

categories (surveys of professionals, major home appliances, and automobiles).

The final element is the respondent's history of past violations. The question of whether consent orders may be used as evidence of past violations is at best unsettled. *Compare ITT Continental Baking Co. v. FTC*, 521 F.2d 207, 222 n.23 (2d Cir. 1976) (because consent orders do not constitute an admission that the respondent has violated the law, the Commission may not rely on consent orders as evidence of additional illegal conduct when formulating cease and desist orders in other proceedings) with *Thompson Medical Co.*, 104 F.T.C. 648, 833 n.78 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987) (while stating that a single consent order would not be used as a basis for concluding that the respondent has a history of past violations, the Commission expressly took no position on whether a pattern of consent orders would be a sufficient history of past violations to warrant fencing-in). Regardless of whether the prior consent orders may be considered evidence of past violations, they show that JWT was aware of the Commission's concern about this type of claim and of the requirements of the law with respect to claims involving surveys and tests.

Despite these concerns, for several reasons we believe that accepting the order as negotiated appears to be appropriate. For example, we understand that JWT has made clear it would litigate if the Commission attempted to obtain broader coverage; litigation inevitably presents resource allocation questions.³ In addition, broad product coverage obviously weighs more heavily on an ad agency such as JWT that handles accounts for a divers assortment of products and services, than on a manufacturer or advertiser offering a limited range of products.⁴ We write only to point out that in light of all the circumstances of this case, broad product coverage in Part II could have been justified as reasonably related to the violations alleged.

³ Even so, a litigated order could be beneficial for several reasons. First, in case of future similar violations by JWT, a litigated order clearly could be used as evidence of prior law violations. Second, while there is no guarantee that the Commission would obtain broader product coverage in litigation than is contained in this consent order, it seems unlikely that the Commission would do any worse, and the potential gain is great, both in terms of having JWT under a broader order and in terms of precedential value for other cases. Third, a litigated opinion might resolve some of the uncertainties concerning the precedential value of prior consent orders.

⁴ On the other hand, the potential burden of a broad order is partially mitigated by the fact that, as an ad agency, JWT's order contains a safe harbor insulating it from liability unless it knows or should know that the survey or test did not prove, demonstrate, or confirm the representation. In addition, it is not unusual for orders covering establishment claims to have broad product coverage because the type of claim covered—the results or validity of tests or surveys—is fairly discrete.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part

J. Walter Thompson USA, Inc., File No. 942-3294

I dissent from Part II of the proposed consent order because the product coverage is too narrow. Part II would prohibit J. Walter Thompson from making deceptive establishment claims for any weight loss or weight control program, weight loss product, health or fitness program, exercise equipment, or diet-related food. Although the product coverage in this provision does go beyond the product with respect to which a violation has been alleged, given the particular facts of this case, I would impose even broader product coverage. In my view, J. Walter Thompson relied on a clearly flawed study in making its deceptive claims, and it continued to make claims based on this flawed study even after it had received contradictory results from a more reliable study that it had commissioned. J. Walter Thompson also could readily transfer deceptive test result claims to other products, as demonstrated by the fact that J. Walter Thompson has entered into three other consent agreements to settle allegations that it made deceptive claims concerning survey or test results for three disparate products.¹ Given that J. Walter Thompson's deception appears to have been deliberate and that its deception readily could be transferred to other products, see *Stouffer Foods Corp.*, D. 9250, slip op. at 17 (Sept. 26, 1994), broader product coverage is appropriate.

[FR Doc. 95-18954 Filed 8-1-95; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3588]

Korean Video Stores Association of Maryland, et al.; Prohibited Trade Practices, and Affirmative Correction Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Maryland based video store association and its members from entering into any agreement to raise, fix, or maintain prices in the retail video tape rental business; and requires, within 30 days, its members to display a poster announcing the settlement, in both English and Korean, in their respective

¹ *J. Walter Thompson Co.*, 97 F.T.C. 323 (1981); (dental cleaning device); *J. Walter Thompson Co.*, 94 F.T.C. 331 (1979) (dishwashers); *J. Walter Thompson Co.*, 84 F.T.C. 736 (1974) (automobiles). Assuming the allegations in this and the previous cases to be true, we would have to conclude that J. Walter Thompson has had difficulty comprehending that the conduct alleged is conduct about which the Commission is concerned.

stores and to publish the entire text of the poster in three Korean-language newspapers in the Washington, DC area.

DATES: Complaint and Order issued June 20, 1995.¹

FOR FURTHER INFORMATION CONTACT: Joseph G. Krauss, FTC/S-3627, Washington, DC 20580. (202) 326-2713.

SUPPLEMENTARY INFORMATION: On Tuesday, April 11, 1995, there was published in the **Federal Register**, 60 FR 18411, a proposed consent agreement with analysis in the Matter of Korean Video Stores, et al., for the purpose of soliciting public comment.

Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95-18955 Filed 8-1-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 951-0024]

Summit Communications Group, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Summit and seven Wometco Cable TV companies from agreeing, attempting to agree or carrying out an agreement with any cable television provider to allocate or divide markets, customers, contracts or territories for cable television service in the incorporated and unincorporated areas of the Georgia counties of Cobb, Bartow, Dekalb, Walton, Gwinnett, Fulton, Douglas, Fayette, Coweta, Clayton, Henry, Rockdale, Newton and Cherokee.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

DATES: Comments must be received on or before October 2, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Robert Doyle, Jr., FTC/S-2105, Washington, DC 20580. (202) 326-2610 or 326-2819.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Summit Communications Group, Inc., a corporation, and Wometco Cable TV of Georgia, Inc., a corporation; Wometco Cable TV of Cobb County, Inc., a corporation; Wometco Cable TV of Clayton County, Inc., a corporation; Wometco Cable TV of Conyers-Rockdale, Inc., a corporation; Wometco Cable TV of Fayette County, Inc., a corporation; Wometco Cable TV of Fulton County, a corporation; and Wometco Cable TV of Henry County, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Summit Communications Group, Inc. ("Summit"), a Delaware corporation, and Wometco Cable TV of Georgia, Inc., a Georgia corporation, Wometco Cable TV of Cobb County, Inc., a Georgia corporation, Wometco Cable TV of Clayton County, Inc., a Georgia corporation, Wometco Cable TV of Conyers-Rockdale, Inc., a Georgia corporation, Wometco Cable TV of Fayette County, Inc., a Georgia corporation, Wometco Cable TV of Fulton County, a Georgia corporation, and Wometco Cable TV of Henry County Inc., a Georgia corporation (hereinafter collectively referred to as "Wometco"), and it now appearing that Summit and Wometco are willing to enter into an agreement containing an order to cease and desist from the acts and the practices being investigated and providing for other relief:

It is hereby agreed by and between Summit and Wometco, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Summit is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 115 Perimeter Center Place, Suite 1150, Atlanta, Georgia 30346.

2. Proposed respondent Wometco Cable TV of Georgia, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 5979 Fairburn Road, Douglasville, Georgia 30134.

3. Proposed respondent Wometco Cable TV of Cobb County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1145 Powder Springs Road, Marietta, Georgia 30064.

4. Proposed respondent Wometco Cable TV of Clayton County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 6435 Tara Boulevard, Suite 22, Jonesboro, Georgia 30236.

5. Proposed respondent Wometco Cable TV of Conyers-Rockdale, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1361 Iris Drive, Conyers, Georgia 30209.

6. Proposed respondent Wometco Cable TV of Fayette County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 107 South Glynn Street, Fayetteville, Georgia 30214.

7. Proposed respondent Wometco Cable TV of Fulton County is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 6435 Tara Boulevard, Suite 22, Jonesboro, Georgia 30236.

8. Proposed respondent Wometco Cable TV of Henry County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 6435 Tara Boulevard, Suite 22, Jonesboro, Georgia 30236.

9. Time Warner Inc. ("TWI") is a corporation organized, existing, and

doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 75 Rockefeller Plaza, New York, New York 10019. After consummation of a proposed acquisition of Summit by TWI, Summit will become a wholly-owned subsidiary of TWI.

10. U S WEST, Inc. ("USW") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business at 7800 East Orchard Road, Englewood, Colorado 80111. USW is an owner of approximately 25% of Time Warner Entertainment Company, L.P., an affiliate of TWI. On December 6, 1994, USW, through its wholly-owned subsidiary Multimedia Cable, Inc., a Delaware corporation, acquired Wometco.

11. Summit and Wometco admit all the jurisdictional facts set forth in the draft of complaint.

12. Summit and Wometco waive:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- d. Any claim under the Equal Access to Justice Act.

13. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Summit and Wometco, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

14. This agreement is for settlement purposes only and does not constitute an admission by Summit or Wometco that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

15. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the

Commission's Rules, the Commission may, without further notice to Summit or Wometco, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the compliant and decision containing the agreed-to order to the addresses of Summit and Wometco, as stated in this agreement, shall constitute service. Summit and Wometco waive any right each may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

16. Summit and Wometco have read the proposed compliant and order contemplated hereby. They understand that once the order has been issued, each will be required to file one or more compliance reports showing that each has fully complied with the order. Summit and Wometco further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is Ordered that, as used in this order, the following definitions shall apply:

A. "Summit" means Summit Communications Group, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by Summit, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

B. "Wometco" means Wometco Cable TV of Georgia, Inc., Wometco Cable TV of Cobb County, Inc., Wometco Cable TV of Clayton County, Inc., Wometco Cable TV of Conyers-Rockdale, Inc., Wometco Cable TV of Fayeete County, Inc., Wometco Table TV of Fulton County, Wometco Cable TV of Henry County, Inc., their directors, officers, employees, agents and representatives,

predecessors, successors and assigns, their subsidiaries, divisions, groups and affiliates controlled by Wometco, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

C. "TWI" means Time Warner Inc., its directors, officers, employees agents and representatives, predecessors, successors and assigns, its subsidiaries, divisions, group and affiliates controlled by TWI, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

D. "USW" means US West, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by USW, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

E. "Commission" means the Federal Trade Commission;

F. "Cable Operator" means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more Cable Television Systems; "Cable Operator" includes the partners, directors officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words "subsidiary," "affiliate," and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

G. "Cable Television Service" means the delivery to the home of various entertainment and informational programming via a Cable Television System.

H. "Cable Television System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Television Service, which includes video programming and which is provided to multiple subscribers within a community. The term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or (b) a facility that serves only subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility or facilities uses a public right-of way.

I. "Relevant Geographic Area" means the incorporated and unincorporated

areas of the counties of Cobb, Bartow, Dekalb, Walton, Gwinnett, Fulton, Douglas, Fayette, Coweta, Clayton, Henry, Rockdale, Newton, and Cherokee, in the State of Georgia.

J. "Overbuilding" means instances in which two or more Cable Operators have the facilities to provide and are capable of providing Cable Television Service to the same subscribers.

II

It is further ordered that Summit and Wometco each cease and desist from, directly, indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, combining or attempting to combine, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, carrying out or attempting to carry out, or soliciting or attempting to solicit, any combination, agreement, or understanding, either express or implied, with any Cable Operator or other provider or potential provider of Cable Television Service in any part of the Relevant Geographic Area:

A. To allocate or divide markets, customers, contracts, or territories for Cable Television Service in any part of the Relevant Geographic Area. "Customers" includes, but is not limited to, residents of existing, newly-constructed, or future housing developments, subdivisions, apartment complexes, or hotels; and

B. To refrain from Overbuilding any portion of any Cable Television System in any part of the Relevant Geographic Area.

Provided that nothing contained in the foregoing paragraphs of this order shall be construed to prohibit TWI or USW from engaging in any lawful conduct or entering into any lawful agreement.

III

It is further ordered that Summit and Wometco shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order to each of their directors, officers, and supervisory employees who are in any way involved in Cable Television Service in the Relevant Geographic Area;

B. For a period of three (3) years after the date this order becomes final, furnish a copy of the complaint and order to each of their new directors, officers, and to each of their supervisory employees in any way involved in Cable Television Service in the Relevant Geographic Area, at the time they

become a director, officer, or supervisory employee;

C. For a period of three (3) years from the date this order becomes final, and within thirty (30) days after the date any entity becomes a majority-owned subsidiary of Summit or Wometco, provide a copy of the complaint and order to all directors, officers, and supervisory employees of such entity who are in any way involved in Cable Television Service in the Relevant Geographic Area.

IV

It is ordered that Summit and Wometco:

A. Within sixty (60) days after the date this order becomes final, and annually for the next five (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, shall each file a verified written report with the Commission setting forth in detail the manner and form in which each has complied and is complying with this order;

B. For the purpose of determining or securing compliance with this order, shall permit any duly authorized representative of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Summit or Wometco, relating to any matters contained in this order; and

2. Upon five days' notice to Summit and Wometco, and without restraint or interference from them, to interview officers, directors, or employees of Summit and Wometco, relating to any matters contained in this order. Summit and Wometco, and the officers, directors, and employees, may have counsel present.

C. Shall notify the Commission at least thirty (30) days prior to any proposed change in Summit or Wometco affecting the provision of Cable Television Service in the Relevant Geographic Area, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that may affect their compliance obligations arising out of this order.

V

It is further ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment from Summit Communications Group, Inc. ("Summit"), and Wometco Cable TV of Georgia, Inc., Wometco Cable TV of Cobb County, Inc., Wometco Cable TV of Clayton County, Inc., Wometco Cable TV of Conyers-Rockdale, Inc., Wometco Cable TV of Fayette County, Inc., Wometco Cable TV of Fulton County, and Wometco Cable TV of Henry County, Inc. (hereinafter collectively referred to as "Wometco"), an agreement containing a proposed consent order to cease and desist.

The agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint prepared for issuance by the Commission along with the proposed order alleges that on or about April 26, 1990, officials of Summit and Wometco reached an understanding concerning which of the two companies would serve apartment complexes and/or housing complexes in an area of unincorporated Cobb County, Georgia, where both companies have franchise authority to provide cable television service. The Complaint alleges that this understanding between Summit and Wometco was in operation from late April 1990 until at least March 24, 1993. The Complaint alleges that this understanding reached by Summit and Wometco was an agreement not to compete and has had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to injure consumers by restraining competition between providers of cable television services in parts of unincorporated Cobb County, and depriving cable television subscribers in parts of unincorporated Cobb County of access to a competitively determined price and quality of cable television services.

Summit and Wometco have signed a consent agreement containing the proposed order. The proposed order prohibits Summit and Wometco from directly or indirectly combining or attempting to combine, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, carrying out or attempting to carry out, or soliciting or attempting to solicit any combination, agreement, or understanding, either express or implied, with any cable operator or other provider or potential provider of cable television services to (a) allocate or divide markets, customers, contracts, or territories for cable television service, and (b) refrain from overbuilding any portion of any cable television system, in any part of the incorporated and unincorporated areas of the counties of Cobb, Bartow, Dekalb, Walton, Gwinnett, Fulton, Douglas, Fayette, Cowetta, Clayton, Henry, Rockdale, Newton, and Cherokee, in the State of Georgia.

The purpose of this analysis is to invite public comment concerning the proposed consent order. This analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way. The agreement would settle charges by the Commission that the proposed respondents violated Section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition between providers of cable television services in parts of unincorporated Cobb County, Georgia.

Statement of the Commission; Summit Communications Group, Inc.

[File No. 951-0024]

In this matter, the Commission has alleged that the respondents, Summit and Wometco, which were competing providers of cable television service, entered into a market allocation agreement. Such an agreement is *per se* illegal and, in this case, deprived cable television subscribers of a competitive marketplace.

The two respondents were Georgia-based firms, each of which offered cable television services in some or all of fourteen Georgia counties. Subsequent to the alleged illegal conduct, Wometco was acquired by U.S. West, and after commencement of the Commission's investigation, Summit was acquired by Time-Warner. Thus, both Summit and Wometco are under the active control of major cable television firms whose managements were not implicated by the allegations of the Commission's complaint.

The proposed order prevents these respondents from engaging in similar conduct in the fourteen counties in Georgia where either of the two firms had operations, a far broader area than the small area in one county where the parties had cable systems capable of competing for business. Under the unique circumstances of this proceeding, the Commission has concluded that relief may be limited in this fashion.

The Commission's policy is that where *per se* illegal conduct is found, it will seek the broadest possible relief, without geographic limitation. *Boulder Ridge Cable TV*, Docket No. C-3537 (Oct. 19, 1994). Only in extraordinary cases, such as this one, will it be appropriate to limit the scope of relief.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part; Summit Communications Group, Inc.

[File No. 951-0024]

I concur in the Commission decision to issue a complaint alleging that the respondents conspired to allocate the market for cable television services. Market allocation agreements, including this one, are *per se* unlawful. *Addyston Pipe and Steel Co. v. United States*, 175 U.S. 211 (1899).

I dissent from the decision to limit the cease and desist order against Summit Communications Group, Inc. (Summit) and the seven named Wometco cable systems to a small geographic area surrounding Atlanta, Georgia. Summit operates cable television systems outside the fourteen Georgia counties that are included in the geographic

coverage of the order, and the order does nothing to prevent future violations at those systems. If, after the order is issued, Summit enters an identical market allocation agreement at a cable system outside these fourteen counties, the Commission's only recourse will be to initiate an administrative proceeding to obtain still another order.

Market allocation, like price fixing, has long been deemed *per se* unlawful, and no proof of market power is necessary to condemn the conduct. Nothing about the fourteen Georgia counties renders them uniquely susceptible to market allocation schemes. Since market allocation is unlawful whenever and wherever it occurs, I see no reason to limit the prohibition in the order to a tiny geographic region.

The complaint and order set forth no rationale for drawing a line around these fourteen counties as the geographic metes and bounds of the order's coverage. The actual agreements alleged in paragraphs six through eleven of the complaint relate to the provision of cable television service to the Asbury Village apartment complex and specific housing subdivisions. As alleged in paragraph thirteen of the complaint, the restraint of trade had its anticompetitive effect only in these unincorporated areas of Cobb County, Georgia. The absence of any apparent rationale is troubling. In future cases, it opens the door to unguided negotiations regarding the geographic scope of conduct orders.

This is the second consent agreement involving allegations of market allocation in which the Commission has limited the coverage of the order to a narrow geographic area. In *B & J School Bus Service, Inc.*, Docket No. C-3425 (April 22, 1993), I dissented from the limitation on the geographic coverage of the order on the ground that in the rare case in which the Commission uncovers a flagrant *per se* violation such as bid rigging, price fixing or market allocation, it should take strong action to prohibit the participants in conspiracy from repeating the violation. I expressed concern that the Commission was signalling a new leniency toward *per se* antitrust violations. In accepting this second order with such a weak and limited remedy, the Commission appears to eliminate the possibility that the school bus order can be disregarded as an aberration.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95-18956 Filed 8-1-95; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration

(HCFA), Department of Health and Human Services (HHS), is publishing the following summaries of proposed collections for public comment.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Peer Review Organization (PRO) Reporting Forms; *Form Nos.:* HCFA 613-627; *Use:* PROs are authorized to review inpatient and outpatient services for quality of care provided and to eliminate unreasonable, unnecessary, and inappropriate care provided to Medicare beneficiaries. The PROs are required to report the results of the review to HCFA. *Frequency:* Monthly, quarterly; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Hours:* 10,759.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration, Baseline Survey; *Form No.:* HCFA R-179; *Use:* The baseline survey is one component in the evaluation of the Oregon Medicaid Reform Demonstration (OMRD), a demonstration authorized under section 115 of the Social Security Act. The purpose of the survey is to gather information on the health status, past utilization, and level of satisfaction of a sample of newly enrolled OMRD recipients, in a way that allows followup contact, and maximizes the likelihood of pre-enrollment recall. *Frequency:* Annually; *Affected Public:* Individuals or households; *Number of Respondents:* 2,667; *Total Annual Hours:* 500.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in HSQ 108-F, Assumption of Responsibilities; *Form No.:* HCFA R-71; *Use:* Rule establishes the review functions to be performed by the PRO and outlines the relationships among PROs, providers, practitioners, beneficiaries, fiscal intermediaries, and carriers. *Frequency:* Monthly, quarterly; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Hours:* 46,653.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medical Records Review Under Prospective Payment System (PPS); *Form No.:* HCFA R-50; *Use:* PROs are authorized to conduct medical review activities under the PPS. In order to conduct medical review activities, we depend upon hospitals to

make available specific records.

Frequency: Annually; *Affected Public:* Business or other for profit; *Number of Respondents:* 6,412; *Total Annual Hours:* 22,400.

5. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Medicare Cataract Surgery Alternate Payment Demonstration; *Form No.:* HCFA-R-177; *Use:* To test the feasibility of a negotiated bundled payment for the entire episode of cataract surgery with an intraocular lens implant and, provide insight into appropriateness indicators and effective quality assurance and utilization review mechanisms for cataract surgery. *Frequency:* Annually; *Affected Public:* Business or other for profit institutions; *Number of Respondents:* 1,686; *Total Annual Hours:* 506.

6. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Home Health Agency Survey and Deficiencies Report, Home Health Functional Assessment Instrument; *Form Nos.:* HCFA-1572, HCFA-1515; *Use:* In order to participate in the Medicare program as a home health agency (HHA) provider, the HHA must meet Federal standards. These forms are used to record information about patients' health and provider compliance with requirement and report information to the Federal Government. *Frequency:* Annually; *Affected Public:* Business or other for profit; *Number of Respondents:* 8,622; *Total Annual Hours:* 129,330.

7. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Survey Team Composition and Workload Report; *Form No.:* HCFA-670; *Use:* This form will provide information on resource utilization applicable to survey activity in the Medicare/Medicaid provider/supplier types and Clinical Laboratory Improvement Amendment (CLIA) laboratories. This information will assist HCFA in determining Federal reimbursement for surveys conducted. *Frequency:* Annually; *Affected Public:* State, local, or tribal governments; *Number of Respondents:* 53; *Total Annual Hours:* 71,667.

8. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Field Testing of the Uniform Needs Assessment Instrument; *Form No.:* HCFA-R-180; *Use:* The validity, reliability, and administrative feasibility of the Uniform Needs Assessment instrument will be