI, City of
60. Lauderhill, FL, City of
61. Lemont, IL, Village of
62. Lemoore, CA, City Manager of
63. Lockport, IL, City of
64. Lodi, CA, City of
65. Lowell, MA, Office of the City Manager
66. Lyons, IL, Village of
67. Macclenny, FL, City of
68. Madison Heights, MI, City of
69. Massachusetts Cable Television Commission, Boston, MA
70. Massachusetts Executive Office of Education, Boston, MA
71. Miami Springs, FL, City of
72. Miami Township, OH
73. Milford Cable Oversight Committee, MA
74. Neptune Beach, FL, City of
75. New Lenox, IL, Village of
76. Newburyport, MA, City of
77. North Andover Cable Advisory Committee, MA
78. North Ridgeville, OH, City of
79. North Riverside, IL, Village of
80. Norwalk, OH, City of

81. Norwell, MA, Town of
82. Ossining, NY, Village of
83. Pekin, IL, City of
84. Plaistow Cable Advisory Committee, NH
85. Raynham, MA, Town of
86. Reedley, CA, City of
87. Richmond, VA, City of
88. River Forest, IL, Village of
89. Riverdale, IL, Village of
90. Riverside, CA, County of
91. St. Johns County Board of County Commissioners, Saint Augustine, FL
92. St. Louis County, MO, County of
93. San Joaquin, CA, County of
94. Sanibel, FL, City of
95. Santa Fe Springs, CA, City of
96. Schiller Park, IL, Village of
97. Scituate, MA, Town of
98. Sherborn, MA, Town of
99. Shorewood, IL, Village of
100. Springfield, MA, City of
101. Stockton, CA, City of
102. Stockton, CA, Board of Supervisors
103. Sutter, CA, County of
104. Tarrytown, NY, Village of (Westchester County, NY)
105. West Bloomfield, MI, Charter Township of
106. West Bridgewater, MA, Board of Selectmen
107. Westmont, IL, Village of
108. Williamsburg, MA, Town of
109. Willoughby Hills, OH, City of
110. Willow Springs, IL, Village of
111. Wilton Manors, FL, City of

#### GOVERNMENT REPRESENTATIVES

112. California Assemblyman, Michael J. Machado
113. California State Senator, Teresa P. Hughes
114. Corona, CA, City Councilman, Jeffrey P. Bennett
115. Corona, CA, City Councilman, Darrell Talbert
116. Florida State Representative, Jack N. Tobin
117. Illinois State Representative, James H. Meyer
118. Illinois State Senator, Dan Cronin

119. Illinois State Senator, Tom Dunn
120. Massachusetts State Representative, Christine E. Canavan
121. Massachusetts State Representative, Shirley Gomes
122. Massachusetts State Representative, Joan M. Menard
123. Massachusetts State Representative, Michael J. Sentance
124. Massachusetts State Representative, Daniel J. Valianti
125. Michigan State Senator, Loren N. Bennett
126. Michigan State Representative, Maxine Berman
127. Michigan State Senator, Michael J. Bouchard
128. Michigan State Representative, John F. Freeman
129. New Hampshire Governor, Stephen Merrill
130. New Hampshire State Senator, Wayne D. King
131. U.S. Congressman, Ken Calvert, CA
132. U.S. Senator, Edward M. Kennedy, MA

### SCHOOLS

133. Anaheim Union High School District, CA
134. Ann Arbor Public Schools, MI
135. Arlington Massachusetts Public Schools
136. Baker County Board of Commissioners, Macclenny, FL
137. Bedford School District, Unit #25, NH
138. Brentwood High School, MO
139. Brentwood Middle School, Brentwood, MO
140. Broad Meadows Middle School, Quincy, MA
141. Brockton Public Schools, MA
142. Brockton School Committee, MA
143. Broward County, Florida, School Board of, Plantation, FL
144. Broward County, FL, Plantation Middle School
145. Cohasset Public Schools, MA
146. Clovis Schools, Foundation for, CA
147. Collier County Public Schools, Naples, FL (Dr. James L. Buchholz -- Coordinator of Instructional Support Services)
148. Collier County Public Schools, Naples, FL (Robert E. Munz -- Superintendent)
149. Compton Unified School District, CA
150. Concord School District, NH
151. Consortium of Ohio Coordinators for the Gifted
152. Clovis Unified School District, CA
153. Crestline High School, OH
154. Cypress School District, CA
155. Dartmouth Public Schools, MA

156. Dedham Public Schools, MA
157. Delta Island Elementary School District, Stockton, CA
158. Driscoll Elementary School, Dayton, OH
159. Duval County Public Schools, Jacksonville, FL
160. Duval Public Education Foundation, Inc., Jacksonville, FL
161. Elyria Elem. School, OH (Karen Adolph -- Elem. Media Spec.)
162. Elyria Prospect Media Center, OH (Mary Behm)
163. Elyria Windsor Media Center, OH (Anne Michael)
164. Elyria High School, OH (Barbara Schneider, Librarian)
165. Elyria High School, OH (Joyce Vacha, Media Specialist)
166. Elyria West High School, OH (Gail Haywood, Media Spec.)
167. Espirito Santo School, Fall River, MA
168. Fall River Public Schools, MA
169. Findlay High School, OH
170. Freeport School District, IL (Dr. Michael Anderson -- Assistant Supervisor of Instruction)
171. Freeport School District, IL (Richard B. Olsen -- Superintendent)
172. Grand Ledge Public Schools, MI
173. Greenland Central School, NH
174. Hanover County Public Schools, Ashland, VA
175. Henrico County Public Schools, Richmond, VA
176. Hull Public Schools, MA
177. Jacksonville Cities in Schools, Inc., FL
178. John F. Kennedy High School, La Palma, CA
179. Joliet Central High School, IL
180. Kettering Middle School, Kettering, OH
181. Lake County Educational Service Center, Painesville, OH
182. Lamphere Schools, Madison Heights, MI
183. Lansing School District, MI
184. Lincoln Unified School District, CA
185. Lincoln-Way Community High School District #210, IL
186. Lodi Unified School District, CA
187. Lyme Elementary School, Bellevue, OH
188. McGrath Elementary School, MO
189. Macomb Intermediate School District, Clinton Township, MI
190. Madison District Public Schools, Madison Heights, MI
191. Madison School, Hinsdale, IL
192. Manchester School of Technology, NH
193. Manchester School District - SAU #37, NH
194. Marblehead Community Charter Public School, MA
195. Mark Twain Elementary School, MO

196. Marysville Joint Unified School District, CA
197. Massachusetts Corporation for Educational Telecommunications, Cambridge, MA
198. Massachusetts School Library Media Association, MA
199. Massachusetts School Library Media Association
200. Mentor Ex. Village School District, Mentor, OH
201. Merrimack Valley Middle School, Penacook, NH
202. Narragansett Regional School District, Phillipston, MA
203. New Hampshire State Board of Education, Concord, NH
204. Newport-Mesa Unified School District, Newport Beach, CA
205. North Rockland Central School District, Garnerville, NY
206. Norwell Public Schools, MA
207. Oak Park and River Forest High School, Oak Park, IL
208. Old Hammondtown School, Mattapoisett, MA
209. Peekskill, NY, City School District of
210. Pekin Public School District No. 108, IL
211. Pekin Community High School, IL
212. Plymouth Canton Community Schools, MI
213. Practical Academic Cultural Education, Jacksonville, FL
214. Quincy Public Schools Unit District No. 172, IL
215. Richmond Public Schools, VA
216. Ridge Elementary School, Bellevue, OH
217. Roseville Community Schools, MI
218. Rollinsford Grade School, NH
219. Romulus Community Schools, MI
220. Saints Peter and Paul School, Fall River, MA
221. St. Joseph School, Monroeville, OH
222. St. Peter School, N. Ridgeville, OH
223. St. Raphael School, Bay Village, OH
224. Salem School District Media Services, NH
225. San Joaquin County Office of Education, Stockton, CA
226. Sandalwood High School, Jacksonville, FL
227. Scituate Public Schools, MA
228. Shiloh Middle School, OH
229. South Amherst Middle School, OH
230. Southfield Public Schools, MI
231. Springfield, Massachusetts, Public Schools of
232. Stoughton Public Schools, MA
233. Stratham Memorial School, MA
234. Timberlane Regional School District, Hampstead School District, Plaistow, NH
235. University of North Florida, Jacksonville, FL
236. Wappingers Central School District, Wappingers Falls, NY