

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

In the Matter of	)	
	)	
Liberty Lake II, Inc.	)	CUID No. IL0001 (Waukegan)
	)	
Petition for Reconsideration	)	

**ORDER ON RECONSIDERATION**

**Adopted: November 9, 2001**

**Released: November 14, 2001**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 97-2339 ("Prior Order"),<sup>1</sup> filed with the Federal Communications Commission ("Commission") on December 10, 1997 by the above-referenced operator ("Operator"). Our Prior Order resolved a complaint filed against Operator's cable programming service tier ("CPST") rates. In this Order, we reconsider and amend our Prior Order and dismiss Operator's Petition as moot.

2. Under the Communications Act,<sup>2</sup> the Commission was authorized, at the time the referenced complaint was filed, 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>3</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 Telecommunications Act of 1996 ("1996 Act")<sup>4</sup> and our rules implementing the legislation ("Interim Rules"),<sup>5</sup> required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint.<sup>6</sup> The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.<sup>7</sup> The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.<sup>8</sup> If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>9</sup>

<sup>1</sup> In the Matter of Liberty Lake II, Inc., DA 97-2339, 12 FCC Rcd 18162 (1997).

<sup>2</sup> Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

<sup>3</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>4</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>5</sup> See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

<sup>6</sup> See Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c) (1996).

<sup>7</sup> See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

<sup>8</sup> *Id.*

<sup>9</sup> See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.<sup>10</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>11</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>12</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>13</sup>

4. In response to Operator's Petition, we reviewed our Prior Order and the record and found that a single complaint was filed against Operator's CPST rates on January 7, 1994. We found that Operator justified its actual CPST rate beginning July 14, 1994. We also found that the total overcharges prior to that date were *de minimis* and it would not be in the public interest to order a refund for that period. As there were no valid complaints received against Operator's CPST rates in effect after July 14, 1994, we will, on our own motion, amend our Prior Order to exclude the finding of any refund liability for that period, without addressing the merits of Operator's arguments in the Petition. Because our review results in a finding of no refund liability, we will dismiss Operator's Petition as moot.

5. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that In the Matter of Liberty Lake II, Inc., DA 97-2339, 12 FCC Rcd 18162 (1997) IS AMENDED TO THE EXTENT INDICATED HEREIN.

6. IT IS FURTHER ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's petition for reconsideration IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief  
Cable Services Bureau

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<sup>10</sup> See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

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

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*