

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

In the Matter of)	
)	
Marcus Cable Associates, LP)	CUID No. CA0180 (Glendale)
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: April 13, 2001

Released: April 17, 2001

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition I") of our Order, DA 97-2663 ("Third Order")¹, and a petition for partial reconsideration ("Petition II") of our Order, DA 98-2308 ("Fourth Order")² filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator"). Our Third Order resolved a complaint against Operator's June 1, 1997 cable programming services tier ("CPST") rate increase in the above-referenced community as well as a petition for reconsideration of our Order, DA 95-739 ("First Order")³, and rejected refund plans associated with our First Order and our Order, DA 97-983 ("Second Order")⁴. Our Fourth Order resolved a complaint against Operator's June 1, 1998 CPST rate increase in the above-referenced community. In this Order, we grant Operator's Petition I in part and modify our First and Second orders to exclude any refund liability for CPST overcharges in the above-referenced community⁵, because the local franchising authority ("LFA") for that community withdrew its complaints against the CPST rates for that time period and no other complaints were filed. We also dismiss Petition II because a review of Operator's Petition II would have no effect on Operator's refund liability and would encumber limited Commission resources.

¹ See In the Matter of Marcus Cable Associates, LP, DA 97-2663, 13 FCC Rcd 9012 (1998). Operator originally filed an application for review of this order but then requested that it be reviewed as a petition for reconsideration. See letter dated April 6, 2001 from Steven J. Horvitz, counsel for Operator.

² See In the Matter of Marcus Cable Associates, LP, DA 98-2308, 13 FCC Rcd 22314 (1998).

³ See In the Matter of Sammons Communications, Inc., DA 95-739, 10 FCC Rcd 10044 (1995). This order resolved complaints against Operator's CPST rates that were in effect from September 1, 1993 through May 14, 1994.

⁴ See In the Matter of Marcus Cable Associates, LP, DA 97-983, 12 FCC Rcd 23216 (1997). This order resolved complaints against Operator's CPST rates that were in effect from May 15, 1994 through May 31, 1997.

⁵ Our First Order resolved complaints against the CPST rates in both Glendale, CA (CUID No. CA0180) and Burbank, CA (CUID No. CA0178). Subsequent orders addressed only the CPST rates in Glendale. Therefore, our findings in this order and any previous orders, other than the First Order, do not pertain to Burbank, CA, CUID No. CA0178.

2. Under the Communications Act,⁶ 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. In the instant case, the LFA filed a complaint against Operator's September 1, 1993 CPST rate on October 18, 1993 and against Operator's July 14, 1994 CPST rate on August 4, 1994. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),⁷ in effect at the time the first two complaints were filed, required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or LFA. Subsequently, the LFA filed complaints against Operator's June 1, 1996⁸, June 1, 1997 and June 1, 1998 CPST rate increases. The Telecommunications Act of 1996 ("1996 Act"),⁹ and our rules implementing the legislation ("Interim Rules"),¹⁰ which were in effect at the time the subsequent complaints were filed, required that a complaint against the CPST rate be filed with the Commission by a local franchising authority ("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.¹¹ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.¹²

3. In our Third Order, we concluded that a valid subscriber complaint was filed on August 4, 1994, in addition to the LFA complaint filed on October 18, 1993, which was withdrawn. In its Petition I, Operator argues that the alleged subscriber complaint filed on August 4, 1994 was actually an LFA complaint and it was also withdrawn. Our review of the complaint reveals that it was filed by the LFA and not an individual subscriber. The LFA requested the withdrawal of all complaints filed through October 31, 1995. Because we do not find any evidence of a collusive agreement between the LFA and the Operator regarding forbearance from rate regulation, we will allow the withdrawal of both LFA complaints. Because we allow these complaints to be withdrawn, we will modify our First and Second Orders to exclude any refund liability for CPST overcharges in the above-referenced community. We will also modify our Third Order to reflect that change.

4. Section 623(c) of the Communications Act,¹³ which establishes the criteria for Commission regulation of the cable programming service tier, does not apply to cable programming services provided after March 31, 1999.¹⁴ The Commission does not have authority to review CPST rates

⁶ Communications Act, Section 623(c), as amended, 47 U.S.C. §543(c) (1996).

⁷ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁸ The complaint against the June 1, 1996 CPST rate increase was returned to the LFA because it was not timely filed with the Commission.

⁹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁰ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

¹¹ 47 C.F.R. §76.956.

¹² 47 C.F.R. §76.957.

¹³ 47 U.S.C. § 543(c).

that became effective after March 31, 1999. Since 1993, the Commission has been receiving and resolving complaints from subscribers and LFA's regarding the CPST rates. Although the Commission has resolved almost 18,000 complaints involving 5,700 communities during that time frame, there are still complaints that are pending and need to be resolved. In addition to the pending complaints, there are a number of pending petitions for reconsideration of prior orders. Most of these prior orders that are the subject of a pending appeal determined that a cable system operator had incurred refund liability for overcharges on its CPST. Several petitions are against prior orders which found that the operator did not incur any refund liability, either because its CPST rate was found to be reasonable or because the total amount of the refund was *de minimis* and it would not have been in the public interest to order a refund.

5. It would not be a judicious use of Commission resources to attempt to resolve appeals of CPST rate orders which had no adverse affect on the petitioner, either because the order found no refund liability at all or found a *de minimis* liability which did not later result in the petitioner incurring actual refund liability. Resolution of such appeals will have no consequences other than to put additional strain on limited Commission resources which are better put to resolving pending complaints and appeals of orders that involve potential or actual refund liability. Therefore, we have determined that appeals of CPST rate orders which do not involve actual refund liability will be dismissed because there is no real relief which may be granted through resolution of the appeal.

6. In our Second, Third and Fourth Orders, we found Operator's CPST rates to be reasonable beginning June 1, 1996. In our Fourth Order, we made adjustments to Operator's FCC Form 1235 filing. Despite our adjustments, we found Operator's actual CPST rate to be reasonable. Although Operator did not incur any refund liability, Operator chose to file its Petition II, challenging our adjustments to the FCC Form 1235 filing. Our review of the record indicates that a resolution of the appeal will have no effect on Operator's refund liability for its CPST.¹⁵ Therefore, in order to conserve Commission resources, we will dismiss Operator's Petition II without addressing the merits of Operator's arguments.

7. 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 of In the Matter of Marcus Cable Associates, LP, DA 97-2663, 13 FCC Rcd 9012 (1998), IS GRANTED TO THE EXTENT INDICATED HEREIN.

8. 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 Sammons Communications, Inc., DA 95-739, 10 FCC Rcd 10044 (1995); In the Matter of Marcus Cable Associates, LP, DA 97-983, 12 FCC Rcd 23216 (1997); and In the Matter of Marcus Cable Associates, LP, DA 97-2663, 13 FCC Rcd 9012 (1998) ARE MODIFIED TO THE EXTENT INDICATED HEREIN.

9. 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 In the Matter of Marcus Cable Associates, LP, DA 98-2308, 13 FCC Rcd 22314 (1998) IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

¹⁴ See 47 U.S.C. § 543(c)(4) (1996).

¹⁵ Operator elected to recover all of its FCC Form 1235 upgrade costs through its CPST rate.

William H. Johnson
Deputy Chief, Cable Services Bureau