

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

In the Matter of	)	File No. EB-02-TC-012
	)	
Marcus Cable Partners, LP	)	CUID No. WI0659 (Mishicot)
	)	
Refund Plan	)	

**ORDER**

**Adopted: May 6, 2002**

**Released: May 8, 2002**

By the Chief, Enforcement Bureau:<sup>1</sup>

1. In this Order we consider the refund plan filed by the above-referenced operator ("Operator")<sup>2</sup> in the above-referenced community pursuant to the Order, DA 97-1140<sup>3</sup> ("Refund Order").<sup>4</sup> Our review of Operator's refund plan<sup>5</sup> reveals that the refund plan does not fulfill the requirements of the Refund Order. Operator requests that we allow intra-tier offsets across time periods when there is only one cable programming services tier ("CPST"). This would require subscribers to pay for undercharges that did not necessarily benefit them. Cross-period offsets could allow an operator to market a service by undercharging and then pass on that cost to a subsequent group of subscribers. Our mandate is to review an operator's actual CPST rates. In doing so, we ensure that an operator has correctly calculated, and is not charging above, its maximum permitted rate ("MPR"). We approve an operator's actual CPST rate if it is equal to or lower than the MPR as of the effective date of the MPR. If an operator chooses to charge less than its calculated MPR at one point in time, it cannot make up the difference at a different time by charging in excess of its calculated MPR. Operator's refund plan would require us to approve Operator's acknowledged overcharging of its CPST subscribers which, we cannot do. Therefore, we will not allow Operator to offset its CPST overcharges with CPST undercharges from a different time period.

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<sup>1</sup> Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

<sup>2</sup> The term "Operator" includes Operator's predecessors and successors in interest.

<sup>3</sup> *See In the Matter of Marcus Cable Partners, LP*, DA 97-1140, 12 FCC Rcd 23354 (CSB 1997).

<sup>4</sup> The Refund Order required Operator to determine the overcharges to cable programming service tier ("CPST") subscribers for the period stated in the Refund Order and file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

<sup>5</sup> Operator calculated a total refund liability of \$2,863.00.

2. Our review of the Refund Order and the record reveals that a single complaint was filed against Operator's CPST rates on November 22, 1993. In the Refund Order, the Cable Services Bureau found that Operator justified its actual CPST rates beginning October 1, 1994. As there were no valid complaints received against Operator's CPST rates after October 1, 1994, we calculate Operator's refund liability only for the period from May 15, 1994 through September 30, 1994.

3. We calculate Operator's refund liability as follows: For the period from May 15, 1994 through July 14, 1994, we calculate an overcharge of \$0.66 per month per subscriber; and for the period from July 15, 1994 through September 30, 1994, we calculate an overcharge of \$0.10 per month per subscriber, in accordance with the Refund Order. Our total calculation, including three percent franchise fees and interest through February 28, 2002, equals \$3,088.38. We order Operator to refund this amount, plus any additional interest accrued from February 28, 2002 to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

4. Accordingly, IT IS ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator's Refund Plan IS NOT ACCEPTED.

5. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$3,088.38, plus interest accruing from February 28, 2002 to the date of refund, within 60 days of the release of this Order.

6. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau