

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

In the Matter of )  
 ) CUID No. NY0794 (Orangetown)  
TKR Cable Company )  
 )  
Petition for Reconsideration )

**ORDER ON RECONSIDERATION**

**Adopted: November 16, 2001**

**Released: November 21, 2001**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 97-155 ("Prior Order"),<sup>1</sup> filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator") on February 24, 1997. Our Prior Order resolved all pending complaints against Operator's CPST rates in the above-referenced community beginning November 29, 1993 and found Operator's cable programming services tier ("CPST") rates to be unreasonable. In this Order, we grant Operator's Petition in part and amend our Prior Order.

2. Under the Communications Act,<sup>2</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>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 filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.<sup>4</sup> The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.<sup>5</sup> If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>6</sup>

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.<sup>7</sup> Cable operators may justify rate increases on a quarterly basis using FCC Form 1210,

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<sup>1</sup> In the Matter of TKR Cable Company, DA 97-155, 12 FCC Rcd 1009 (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> See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

<sup>5</sup> *Id.*

<sup>6</sup> See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

<sup>7</sup> 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.<sup>8</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>9</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>10</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.<sup>11</sup> 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. 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.

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 TKR Cable Company, DA 97-155, 12 FCC Rcd 1009 (1997) IS AMENDED 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 the complaints referenced herein against the CPST rates charged by Operator in the community referenced above, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief  
Cable Services Bureau

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

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

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

<sup>11</sup> We did not discuss this issue directly in our Prior Order, instead we referred to a previous Order, DA 96-266, in which we had already discussed this same system's rate filings. *See* In the Matter of TKR Cable Company, DA 96-266, 113498 (1996). That order was amended by TKR Cable Company, DA 01-2149 (released September 14, 2001).