

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

In the Matter of) CUID No. SC0140 (Goose Creek)
)
Comcast Cablevision of Carolina, Inc.)
)
Complaint Regarding)
Cable Programming Services Tier Rates)

ORDER

Adopted: June 14, 2000

Released: June 16, 2000

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

1. In this Order we consider a complaint against the rate charged by the above-referenced operator ("Operator") for its cable programming services tier ("CPST") in the community referenced above. On December 14, 1993, the local franchise authority ("LFA") for the above-referenced community filed a complaint with the Federal Communications Commission ("Commission") against Operator's September 1, 1993 CPST rate. This Order addresses only the reasonableness of Operator's CPST rates beginning December 14, 1993, the date of the first valid complaint.

2. Under the Communications Act,¹ the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. At the time the complaint was filed, the Cable Television Consumer Protection and Competition Act of 1992² ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or LFA. The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.³ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.⁴

3. Operators with complete and timely CPST complaints filed against them prior to May 15, 1994 must demonstrate that their CPST rates were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their CPST rates were in compliance with the revised rules from May 15, 1994 forward. Operators attempting to justify CPST rates for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393. To justify rates for the period beginning May 15, 1994, operators must use the FCC Form 1200 series.⁵ Operators

¹ Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c) (1996).

² Pub. L. No. 102-385, 106 Stat. 1460 (1992).

³ See Section 76.956 of the Commission's Rules, 47 C.F.R. § 76.956.

⁴ See Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957.

⁵ See Section 76.922 of the Commission's Rules, 47 C.F.R. §76.922.

are permitted to make changes to their rates on a quarterly basis using FCC Form 1210.⁶ Operators may adjust their rates on an annual basis using FCC Form 1240.⁷

4. Upon review of Operator's FCC Form 393, we find Operator's calculated maximum permitted rate ("MPR") of \$17.82 to be reasonable. Because Operator's actual CPST rate of \$17.82, effective December 14, 1993 through May 14, 1994, does not exceed its MPR, we find Operator's actual CPST rate of \$17.82, effective December 14, 1993 through May 14, 1994, to be reasonable.⁸ Upon review of Operator's FCC Form 1200, we find Operator's calculated MPR of \$16.95 to be reasonable. Because Operator's actual CPST rate of \$17.82, effective May 15, 1994 through September 30, 1994, exceeds its MPR, we find Operator's actual CPST rate of \$17.82, effective May 15, 1994 through September 30, 1994, to be unreasonable.⁹

5. Upon review of Operator's FCC Form 1210 covering the period April 1, 1994 through September 30, 1994, we find Operator's calculated MPR of \$17.34 to be reasonable. Because Operator's actual CPST rate of \$17.82, effective October 1, 1994 through December 31, 1994, exceeds its MPR, we find Operator's actual CPST rate of \$17.82, effective October 1, 1994 through December 31, 1994, to be unreasonable. Upon review of Operator's FCC Form 1210 covering the period October 1, 1994 through December 31, 1994, we find Operator's calculated MPR of \$17.73 to be reasonable. Because Operator's actual CPST rate of \$17.82, effective January 1, 1995 through January 31, 1995, exceeds its MPR, we find Operator's actual CPST rate of \$17.82, effective January 1, 1995 through January 31, 1995, to be unreasonable. Upon review of Operator's FCC Form 1210 addendum, filed to justify a CPST rate increase based on the addition of two channels, effective February 1, 1995, we find Operator's actual CPST rate of \$18.21, effective February 1, 1995, to be reasonable.

6. 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 \$17.82, charged by Operator in the community referenced above, effective December 14, 1993 through May 14, 1994, IS REASONABLE.

7. 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 \$17.82, charged by Operator in the community referenced above, effective May 15, 1994 through January 31, 1995, IS UNREASONABLE.

⁶ *Id.*

⁷ *Id.*

⁸ These findings are 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.

⁹ 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.

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 \$18.21, charged by Operator in the community referenced above, effective February 1, 1995, IS REASONABLE.

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 \$16.95 month (plus franchise fees), plus interest to the date of the refund, for the period May 15, 1994 through September 30, 1994.

10. 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 \$17.34 per month (plus franchise fees), plus interest to the date of the refund, for the period October 1, 1994 through December 31, 1994.

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 \$17.73 per month (plus franchise fees), plus interest to the date of the refund, for the period January 1, 1995 through January 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 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 Commission approval of the plan.

13. 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