

**NEW YORK STATE
CONSUMER PROTECTION BOARD**

**STATEMENT OF
TERESA A. SANTIAGO
CHAIRPERSON AND EXECUTIVE DIRECTOR**

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the Rules and Regulations
of the Public Service Commission
Regarding Cable Television

Case No. 01-V-0381

July 24, 2003

Good afternoon. I am Teresa A. Santiago, and I serve as the Chairperson and Executive Director of the New York State Consumer Protection Board. Before commenting on the proposed rules and regulations governing cable television service, I want to commend Chairman Flynn and the Public Service Commission for providing this further opportunity for public officials as well as customers of Cablevision, Time Warner and other cable television operators to express their views on those proposals. This opportunity is in addition to the customer input that the Public Service Commission solicited in 1996, when these rule changes were first proposed. It is also in addition to opportunities that the PSC provided the public throughout New York State earlier this year. I thank Chairman Flynn for his continuing efforts to solicit the input of consumers on these important issues and I urge the Public Service Commission to carefully consider the viewpoints of consumers who would be affected by the proposed rules and regulations.

The New York State Consumer Protection Board was created in 1970. As Governor Pataki's top consumer watchdog, the CPB is involved in a broad array of consumer issues. In addition to representing the interests of residential and small business customers on electricity, natural gas and cable television issues, the CPB develops and delivers consumer education programs and materials on a wide variety of current consumer issues, responds to tens of thousands of individual consumer complaints each year by working to settle disputes through voluntary agreements and enforces New York's Do-Not-Call anti-telemarketing law.

Changes to current cable television rules and regulations were first contemplated in 1996. The CPB participated actively in the PSC's review of those rules and regulations. Many of those rules provide important consumer protections that, in our judgment, continue to be necessary. Such rules address billing disputes, customer service standards and notification of rate changes. Other rules, however, are outdated or unnecessary. Overall, we strongly advocated in 1996 that the PSC retain the majority of its existing rules and modify others while continuing to maintain necessary consumer protections.

The PSC's proposals were made public and circulated for comment several months ago. I am pleased that many of the CPB's recommendations from 1996 are reflected in the PSC's proposals. For example, as the CPB recommended, the PSC's proposals retain all existing consumer protections regarding billing disputes, disconnection of service, reconnection charges and late charges. They also retain existing customer service standards and requirements for notifying customers of rate and service changes.

However, the CPB disagrees with several PSC proposals.

Subscriber Credit for Service Outages

The proposed rules would relax existing requirements under which cable operators must automatically credit customers for service outages of more than four

hours, some part of which occurred in prime time. Under the proposed rules, automatic credits would be required only for outages of more than 24 hours in duration. The proposed rule would substantially weaken an important existing consumer safeguard. We recommend that the current rule be retained.

If the cable operator has not provided service and is aware of the extent of the service outage, it is reasonable for that provider to credit the bills of all known affected customers. When a consumer purchases cable service, he or she is paying for the opportunity to watch the cable offerings at any time within the billing period. Since it is the opportunity to watch that is affected by the service outage, it is logical to credit customers for the loss of that opportunity.

Under the PSC's proposal, subscribers could receive a credit for outages of at least four hours, but only if they apply individually to the Company. Such an approach would be unfair to consumers. It would also be extremely inefficient and frustrating to consumers who attempt to contact the Company by telephone to request a refund but are unable to do so because tens or hundreds of thousands of other customers are also attempting to call to request a refund. For all these reasons, the CPB recommends that the proposed rules regarding automatic subscriber credits for service outages be rejected and the existing rules maintained.

Duration of Franchise Agreement

Currently, franchise terms are limited to ten years in duration. The PSC's proposal would provide municipalities flexibility to grant both initial and renewal

franchises for terms as long as 15 years. The CPB recognizes that in some circumstances, a franchise term of up to 15 years in duration may benefit consumers since cable operators may be more likely to incur the considerable expense required to significantly upgrade cable system infrastructure if they are assured of a longer franchise term. Such infrastructure improvements could benefit consumers by helping ensure high quality service and improving access by cable subscribers to new state-of-the-art services. However, we are concerned that the risk to consumers of a franchise term of up to 15 years in duration outweighs this potential benefit.

As a general matter, the CPB believes that policies that promote competition are in consumers' interest. Competition is enhanced with more frequent franchise review and bidding. In contrast, the proposal to extend the duration of the franchise term would lengthen the period between opportunities for significant competition.

Further, as a result of rapid changes in technology, municipalities and their representatives would be hard-pressed to forecast the appropriate technology and business practices to be used 15 years into the future. With franchise terms as long as 15 years, consumers may be denied the benefits of changes in industry technology that would otherwise produce savings, innovative new services or other consumer benefits. Moreover, as a practical matter, few mayors and other municipal officials can reasonably expect to hold office for more than a decade. Accordingly, municipal leaders may have little or no incentive to consider the risks of a long-term franchise agreement on consumers.

It is therefore incumbent on state officials to ensure that mechanisms are in place to protect consumer interests under long-term franchise agreements. We therefore recommend that the PSC retain existing rules regarding the duration of franchise agreements. Alternatively, any extension of the duration of a franchise agreement beyond ten years should be accompanied, at a minimum, by explicit requirements that the cable operator respond to concerns raised by the municipality regarding the adequacy and appropriateness of technology after ten years.

PEG Access

Currently, cable system operators are required to designate channel capacity for public, educational and governmental (“PEG”) access. Franchisees must designate: (a) at least one full-time channel for public access use, (b) at least one additional separate full-time channel for educational and governmental use, and (c) one additional channel for educational/governmental use if the first such channel is used sufficiently. The PSC proposes to reduce these requirements to a single channel that would be shared among public, educational and governmental users, if agreed upon by the municipality and the cable operator.

It is noteworthy that as a practical matter, the proposed rule would not reduce the number of PEG channels in the New York City metropolitan area, since the number of such channels vastly exceeds the minimum prescribed in current regulations.

Nevertheless, state government should not be perceived as limiting PEG access, especially while media ownership concentration rules are being relaxed. Instead, New York state government should continue to demonstrate a commitment to provide for diversity and local interests.

Therefore, the CPB opposes the proposal to allow a reduction in the minimum number of PEG channels if agreed upon by the municipality and the cable operator. Municipalities and cable operators should be permitted to reduce the minimum number of PEG channels, with PSC approval, only upon a demonstration that there is no demand for more than 1 channel. That demonstration must explicitly consider input from the public, public access service providers and other interested parties. Moreover, that input should be considered by the municipality and cable operator in a public forum, such as public hearings. The PSC should clearly explain that the burden of proving that there should be a reduction in the number of PEG channels below the current minimum is on the municipality and cable operator. Requests that do not meet that burden should be denied.

Even where this rigorous process has been followed and the PSC authorizes a reduction in the number of PEG channels for a particular cable franchise below the current minimum, new rules are required to ensure that a sufficient number of public access channels are available should a need develop in the future. We recommend that the PSC adopt rules that require cable operators to restore the minimum levels of PEG channel capacity in the current rules, should such a need be demonstrated.

We also encourage the PSC to emphasize the importance of input from residents and community leaders concerning the award of an initial franchise, renewal of a franchise and the on-going operation of PEG channels. Existing rules allow municipalities to designate an advisory committee consisting of representatives of the community, to assist in evaluation of an initial franchise request. That committee is charged with determining the communication needs and interests of residents and making recommendations as to how those interests may be met. Such public input is extremely important and should be considered carefully by the municipality. Moreover, overall operation of a cable franchise in the public interest would benefit from public input at other times as well. For that reason, the CPB supports the PSC's proposal to empower municipalities to designate advisory committees at times other than when considering an initial franchise request.

In addition, we urge the PSC to emphasize the importance of effective committees or commissions that operate and administer the PEG channels. These committees consist of citizens designated by the municipality and are charged with overseeing the day-to-day operation and administration of PEG channels. Those committees are well-situated to ensure that the various interests and concerns of diverse ethnic and geographic communities are considered in the operation and administration of PEG channels. Municipalities and cable operators should be responsive to the concerns raised by these committees.

Service Quality Reporting

Several other rules proposed by the PSC should be clarified, in particular those regarding service quality reporting. Current rules and regulations require cable television operators to compile and report data regarding customer service-related issues including telephone availability and response time, installation time, the number and duration of service interruptions, and missed service appointments. Cable operators can fulfill those requirements by providing aggregate data for the Company's entire franchise area. However, such aggregate data may mask poor service quality performance in particular regions or municipalities. The Governor's Office, Legislators and the PSC may be interested in identifying regions and municipalities in which service quality is below standard. We request that the PSC clarify that cable operators are required to provide such disaggregated service quality data upon request of the PSC. This will help ensure that policymakers can identify, and respond to, instances in which cable service quality in particular municipalities is unsatisfactory. The CPB is aware that service quality data can be compiled on a regional or municipality basis at little or no cost. Therefore, this requirement would not place upward pressure on the price of cable television service.

On a related point, cable companies are currently required to compile and report their compliance with service standards on measures including customer calls, service installation and repair on a quarterly basis. Under the proposed rules and regulations, Companies would be required to file those reports only annually. We request that the PSC clarify that Companies are still required to compile service quality data on a quarterly basis, and that the PSC may require Companies to file quarterly reports at its discretion. This should help ensure that the PSC has the information it needs to

effectively regulate the service quality of cable television service, without imposing undue burdens on cable operators.

Conclusion

The CPB looks forward to continuing to work with Chairman Flynn, the Public Service Commission, the Puerto Rican/Hispanic Task Force, the cable television industry, cable television subscribers and other interested parties to craft rules and regulations that adequately protect consumers. I thank you for your kind attention to the points made here today.