

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

In the Matter of)
)
Suburban Cable TV Co., Inc.) CUID No. PA2294 (Paradise)
)
Complaint Regarding)
Cable Programming Services Tier Rates)

ORDER

Adopted: May 8, 2000

Released: May 9, 2000

By Acting Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. In this Order we consider a complaint against the rates charged by the above-referenced Operator ("Operator") for its cable programming services tier ("CPST") in the community referenced above. We have previously resolved complaints filed against Operator's CPST rates in effect through May 14, 1994 ("Prior Order").¹ In our Prior Order, we stated that our findings "do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations."² Accordingly, this Order addresses only the reasonableness of Operators CPST rates effective May 15, 1994.

2. Under the Communications Act,³ the Federal Communications Commission ("Commission") is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992⁴ ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁵ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁶ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.⁷

¹ See In the Matter of Suburban Cable TV Co., Inc., 10 FCC Rcd 5593 (1995).

² *Id.* at n. 1.

³ Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁵ See Section 76.956 of the Commission's Rules, 47 C.F.R. §76.956.

⁶ *Id.*

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁸ Cable operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.⁹ Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹⁰ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹¹

4. Upon review of Operator's FCC Form 1200, we find Operator's calculated maximum permitted rate ("MPR") of \$11.87 to be reasonable. Because Operator's actual CPST rate of \$11.98 exceeds its calculated MPR, we find Operator's actual CPST rate of \$11.98, effective May 15, 1994¹² through February 14, 1995, to be unreasonable.¹³

5. Upon review of Operator's FCC Form 1210 covering the period April 1, 1994 through December 31, 1994, we find Operator's calculated MPR of \$13.21, effective February 15, 1995, to be reasonable.¹⁴ Because Operator's actual CPST rate of \$14.31, effective February 15, 1995, exceeds its calculated MPR, we find Operator's actual CPST rate of \$14.31, effective February 15, 1995 through March 31, 1995, to be unreasonable.

6. Upon review of Operator's FCC Form 1210 covering the period January 1, 1995 through March 31, 1995, we disallowed Operator's \$0.03 adjustment on Line G7 (Per Channel Adjustment per

⁷ See Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957.

⁸ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Operator did not elect to take advantage of the Commission's rules which provide for a refund liability deferral period, if timely requested by Operator, beginning May 15, 1994 and ending July 14, 1994, for any overcharges resulting from Operator's calculation of a new maximum permitted rate on its FCC Form 1200. See 47 C.F.R. 76.922(b)(6)(ii). If Operator did timely file such a request and can provide documentation in support thereof, we will take Operator's documentation under consideration in our review of Operator's refund plan.

¹³ This finding is based solely on the representations of Operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

¹⁴ Operator included in this filing \$1.50 for channels added on February 15, 1995.

Tier) under the "markup method" because Operator elected the "CAPS method" in its previous FCC Form 1210.¹⁵ We further adjusted Operator's entry on Lines I5 and J5 (Inflation Adjustment Factor) to 1.0219 because, for the time periods under review, Operator was only entitled to claim a total inflation adjustment amount of 1.0521, pursuant to the Ninth Reconsideration Order,¹⁶ and we allowed Operator a 1.0296 adjustment in the previous FCC Form 1210.¹⁷ Our adjustments reduced Operator MPR from \$14.56 to \$14.45. Because Operator's actual CPST rate of \$14.31 does not exceed its revised MPR, we find Operator's actual CPST rate of \$14.31, effective April 1, 1995, to be reasonable.

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rate of \$11.98, charged by Operator in the franchise area referenced above, effective May 15, 1994 through February 14, 1995, IS UNREASONABLE.

8. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rate of \$14.31, charged by Operator in the franchise area referenced above, effective February 15, 1995 through March 31, 1995, IS UNREASONABLE .

9. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rate of \$14.31, charged by Operator in the franchise area referenced above, effective April 1, 1995, IS REASONABLE.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission rules, 47 C.F.R. 76.961, that Operator shall refund to subscribers in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$11.87 per month (plus franchise fees), plus interest to the date of the refund, for the period May 15, 1994 through February 14, 1995.

11. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission rules, 47 C.F.R. 76.961, that Operator shall refund to subscribers in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$13.21 per month (plus franchise fees), plus interest to the date of the refund, for the period February 15, 1995 through March 31, 1995.

12. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated periods, and shall within 30 days of the release of this Order, file a report

¹⁵ See 47 C.F.R. §76.922(g)(1). Operators must elect between the "markup method" channel addition rules contained in 47 C.F.R. §76.922(g)(2) or the "CAPS method" channel addition rules contained in 47 C.F.R. §76.922(g)(3).

¹⁶ See In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Ninth Order on Reconsideration, 10 FCC Rcd 5198 at ¶ 12 (1995).

¹⁷ Information regarding the specific adjustments made to Operator's FCC Forms can be found in the public file for the community referenced above which is available in the Cable Services Bureau's public reference room, or through the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036, or by calling (202) 857-3800.

with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

13. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321, that the complaint referenced herein against the rates charged by Operator in the franchise area referenced above, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen F. Costello, Acting Chief
Financial Analysis and Compliance Division
Cable Services Bureau