

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

In the Matter of)	
)	
Bresnan Communications Company)	CUID No. MN0001 (Marshall)
)	
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 February 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 March 7, 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 1200,¹¹ we adjusted Line G2 (Monthly Charge per Tier as of 9/30/92) from \$9.68 to \$9.10 based on the rate card provided by Operator for that time period. We also adjusted Line G6 to zero because the rate of \$9.10 did not include franchise fees. Our adjustment reduced Operator's maximum permitted rate ("MPR") from Operator's calculated MPR of \$13.23 to \$12.90. Upon review of Operator's FCC Form 1210 covering the period July 1, 1994 through December 31, 1994, we adjusted Line A1 (Previous Transition Rate) and Line A2 (Previous Full Reduction Rate) to coincide with Operator's revised FCC Form 1200. Our adjustments reduced Operator's MPR from \$13.49 to \$13.16. On February 6, 1995, Operator added six channels under our CAPS methodology, raising its MPR to \$14.66. Because Operator's actual CPST rate of \$15.09, effective March 7, 1995 through March 31, 1995, exceeds its revised MPR of \$14.66, we find Operator's actual CPST rate of \$15.09, effective March 7, 1995 through March 31, 1995, to be unreasonable.¹²

5. Upon review of Operator's FCC Form 1210 covering the period January 1, 1995 through March 31, 1995, we adjusted Line A2 to coincide with the previous revised FCC Form 1210. Our adjustment reduced Operator's MPR from \$15.09 to \$14.75. Because Operator's actual CPST rate of \$15.09, effective April 1, 1995 through June 30, 1995, exceeds its revised MPR of \$14.75, we find Operator's actual CPST rate of \$15.09, effective April 1, 1995 through June 30, 1995, to be unreasonable. Upon review of Operator's FCC Form 1210 covering the period April 1, 1995 through June 30, 1995, we

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ In response to the complaint, Operator requested that we review only the increase for the channels added on February 1, 1995. Operator claimed that the previous rate was not regulated, and Operator should be treated as an unregulated operator. (*See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration, MM Docket No. 92-266, 11 FCC Rcd 388 (1996) ("Thirteenth Reconsideration Order")). However, the Thirteenth Reconsideration Order applies only when an operator is responding to a complaint filed after November 6, 1995. The instant complaint was filed on March 7, 1995.

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

adjusted Line A2 to coincide with the previous revised FCC Form 1210. Despite our adjustment, we find Operator's actual CPST rate of \$15.09, effective July 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 \$15.09, charged by the Operator in the community referenced above, effective March 7, 1995 through June 30, 1995, 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 \$15.09, charged by the Operator in the community referenced above, effective July 1, 1995, IS REASONABLE.

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 \$14.66 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning March 7, 1995 through March 31, 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 \$14.75 per month (plus franchise fees), plus interest to the date of the refund, for the period beginning April 1, 1995 through June 30, 1995.

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 March 7, 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