

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

In the Matter of )  
 ) CUID No. PA1700 (Spring City)  
Suburban Cable TV Company, Inc. )  
 )  
Complaint Regarding )  
Cable Programming Services Tier Rates )

**ORDER**

**Adopted: May 9, 2000**

**Released: May 10, 2000**

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

1. In this Order we consider a complaint<sup>1</sup> against the rates charged by the above-referenced operator ("Operator") for its cable programming services tier ("CPST") in the community referenced above. We have already issued an Order in which we found Operator's CPST rate in effect through May 14, 1994 to be reasonable ("Prior Order").<sup>2</sup> In our Prior order, we stated that our findings "do not in any way prejudice the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations."<sup>3</sup> This Order addresses only the reasonableness of Operator's CPST rates in effect beginning May 15, 1994.

2. Under the Communications Act,<sup>4</sup> 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 1992<sup>5</sup> ("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.<sup>6</sup> The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.<sup>7</sup> If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>8</sup>

<sup>1</sup> The first valid complaint against Operator's CPST rate in the community referenced above was filed with the Federal Communications Commission on October 26, 1993.

<sup>2</sup> See In the Matter of Suburban Cable TV Co. Inc., 10 FCC Rcd 5593 (1995).

<sup>3</sup> *Id.* at n. 1.

<sup>4</sup> Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

<sup>5</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>6</sup> See Section 76.956 of the Commission's Rules, 47 C.F.R. §76.956.

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

<sup>8</sup> See Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957.

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>12</sup>

4. Upon review of Operator's FCC Form 1200, we find Operator's calculated maximum permitted rate ("MPR") of \$9.53 to be reasonable. Because Operator's actual CPST rate of \$11.42, effective May 15, 1994 through February 14, 1995, exceeds its MPR we find Operator's actual CPST rate of \$11.42, effective May 15, 1994 through February 14, 1995, to be unreasonable.<sup>13</sup> 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 \$10.68 to be reasonable, effective February 15, 1995.<sup>14</sup> Because Operator's actual CPST rate of \$12.84, effective February 15, 1995 through June 30, 1995, exceeds its MPR we find Operator's actual CPST rate of \$12.84, effective February 15, 1995 through June 30, 1995, to be unreasonable. Upon review of Operator's FCC Form 1210 covering the period January 1, 1995 through June 30, 1995, we find Operator's calculated MPR of \$11.77 to be reasonable. Because Operator's actual CPST rate of \$12.84, effective July 1, 1995 through March 31, 1996, exceeds its MPR we find Operator's actual CPST rate of \$12.84, effective July 1, 1995 through March 31, 1996, to be unreasonable.<sup>15</sup>

5. Upon review of Operator's FCC Form 1240 for the projected period April 1, 1996 through March 31, 1997, we find Operator's calculated MPR of \$12.66 to be reasonable. Because Operator's actual CPST rate of \$13.80 exceeds its MPR we find Operator's actual CPST rate of \$13.80, effective April 1, 1996 through March 31, 1997, to be unreasonable. Upon review of Operator's FCC Form 1240 for the projected period April 1, 1997 through March 31, 1998, we adjusted Worksheet 8 (True-Up Rate

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<sup>9</sup> See Section 76.922 of the Commission's Rules 47 C.F.R. § 76.922.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 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.

<sup>14</sup> Operator included in this filing \$0.58 for channels added on February 15, 1995.

<sup>15</sup> 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.

Charged), Lines 801 through 803, to reflect the actual rate charged during the true-up period. We also adjusted Operator's Worksheet 4 (Residual - Projected Period) at Line 406 because Operator used an incorrect figure to represent its CAPS Method Channels per Tier. We also adjusted Operator's Line C5 (Current FCC Inflation Factor) to 1.0177.<sup>16</sup> Our adjustments reduced Operator's MPR from \$12.95 to \$12.84.<sup>17</sup> Because Operator's actual CPST rate of \$14.75 exceeds its revised MPR we find Operator's actual CPST rate of \$14.75, effective April 1, 1997 through March 31, 1998 to be unreasonable. Upon review of Operator's FCC Form 1240 for the projected period April 1, 1998 through March 31, 1999, we made adjustments to coincide with the prior revised FCC Form 1240. We also adjusted Operator's Line C5 to 1.0082. Our adjustments reduced Operator's MPR from \$12.63 to \$11.53. Because Operator's actual CPST rate of \$15.95 exceeds its revised MPR we find Operator's actual CPST rate of \$15.95, effective April 1, 1998 through March 31, 1999, to be unreasonable.<sup>18</sup>

6. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321 that the CPST rates charged by Operator in the community referenced above, effective May 15, 1994 through March 31, 1999, ARE UNREASONABLE.

7. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$9.53 per month (plus franchise fees), plus interest to the date of the refund, for the period May 15, 1994 through February 14, 1995.

8. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$10.68 per month (plus franchise fees), plus interest to the date of the refund, for the period February 15, 1995 through June 30, 1995.

9. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$12.84 per month (plus franchise fees), plus interest to the date of the refund, for the period October 1, 1997 through March 31, 1998.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47

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<sup>16</sup> We used the most recent Inflation Adjustment Factor released by the Cable Services Bureau for the relevant time period. See Public Notice, DA 00-767 (released April 6, 2000).

<sup>17</sup> 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.

<sup>18</sup> Because Operator's refund liability for the period from July 1, 1995 through September 30, 1997 was trued-up in its FCC Form 1240s, which we review herein, Operator is not required to separately calculate that refund liability and submit a refund plan.

C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$11.53 per month (plus franchise fees), plus interest to the date of the refund, for the period April 1, 1998 through March 31, 1999.

11. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated period, and shall within 30 day of the release of this Order, file a report 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 with 60 days of the approval of the plan.

12. 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 community referenced above IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

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