

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

|                                       |   |          |                  |
|---------------------------------------|---|----------|------------------|
| In the Matter of                      | ) |          |                  |
|                                       | ) |          |                  |
| Suburban Cable TV Company, Inc.       | ) | CUID No. | PA0102 (Manheim) |
|                                       | ) |          |                  |
| Complaints Regarding                  | ) |          |                  |
| Cable Programming Services Tier Rates | ) |          |                  |

**ORDER**

**Adopted: May 10, 2000**

**Released: May 12, 2000**

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

1. In this Order we consider complaints<sup>1</sup> against the February 15, 1995 rate increase by the above-referenced Operator ("Operator") for its cable programming services tier ("CPST") in the community referenced above. This Order addresses only the reasonableness of Operator's February 15, 1995 CPST rate increase.

2. Under the Communications Act,<sup>2</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>3</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>4</sup> The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.<sup>5</sup> If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>6</sup>

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.<sup>7</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>8</sup> Operators may

<sup>1</sup> The first valid complaint was filed with the Federal Communications Commission on March 10, 1995.

<sup>2</sup> Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

<sup>3</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>4</sup> See Section 76.956 of the Commission's Rules, 47 C.F.R. §76.956.

<sup>5</sup> *Id.*

<sup>6</sup> See Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957.

<sup>7</sup> See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

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>9</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>10</sup>

4. Upon review of Operator's FCC Form 1200, we find Operator's calculated maximum permitted rate ("MPR") of \$11.12 to be reasonable.<sup>11</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 \$12.50, effective February 15, 1995, to be reasonable.<sup>12</sup> Because Operator's actual CPST rate of \$14.31,<sup>13</sup> 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.

5. 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 Tier) under the "markup method" because Operator elected the "CAPS method" in its previous FCC Form 1210.<sup>14</sup> 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,<sup>15</sup> and we allowed Operator a 1.0296 adjustment in the previous FCC Form 1210. Our adjustments reduced Operator's MPR from \$13.83 to \$13.73.<sup>16</sup> Because Operator's actual CPST rate of \$14.31, effective April 1, 1995 through June 30, 1995,

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

<sup>9</sup> *Id.*

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

<sup>11</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.

<sup>12</sup> Operator included in this filing \$1.50 for channels added on February 15, 1995.

<sup>13</sup> Operator's CPST rate of \$14.31 does not include franchise fees. The actual CPST rate including franchise fees is \$15.03.

<sup>14</sup> 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).

<sup>15</sup> 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).

<sup>16</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,

exceeds its revised MPR, we find Operator's actual CPST rate of \$14.31, effective April 1, 1995 through June 30, 1995, to be unreasonable.

6. Upon review of Operator's FCC Form 1210 covering the period April 1, 1995 through June 30, 1995, we adjusted Operator's Line A1 to coincide with the prior revised FCC Form 1210. Our adjustment reduced Operator's MPR from \$14.31 to \$14.20. Because Operator's actual CPST rate of \$14.31, effective July 1, 1995 through March 31, 1996, exceeds its revised MPR, we find Operator's actual CPST rate of \$14.31, effective July 1, 1995 through March 31, 1996, to be unreasonable. Upon review of Operator's FCC Form 1240 for the projected period April 1, 1996 through March 31, 1997, we made adjustments to coincide with the prior revised FCC Form 1210. We also adjusted Worksheet 8 (True-Up Rate Charged), to reflect the actual rate charged during the true-up period. Our adjustments reduced Operator's MPR from \$15.34 to \$15.20. Because Operator's actual CPST rate of \$15.25 exceeds its MPR, we find Operator's actual CPST rate of \$15.25, effective April 1, 1996 through March 31, 1997, to be unreasonable.<sup>17</sup>

7. Upon review of Operator's FCC Form 1240 for the projected period April 1, 1997 through March 31, 1998, we made adjustments to coincide with the prior revised FCC Form 1240. We adjusted Worksheet 8 to reflect the actual rate charged during the true-up period. We also adjusted Operator's Line C3 (Current FCC Inflation Factor) to 1.0177.<sup>18</sup> Our adjustments reduced Operator's MPR from \$17.11 to \$16.80. Because Operator's actual CPST rate of \$16.95 exceeds its revised MPR, we find Operator's actual CPST rate of \$16.95, 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 adjusted Worksheet 8 to reflect the actual rate charged during the true-up period. We also adjusted Operator's Line C5 (Current FCC Inflation Factor) to 1.0082. Our adjustments reduced Operator's MPR from \$18.56 to \$17.92. Because Operator's actual CPST rate of \$18.55 exceeds its revised MPR we find Operator's actual CPST rate of \$18.55, effective April 1, 1998 through March 31, 1999, to be unreasonable.

8. 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 franchise area referenced above, effective February 15, 1995 through March 31, 1999, ARE UNREASONABLE .

9. 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 \$12.50 per month (plus franchise fees), plus interest to the date of the refund, for the period March 10, 1995 (the date of the first valid complaint) through March 31, 1995.

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Washington, DC 20036, or by calling (202) 857-3800.

<sup>17</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.

<sup>18</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).

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 \$13.73 per month (plus franchise fees), plus interest to the date of the refund, for the period April 1, 1995 through June 30, 1995.

11. 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 \$16.80 per month (plus franchise fees), plus interest to the date of the refund, for the period October 1, 1997 through March 31, 1998.

12. 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 \$17.92 per month (plus franchise fees), plus interest to the date of the refund, for the period April 1, 1998 through March 31, 1999.

13. 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.

14. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 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