

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

In the Matter of)
)
Cox Communications, Inc.) CUID No. VA0074 (City of Williamsburg)
)
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 97-1127 ("Prior Order")¹. In our Prior Order, we resolved a complaint against the above-referenced operator's ("Operator's")² January 1, 1997 rate increase for the cable programming services tier ("CPST") in the above- referenced community. Operator filed a petition for stay as well as a refund plan in response to our Prior Order. In this Order, we grant Operator's Petition in part, amend our Prior Order and dismiss Operator's petition for stay and refund plan as moot.

2. Under the Communications Act,³ at the time the referenced complaints were filed, the Federal Communications Commission ("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 1992⁴ ("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")⁵ and our rules implementing the legislation ("Interim Rules"),⁶ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint.⁷ The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its

¹ In the Matter of Cox Communications, Inc. DA 97-1127, 12 FCC Rcd 23345 (1997).

² The term "Operator" includes Operator's successors and predecessors in interest.

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

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ *See* Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

⁷ *See* Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c) (1996).

CPST rates.⁸ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁹ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁰

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹¹ 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.¹² 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.¹³ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁴

4. In its Petition, Operator raises several issues. Operator argues that the Commission erred by not allowing Operator to include an unclaimed inflation factor in its 1996 FCC Form 1240 filing and by miscalculating Operator's external costs.¹⁵ Upon review, we find that these were inadvertent clerical errors and find Operator's arguments to be compelling. Our further review reveals that the total overcharges per subscriber for the period addressed in our Prior Order are *de minimis* and it would not be in the public interest to order a refund. Because our resolution of these issues 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. Therefore, we will grant Operator's Petition in part and dismiss Operator's petition for stay and refund plan as moot.

5. 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 IN PART TO THE EXTENT INDICATED HEREIN.

6. 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 Cox Communications, Inc. DA 97-1127, 12 FCC Rcd 23345 (1998), IS AMENDED TO THE EXTENT INDICATED HEREIN.

⁸ See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

⁹ *Id.*

¹⁰ See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

¹¹ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Operator included revised forms with its Petition, in conformance with our bifurcated methodology for treating the Time Warner Social Contract Dollar. See, for example, In the Matter of Time Warner Cable, 13 FCC Rcd 17319 (1998). This cable system was previously owned by Time Warner Cable and was included in the Social Contract for Time Warner, 11 FCC Rcd 2788 (1996).

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Operator's petition for stay and refund plan ARE DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau