

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

In the Matter of	)	
	)	
Insight Communications	)	CUID No. KY0427 (City of Shelbyville)
	)	
Complaint Regarding Cable Programming	)	
Services Tier Rates	)	

**ORDER**

**Adopted: March 26, 2001**

**Released: March 27, 2001**

By the Acting Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. In this Order we consider complaints filed against the rates charged by the above-referenced operator ("Operator")<sup>1</sup> for its cable programming services tier ("CPST") in the community referenced above.<sup>2</sup> On December 14, 1993, a complaint was filed by the local franchising authority ("LFA") with the Federal Communications Commission ("Commission") against Operator's September 1, 1993 CPST rate. On December 23, 1993, Operator filed a motion to dismiss the complaint. On December 29, 1993, the LFA filed an opposition to the motion. On September 27, 1994, the Commission received a second complaint from the LFA against Operator's alleged August 15, 1994 CPST rate increase. In response to the complaint, Operator filed a motion to dismiss on January 18, 1995. In this Order we deny Operator's motion to dismiss the December 14, 1993 complaint and grant Operator's motion to dismiss the September 27, 1994 complaint. We also address the reasonableness of Operator's CPST rates beginning December 14, 1993.

2. At the time the above-referenced complaints were filed, the Commission was authorized under the Communications Act,<sup>3</sup> to review the CPST rates of cable systems not subject to effective competition upon the filing of a valid complaint. In its motion to dismiss the December 14, 1993 complaint, Operator argues that the LFA failed to fill in line 8 (Previous Monthly Rate) of the FCC Form 329 and failed to attach a copy of a bill to the complaint. Because the LFA was complaining about the September 1, 1993 CPST rate and not a subsequent rate increase, filling in the Previous Monthly Rate on line 8 was not necessary. Also, because the LFA is not an individual subscriber, it did not need to include a copy of a bill. We will deny Operator's motion to dismiss the December 14, 1993 complaint. The second complaint was filed on September 27, 1994 against an alleged August 15, 1994 rate increase. At the time the complaint was filed, Section 623 (c) (3) of the Communications Act required that complaints be filed

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<sup>1</sup> The term "Operator" includes Operator's predecessors in interest.

<sup>2</sup> The complaints were filed using CUID No. KY0428. The correct CUID number for the City of Shelbyville is KY0427.

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

within "a reasonable period of time" following a change in rates.<sup>4</sup> We determined that "a reasonable period of time" is 45 days.<sup>5</sup> An LFA must file a complaint within 45 days of the date the rate increase becomes effective. Our review of the record indicates that no rate increase took effect between September 1, 1993 and October 1, 1994. Therefore, the September 27, 1994 complaint was not timely filed with the Commission and will be dismissed.

3. Operators with complete and timely CPST complaints filed against them prior to May 15, 1994 must demonstrate that their CPST rates were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their CPST rates were in compliance with the revised rules from May 15, 1994 forward. Operators attempting to justify CPST rates for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.<sup>6</sup> Operators may file a FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.<sup>7</sup>

4. Upon review of Operator's FCC Form 393, we find Operator's actual CPST rate of \$14.77, effective December 14, 1993 through July 14, 1994, to be reasonable. Upon review of Operator's FCC Form 1200, we find Operator's maximum permitted rate ("MPR") of \$14.65 to be reasonable. Because Operator's actual CPST rate of \$14.77 exceeds its MPR, we find Operator's actual CPST rate of \$14.77, effective July 15, 1994 through September 30, 1994, to be unreasonable. Because Operator elected to defer refund liability for overcharges associated with its FCC Form 1200, for the period May 15, 1994 through July 14, 1994, pursuant to the Commission's rules,<sup>8</sup> Operator's refund liability for the FCC Form 1200 does not begin until July 15, 1994. We determine that the total refund liability for the period from July 15, 1994 through September 30, 1994 is *de minimis*, and it would not be in the public interest to order a refund. Upon review of Operator's FCC Form 1210 covering the period July 1, 1994 through September 30, 1994, we find Operator's actual CPST rate effective October 1, 1994, to be reasonable.

5. 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 \$14.77, charged by the Operator in the community referenced above, effective December 14, 1993 through July 14, 1994, IS REASONABLE.

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<sup>4</sup> 47 U.S.C. §543 (c) (3) (1995).

<sup>5</sup> See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, 9 FCC Rcd 1164 at n.314 (1994).

<sup>6</sup> See Section 76.922 of the Commission's Rules, 47 C.F.R. §76.922.

<sup>7</sup> *Id.*

<sup>8</sup> See Letter dated June 13, 1994 from Trudi McCollum-Foushee, Vice President-Legal, Crown Media to the Federal Communications Commission. The Commission's rules provide for a refund liability deferral period beginning May 15, 1994 and ending July 14, 1994, if timely requested by Operator, for any overcharges resulting from Operator's calculation of a new MPR on the FCC Form 1200. See 47 C.F.R. §76.922(b)(6)(ii). However, Operator will incur refund liability between May 15, 1994 and ending July 14, 1994 for any CPST rates charged above the FCC Form 393 MPR approved by the Commission. 47 C.F.R. §76.922(b)(6)(ii).

6. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that the CPST rate of \$14.77, charged by the Operator in the community referenced above, effective July 15, 1994 through September 30, 1994, IS UNREASONABLE.

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that the CPST rate effective October 1, 1994, charged by the Operator in the community referenced above, IS REASONABLE.

8. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that the Operator's motion to dismiss the December 14, 1993 complaint IS DENIED and Operator's motion to dismiss the September 27, 1994 complaint IS GRANTED.

9. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that the December 14, 1993 complaint IS GRANTED TO THE EXTENT INDICATED HEREIN and the September 27, 1994 complaint IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen F. Costello, Acting Chief  
Financial Analysis and Compliance Division  
Cable Services Bureau