

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

In the Matter of)
)
Suburban Cable TV, Inc.) CUID No. NJ0515 (Harrison 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 September 13, 1999, Operator filed a request to dismiss these complaints. On March 24, 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

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).

May 15, 1994.⁵ Operators may file a FCC Form 1210 to justify quarterly rate increases based on the 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 \$13.02 to be reasonable. 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 \$14.93 to be reasonable. Because Operator added six channels prior to its March 1, 1995 CPST rate increase, we will allow Operator to include its \$1.26 for 6 CAPS channels plus license fees, resulting in an MPR of \$16.19, effective March 1, 1995. Because Operator's actual CPST rate of \$17.25 exceeds its revised MPR, we find Operator's actual CPST rate of \$17.25, effective March 1, 1995 through June 30, 1995, to be unreasonable.⁹

5. 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 \$16.14 to be reasonable. Because Operator's actual CPST rate of \$17.25 exceeds its revised MPR, we find Operator's actual CPST rate of \$17.25, 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, 1998,¹⁰ we adjusted Line C5 (Current FCC Inflation Factor) to 1.0143.¹¹ Our adjustment resulted in a revised MPR of \$18.12. 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

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 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.

¹⁰ Operator's True-Up Period covered July 1, 1995 through May 31, 1997.

¹¹ Operator's FCC Form 1240 was dated July 15, 1999, after the Cable Service Bureau released the Inflation Adjustment Factor of 1.0143 for the fourth quarter of 1997. See Public Notice, DA 99-1272, 14 FCC Rcd 10490 (released June 29, 1999).

Operator's FCC Form 1240 for the projected period December 1, 1998 through November 30, 1999,¹² we made adjustments based on the previous revised FCC Form 1240 and we adjusted Line C5 (Current FCC Inflation Factor) to 1.0078,¹³ which resulted in a revised MPR of \$19.04. 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 \$17.25, 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 \$16.19 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning March 24, 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 \$18.12 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 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 24, 1995 complaint referenced herein against the rates charged by Operator in the community referenced above, IS GRANTED.

¹² Operator's True-Up Period covered June 1, 1997 through May 31, 1998.

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 period. *See* Public Notice, DA 01-1577 (released July 3, 2001).

FEDERAL COMMUNICATIONS COMMISSION

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