

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

In the Matter of	)	
	)	
TKR Cable Company	)	CUID Nos. NY0449 (Clarkstown)
	)	NJ0489 (Montvale)
Petition for Reconsideration	)	

**ORDER ON RECONSIDERATION**

**Adopted: September 13, 2001**

**Released: September 14, 2001**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 96-226 ("Prior Order"),<sup>1</sup> filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator"). Operator filed its Petition on April 19, 1996 along with a petition for stay. We granted the stay by Order, DA 96-802.<sup>2</sup> Our Prior Order resolved all pending complaints against Operator's CPST rates in the above-referenced communities through May 14, 1994, and found Operator's cable programming services tier ("CPST") rates to be unreasonable. In this Order, we grant Operator's Petition in part, amend our Prior Order, vacate the stay and review Operator's CPST rates beginning May 15, 1994.

2. Under the Communications Act,<sup>3</sup> at the time the referenced complaints were 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 1992<sup>4</sup> ("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.<sup>5</sup> The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.<sup>6</sup> If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>7</sup>

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning

<sup>1</sup> In the Matter of TKR Cable Company, DA 96-226, 11 FCC Rcd 3498 (1996).

<sup>2</sup> In the Matter of TKR Cable Company d/b/a TKR Cable Co. of Rockland, DA 96-802, 11 FCC Rcd 19207 (1996).

<sup>3</sup> Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

<sup>4</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>5</sup> See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

<sup>6</sup> *Id.*

<sup>7</sup> See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

May 15, 1994.<sup>8</sup> Cable operators may justify rate increases on a quarterly basis using FCC Form 1210, based on the addition and deletion of channels, changes in certain external costs and inflation.<sup>9</sup> 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.<sup>10</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>11</sup>

4. In its Petition, Operator raises several issues, only one of which is addressed herein. In our Prior Order, we reduced the number of regulated channels on Operator's CPST because two channels carried identical programming according to Operator's channel line-up card. In its Petition, Operator argues that this was a clerical error because the channel line-up card was printed prior to a determination concerning the programming on the two channels. Operator provides evidence that the two channels actually carried different programming during the time period under review. We find Operator's argument to be compelling and will grant that part of Operator's Petition. 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 and we will amend our Prior Order to exclude any refund liability.

5. Upon review of Operator's FCC Form 1200, FCC Form 1210s covering the time periods from April 1, 1994 through December 31, 1994, and Operator's FCC Form 1240 for the projected period beginning May 1, 1996, we find that Operator's has incurred no additional refund liability for overcharges on its CPST beginning May 15, 1994.

6. 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.

7. 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 TKR Cable Company, DA 96-226, 11 FCC Rcd 3498 (1996) IS AMENDED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the stay, granted in the Matter of TKR Cable Company d/b/a TKR Cable Co. of Rockland, DA 96-802, 11 FCC Rcd 19207 (1996), IS VACATED.

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<sup>8</sup> See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

9. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the CPST rates charged by Operator in the communities referenced above, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief  
Cable Services Bureau