

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

In the Matter of)	
)	
Suburban Cable TV, Inc.)	CUID No. NJ0598 (Fairfield Township)
)	
Complaints Regarding Cable Programming)	
Services Tier Rates)	

ORDER

Adopted: July 26, 2001

Released: July 30, 2001

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

1. In this Order we consider complaints filed against the rates charged by the above-referenced operator ("Operator")¹ for its cable programming services tier ("CPST") in the community referenced above. On December 5, 1994, complaints were filed by the local franchising authority ("LFA") with the Federal Communications Commission ("Commission") against Operator's alleged November 14, 1994 CPST rate increase. On January 23, 1998, Operator filed a request to dismiss these complaints. On March 20, 1995, the Commission received a subscriber complaint against Operator's March 1, 1995 CPST rate increase. In this Order we dismiss the LFA's complaints for being untimely filed and we address the reasonableness of Operator's CPST rates beginning March 1, 1995.

2. At the time the above-referenced complaints were filed, the Commission was authorized under the Communications Act,² to review the CPST rates of cable systems not subject to effective competition upon the filing of a valid complaint. The December 5, 1994 complaints were filed against an alleged November 14, 1994 rate increase. At the time the complaints were filed, Section 623 (c) (3) of the Communications Act required that complaints be filed within "a reasonable period of time" following a change in rates.³ We determined that "a reasonable period of time" is 45 days.⁴ An LFA must file a complaint within 45 days of the date the rate increase becomes effective. Our review of the record indicates that no rate increase took effect between September 1, 1993 and March 1, 1995. Therefore, the December 5, 1994 complaints were not timely filed with the Commission and will be dismissed.

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁵ Operators may file a FCC Form 1210 to justify quarterly rate increases based on the

¹ The term "Operator" includes Operator's successors and predecessors in interest.

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

³ 47 U.S.C. §543 (c) (3) (1995).

⁴ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, 9 FCC Rcd 1164 at n.314 (1994).

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

addition and deletion of channels, changes in certain external costs and inflation.⁶ 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.⁷ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.⁸

4. Upon review of Operator's FCC Form 1200, we find Operator's calculated maximum permitted rate ("MPR") of \$12.57 to be reasonable. Upon review of Operator's FCC Form 1210 covering the period April 1, 1994 through December 31, 1994, we adjusted Line C14 (Previous External Costs per Tier per Subscriber) to match with Line B13 (Average External Costs per Subscriber per Tier on 3/31/94) of Operator's FCC Form 1200 in accordance with our FCC Form 1210 Instructions. We also adjusted the Inflation Adjustment Factor at Lines I5 and J5 to 1.0215 rather than 1.0251 because Operator, as a full reduction operator, was only entitled to recover 2.15% inflation between October 1, 1994 and August 31, 1995 for the October 1, 1993 to June 30, 1994 inflation period, pursuant to the Ninth Reconsideration Order.⁹ We also disallowed Operator's \$0.28 adjustment on Line G7 (Per Channel Adjustment per Tier) under the "markup method" because Operator elected the "CAPS method" by claiming \$1.20 for six channels that Operator added.¹⁰ Our adjustments reduced Operator's calculated MPR from \$16.42 to \$15.81. Because Operator's actual CPST rate of \$17.16 exceeds its revised MPR, we find Operator's actual CPST rate of \$17.16, effective March 1, 1995 through June 30, 1995, to be unreasonable.¹¹

5. Upon review of Operator's FCC Form 1210 covering the period January 1, 1995 through June 30, 1995, we adjusted Line A2 (Permitted Charge) to match the MPR from the prior revised FCC Form 1210 in accordance with our FCC Form 1210 Instructions. Our adjustment reduced Operator's calculated MPR from \$16.76 to \$16.14. Because Operator's actual CPST rate of \$17.16 exceeds its

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 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, 11 FCC Rcd 1151 at ¶ 12 (1996) ("Ninth Reconsideration Order").

¹⁰ 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).

¹¹ 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. Information regarding the specific adjustments made to Operator's FCC Forms can be found in the public files for the above-referenced community which are available in the Cable Services Bureau's public reference room, or through the Commission's copy contractor, International Transcription Services (ITS), 1231 20th Street N.W., Washington, DC, 20036, or by calling ITS at (202) 857- 3800.

revised MPR, we find Operator's actual CPST rate of \$17.16, effective July 1, 1995 through November 30, 1997 to be unreasonable. Upon review of Operator's FCC Form 1240 for the projected period December 1, 1997 through November 30, 1998,¹² we adjusted Line A1 (Current Maximum Permitted Rate) to match the MPR from Operator's previous revised FCC Form 1210 in accordance with our FCC Form 1240 Instructions. We also adjusted the Inflation Factors at Worksheet 1 (True-Up Period Inflation) which adjusted Line C3 (Inflation Factor for True- Up Period 1) and Line C4 (Inflation Factor for True-Up Period 2). We adjusted Line C5 (Current FCC Inflation Factor) to 1.0143.¹³ Our adjustments resulted in a revised MPR of \$17.28. Because Operator's actual CPST rate of \$18.25 exceeds its revised MPR, we find Operator's actual CPST rate of \$18.25, effective December 1, 1997 through November 30, 1998, to be unreasonable. Upon review of Operator's FCC Form 1240 for the projected period December 1, 1998 through November 30, 1999,¹⁴ we made adjustments based on the previous revised FCC Form 1240, which resulted in a revised MPR of \$18.96. Because Operator's actual CPST rate of \$18.93 does not exceed its revised MPR, we find Operator's actual CPST rate of \$18.93, effective December 1, 1998, 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 \$17.16, charged by the Operator in the community referenced above, effective March 1, 1995 through November 30, 1997, IS UNREASONABLE.

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 \$18.25, charged by the Operator in the community referenced above, effective December 1, 1997 through November 30, 1998, IS UNREASONABLE.

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 community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$15.81 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning March 20, 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 community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$17.28 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning June 1, 1998 through November 30, 1998.

10. 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

¹² Operator's True-Up Period covered July 1, 1995 through May 31, 1997.

¹³ In accordance with the FCC Form 1240 Instructions, we used the most recent Inflation Adjustment Factors released by the Cable Services Bureau for the relevant time periods. *See* Public Notice, DA 01-1577 (released July 3, 2001).

¹⁴ Operator's True-Up Period covered June 1, 1997 through May 31, 1998.

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.

11. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that the December 5, 1994 complaints referenced herein against the rates charged by Operator in the community referenced above, ARE DISMISSED.

12. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the March 20, 1995 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