

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

In the Matter of)
)
Bresnan Communications Company) CUID No. GA0843 (Riceboro)
)
Complaint Regarding Cable Programming)
Services Tier Rates)

ORDER

Adopted: September 12, 2001

Released: September 14, 2001

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

1. In this Order we consider a complaint filed against the October 1, 1995 rate increase by the above-referenced operator ("Operator")¹ for its cable programming services tier ("CPST") in the community referenced above. This Order addresses only the reasonableness of Operator's CPST rates beginning October 25, 1995, the date the complaint was filed with the Federal Communications Commission ("Commission").

2. Under the Communications Act,² at the time the referenced complaint was filed, the Commission was 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 filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁴ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁵ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.⁶

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁷ Cable operators may justify rate increases on a quarterly basis using FCC Form 1210,

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

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

⁵ *Id.*

⁶ See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

⁷ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

based on the addition and deletion of channels, changes in certain external costs and inflation.⁸ 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.⁹ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁰

4. Upon review of Operator's FCC Form 1200, we find Operator's calculated maximum permitted rate ("MPR") of \$3.11 for its CPST-1 and \$10.43 for its CPST-2 to be reasonable. In its first FCC Form 1210, covering the period April 1, 1994 through June 30, 1994, Operator claims to have collapsed its two CPST tiers into one and sought to justify the rate for its remaining CPST by combining its calculated rates for both tiers. Upon review, we requested that Operator provide additional information on the FCC Form 1210, to reflect the actual channel movement that occurred when Operator created a single CPST. Operator filed this information under protest, stating that it adjusted its rates in 1994 using the best information available at that time.¹¹ However, our review reveals that the CPST-1, which had three channels, was not collapsed into the CPST-2. Rather, two of the channels were dropped and the third channel was moved to the basic services tier ("BST"). The original CPST-2, which had 10 channels, remained at 10 channels, although Operator substituted two new channels for two existing channels that were moved to the BST. Based on the revised FCC Form 1210 information provided by Operator, we find that Operator justified an MPR of \$11.21 for the remaining CPST, effective July 1, 1994.

5. Upon review of Operator's FCC Form 1210, covering the period July 1, 1994 through December 31, 1994, we adjusted the Line A2 (Previous Full Reduction Rate) to coincide with Operator's previous revised FCC Form 1210. Our adjustment reduced Operator's MPR from \$14.58 to \$11.58, effective January 1, 1995. Upon review of Operator's FCC Form 1210, covering the period January 1, 1995 through March 31, 1995, we adjusted the Line A2 (Previous Full Reduction Rate) to coincide with Operator's previous revised FCC Form 1210. Our adjustment reduced Operator's MPR from \$14.57 to \$11.57, effective April 1, 1995. Upon review of Operator's FCC Form 1210, covering the period April 1, 1995 through June 30, 1995, we adjusted the Line A2 (Previous Full Reduction Rate) to coincide with Operator's previous revised FCC Form 1210. Our adjustment reduced Operator's MPR from \$14.95 to \$11.87, effective July 1, 1995 through March 31, 1996. Because Operator's actual CPST rate of \$14.95, effective October 25, 1995 through March 31, 1996, exceeds its revised MPR, we find Operator's actual CPST rate of \$14.95, effective October 25, 1995 through March 31, 1996, to be unreasonable.¹²

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See letter dated October 22, 1999 from Daniel J. White, Director of Operations Analysis, Bresnan Communications.

¹² 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,

6. Upon review of Operator's FCC Form 1240 for the projected period April 1, 1996 through March 31, 1997, we adjusted Line A1 (Current Maximum Permitted Rate) to coincide with 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 1.0222.¹³ Our adjustments reduced Operator's MPR to \$10.73, effective April 1, 1996 through December 31, 1996. From January 1, 1997 through March 31, 1997, Operator's MPR increased to \$13.41, a total of \$10.73 plus a network upgrade amount of \$2.68, calculated by Operator on its FCC Form 1235. Because Operator's actual CPST rate of \$16.32, effective April 1, 1996 through March 31, 1997, exceeds its revised MPRs, we find Operator's actual CPST rate of \$16.32, effective April 1, 1996 through March 31, 1997, to be unreasonable. Upon review of Operator's FCC Form 1240 for the projected period April 1, 1997 through March 31, 1998, we adjusted Line A1 (Current Maximum Permitted Rate) to coincide with Operator's previous revised FCC Form 1240. We also adjusted Line C3 (Inflation Factor for True-Up Period 1) and Line C5 (Current FCC Inflation Factor). We adjusted worksheet 8 to reflect the actual CPST rates charged by Operator during its true-up period. Our adjustments reduced Operator's MPR to \$8.68, which, when added to the network upgrade amount of \$2.68, resulted in a total MPR of \$11.36, effective April 1, 1997 through March 31, 1998. Because Operator's actual CPST rate of \$17.47, effective April 1, 1997 through March 31, 1998, exceeds its revised MPR, we find Operator's actual CPST rate of \$17.47, effective April 1, 1997 through March 31, 1998, to be unreasonable.

7. Upon review of Operator's FCC Form 1240 for the projected period April 1, 1998 through March 31, 1999, we adjusted Line A1 (Current Maximum Permitted Rate) to coincide with Operator's previous revised FCC Form 1240. We also adjusted Line C3 (Inflation Factor for True-Up Period 1) and Line C5 (Current FCC Inflation Factor). Our adjustments reduced Operator's MPR to \$11.15, which, when added to the network upgrade amount of \$2.68, resulted in a total MPR of \$13.83, effective April 1, 1998 through March 31, 1999. Because Operator's actual CPST rate of \$19.74, effective April 1, 1998 through March 31, 1999, exceeds its revised MPR, we find Operator's actual CPST rate of \$19.74, 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 the Operator in the community referenced above, effective October 25, 1995 through March 31, 1999, ARE UNREASONABLE.

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 \$11.36 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning December 1, 1997 through March 31,

International Transcription Services (ITS), 1231 20th Street N.W., Washington, DC, 20036, or by calling ITS at (202) 857- 3800.

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).

1998.

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 community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$13.83 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning April 1, 1998 through March 31, 1999.

11. 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.

12. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that the October 25, 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