

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

In the Matter of) CUID No. OK0050 (Clinton)
)
Marcus Cable Associates, LP)
)
Petition for Reconsideration)
and Complaint Regarding Cable Programming)
Services Tier Rates)

ORDER ON RECONSIDERATION
AND RATE ORDER

Adopted: November 9, 2001

Released: November 14, 2001

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a complaint against the rates charged by the above-referenced operator ("Operator") for its cable programming services tier ("CPST") in the community referenced above. We also consider a petition for reconsideration ("Petition") of our Order, DA 97-2427 ("Refund Plan Order"), filed with the Federal Communications Commission ("Commission") by Operator on December 19, 1997. In our Refund Plan Order, we did not accept a refund plan ("1995 Refund Plan") filed by Operator in response to our Order, DA 95-625 ("Prior Order"), which found Operator's CPST rates in the above-referenced community to be unreasonable, effective October 12, 1993 through May 14, 1994. Operator also filed revised refund plans ("1997 Refund Plans") with its Petition. In this Order we address Operator's Petition, the 1997 Refund Plans, and the reasonableness of Operator's CPST rates beginning May 15, 1994.

2. Under the Communications Act, the Commission is 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 ("1992 Cable Act"), and our rules in effect at the time the complaint was filed, 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"), and our rules implementing the legislation ("Interim Rules"), required that a complaint

1 In the Matter of Marcus Cable Associates, LP, DA 97-2427, 12 FCC Rcd 19526 (1997).

2 In the Matter of Sammons Communications, Inc., DA 95-625, 10 FCC Rcd 5147 (1995).

3 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).

against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁷ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁸

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁹ Cable operators may justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.¹⁰ 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.¹¹ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹²

4. Upon review of Operator's FCC Form 1200, we find Operator's calculated maximum permitted rate ("MPR") of \$8.75 to be reasonable. Because Operator's actual CPST rate of \$8.73 does not exceed its MPR, we find Operator's actual CPST rate of \$8.73 to be reasonable, effective May 15, 1994.¹³

5. In its Petition, Operator argues that it should have been allowed to raise the issue of inter-tier offsets for the first time when it filed its 1995 Refund Plan. Because we reject Operator's request for offsets on substantive grounds, we find the procedural argument to be moot and decline to address it. In its Petition, Operator argues that it should be permitted to offset its past CPST overcharges with its past basic

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

⁷ 47 C.F.R. §76.956.

⁸ 47 C.F.R. §76.957.

⁹ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 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 FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

service tier ("BST") undercharges. This is essentially the same argument advanced by Operator with its 1995 Refund Plan. The Commission has addressed the issue of inter-tier offsets in *Cencom Cable Income Partners ("Cencom")*.¹⁴ In *Cencom*, the Commission determined that such inter-tier offsets are "inconsistent with the Commission's conclusion in the [Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92-266, Report and Order and Further Notice of Proposed Rulemaking]¹⁵ that cable operators should not balance low BST rates with CPST rates that exceed the maximum permitted rate for the tier."¹⁶ Therefore, we will not allow Operator to offset its CPST overcharges with its BST undercharges and we will deny Operator's Petition.

6. Although Operator included two 1997 Refund Plans with its Petition, we review only the 1997 Refund Plan which did not include inter-tier offsets. Our review of Operator's 1997 Refund Plan reveals that Operator failed to calculate its interest properly. Therefore, we have calculated the total refund amount due from Operator to the CPST subscribers in the community referenced above. Our calculations take into account Operator's overcharges to subscribers for the period beginning October 12, 1993 (the date the first valid complaint was filed with the Commission) through May 14, 1994, including franchise fees and with interest calculated through November 30, 2001. Our calculations result in a total refund liability of \$3,052.81. We will order Operator to refund this amount, plus any additional interest accrued to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

7. 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 \$8.73, charged by Operator in the community referenced above, effective May 15, 1994, IS REASONABLE.

8. 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 of Marcus Cable Associates, LP, DA 97-2427, 12 FCC Rcd 19526 (1997) IS DENIED.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. § 0.321 and § 76.962, that Operator's Refund Plans ARE NOT ACCEPTED.

10. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. § 0.321 and § 76.962, that Operator shall refund to subscribers in the franchise areas referenced above the total amount of \$3,052.81, plus interest accruing from November 30, 2001 to the date of refund, within 60 days of the release of this Order.

¹⁴ See *In the Matter of Cencom Cable Income Partners II, L.P.*, 12 FCC Rcd 7948 (1997).

¹⁵ 8 FCC Rcd 5631 (1993).

¹⁶ *Cencom* at ¶22 (footnote omitted).

11. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. §0.321 and §76.962, that Operator file a certificate of compliance with the Chief, Cable Services Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau