

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

In the Matter of	)	
	)	
Marcus Cable Associates, LP	)	CUID No. CA0189 (Whittier)
	)	
Petition for Reconsideration and Refund Plan	)	

**ORDER ON RECONSIDERATION  
AND REFUND PLAN ORDER**

**Adopted: April 4, 2001**

**Released: April 9, 2001**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for partial reconsideration ("Petition") of our Order, DA 98-2314 ("Prior Order"),<sup>1</sup> filed with the Federal Communications Commission ("Commission") on December 14, 1998 by the above-referenced operator ("Operator"). Our Prior Order resolved complaints against Operator's cable programming service tier ("CPST") rates in effect beginning May 15, 1994. On January 8, 1999, Operator filed a refund plan ("Refund Plan") in response to our Prior Order. In this Order, we grant Operator's Petition, modify our Prior Order and accept Operator's Refund Plan as modified herein.

2. Under the Communications Act,<sup>2</sup> the Federal Communications Commission ("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<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

<sup>1</sup> In the Matter of Marcus Cable Associates, LP, DA 98-2314, 13 FCC Rcd 22324 (1998).

<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.

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>

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 also 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 its Petition, Operator argues that it made a clerical mistake when filing its FCC Form 1210s. Operator mistakenly dated its FCC Form 1210s with the same beginning date on each form, leading the Cable Services Bureau staff to conclude that the most recent FCC Form 1210 filed superceded prior filings. Operator asserts that the clerical error resulted in excess refund liability being assessed from January 1, 1995 through March 31, 1995 because the specific FCC Form 1210 for that period was not separately reviewed. We find Operator's argument to be compelling and our review of the FCC Form 1210 in issue reveals that Operator has incurred no refund liability from January 1, 1995 through March 31, 1995. Therefore, we will modify our Prior Order accordingly.

5. Our review of Operator's Refund Plan reveals that the Refund Plan fulfills the requirements of the Prior Order, so long as Operator modifies its Refund Plan to exclude the refund calculations for January 1, 1995 through March 31, 1995, and provided Operator accrues refund interest up to the date of the refund. Except for these modifications, we accept Operator's Refund Plan as calculated by Operator.

6. 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 Partial Reconsideration IS GRANTED TO THE EXTENT INDICATED HEREIN.

7. IT IS FURTHER ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that In the Matter of Marcus Cable Associates, L.P., DA 98-2314, 13 FCC Rcd 22324 (1998) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, that Operator's Refund Plan IS APPROVED provided Operator modifies its refund plan to the extend indicated herein, and IT IS ORDERED, pursuant to Section 76.962 of the Commission's rules, 47 C.F.R. § 76.962, that Operator implement its refund plan within 60 days of the date of this Order

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

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

<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.*

9. IT IS FURTHER ORDERED, pursuant to Section 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 this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief  
Cable Services Bureau