

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

In the Matter of)
)
US Cable of Lake County) CUID No. TX0125 (Seminole)
d/b/a US Cable of West Texas)
)
Petition for Reconsideration)

ORDER ON RECONSIDERATION

Adopted: April 19, 2000

Released: April 20, 2000

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") filed by the above-referenced operator ("Operator") of our Order, DA 97-1850 ("Prior Order")¹ which granted a complaint filed against the rates charged by Operator for its cable programming services tier ("CPST") in the community referenced above. On September 26, 1997, Operator filed its Petition along with a refund plan ("Refund Plan"). In this Order, we grant Operator's Petition in part and dismiss the Refund Plan as moot.

2. Under the Communications Act,² 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 1992³ ("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 Telecommunications Act of 1996 ("1996 Act")⁴ and our rules implementing the legislation ("Interim Rules"),⁵ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint.⁶ The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁷ The Operator has the burden of

¹ See In the Matter of US Cable of Lake County d/b/a US Cable of West Texas, DA 97-1850, 12 FCC Rcd 23590 (1997).

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

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁴ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

⁶ See Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c) (1996).

⁷ See Section 76.956 of the Commission's Rules, 47 C.F.R. §76.956.

demonstrating that the CPST rates complained about are reasonable.⁸ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.⁹

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹⁰ Cable operators may also justify rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.¹¹ 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.¹² Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹³

4. In its Petition, Operator raises several issues, only one of which is addressed herein. Operator points out that a clerical mistake was made in reviewing Operator's FCC Form 1200 in that the Bureau failed to consider an amended FCC Form 1200 which was timely filed with the Bureau. We agree that Operator did timely file an amended FCC Form 1200. Upon review of the amended FCC Form 1200, we find that Operator has correctly calculated its maximum permitted rate ("MPR") of \$10.71. Therefore, we will grant Operator's Petition in part. Our adjustment to Operator's MPR resulted in a recalculation of Operator's overcharges for the periods under review.¹⁴ Because Operator's actual CPST rate of \$11.49, effective November 22, 1993 through July 31, 1994, exceeds its MPRs, we find Operator's actual CPST rate of \$11.49, effective November 22, 1993 through July 31, 1994, to be unreasonable.¹⁵ However, we find the total overcharges for the periods under review to be *de minimis*, and it would not be in the public interest to order a refund.¹⁶ We find Operator's actual CPST rate of \$10.66, effective August 1, 1994, to be reasonable. Because our resolution of this issue disposes of Operator's refund liability, we decline to address any other issue raised by Operator in its Petition. Operator's Refund Plan is dismissed as moot.

⁸ *Id.*

⁹ See Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957.

¹⁰ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ The first review period covers from November 22, 1993, the date the first valid complaint was received by the Federal Communications Commission, through July 14, 1994, the end of the deferral period. See Prior Order at ¶ 5. The second period covers from July 15, 1994 through July 31, 1994.

¹⁵ 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.

¹⁶ We have previously found that it would not be in the public interest to order a refund when an operator's total overcharges are *de minimis*. See, for example, In the Matter of Concord TV Cable, DA 99-2447, 14 FCC Rcd 18968 (1999).

5. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. §1.106, that Operator's Petition for Reconsideration IS GRANTED TO THE EXTENT INDICATED HEREIN.

6. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that In the Matter of US Cable of Lake County d/b/a Us Cable of West Texas, 12 FCC Rcd 23704 (1997) IS VACATED TO THE EXTENT INDICATED HEREIN.

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that Operator's Refund Plan IS DISMISSED AS MOOT.

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 \$11.49, charged by Operator in the franchise area referenced above, effective November 22, 1993 through July 31, 1994, 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 \$10.66, charged by Operator in the franchise area referenced above, effective August 1, 1994, IS REASONABLE.

10. 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 CPST rates charged by Operator in the community referenced above IS GRANTED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau