

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

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| In the Matter of |) | |
| |) | File No. EB-02-TC-019 |
| Bresnan Communications Company |) | |
| |) | CUID No. MI0102 (Essexville) |
| Complaints Regarding |) | |
| Cable Programming Services Tier |) | |

ORDER

Adopted: May 6, 2002

Released: May 8, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider complaints² against the rates charged by the above-referenced operator ("Operator")³ for its cable programming services tier ("CPST") in the community referenced above. The Cable Services Bureau has already issued an order ("Prior Order"),⁴ in which it found Operator's CPST rates in effect through May 14, 1994 to be unreasonable. In its Prior Order, it stated that its findings "do not in any way prejudice the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations."⁵ On February 17, 2000, Operator filed an amended refund plan in response to the Prior Order. In its refund plan, Operator calculated its refund liability through July 14, 1994.⁶ On February 15, 2002, the Cable Services Bureau issued an order accepting Operator's refund plan as modified therein.⁷ In this Order, we address only the reasonableness of Operator's CPST rates for the above-referenced community, for the

¹ 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).

² The first valid complaint against Operator's CPST rate in the community referenced above was filed on October 8, 1993.

³ The term "Operator" includes Operator's predecessors and successors in interest.

⁴ *In the Matter of Bresnan Communications Company*, DA 95-1380, 10 FCC Rcd 7184 (CSB 1995); *recon. den.*, *In the Matter of Bresnan Communications Company*, DA 97-2033, 13 FCC Rcd 13120 (CSB 1998); *recon. granted in part and den. in part*, *In the Matter of Bresnan Communications Company*, DA 98-1877, 13 FCC Rcd 19615 (CSB 1998); *recon. den.*, *In the Matter of Bresnan Communications Company*, DA 99-1779 (CSB released September 7, 1999).

⁵ Prior Order at n. 1.

⁶ The Commission's rules provide for a refund liability deferral period, if timely requested by the Operator, beginning May 15, 1994 and ending July 14, 1994, for any overcharges resulting from Operator's calculation of a new maximum permitted rate on its FCC Form 1200. *See* 47 C.F.R. § 76.922(b)(6)(ii). Operator elected to defer refund liability. However, Operator will incur refund liability from May 15, 1994 through July 14, 1994 for any CPST rates charged above the FCC Form 393 maximum permitted rate approved by the Commission. Operator included this period in its refund plan calculation approved by the Commission.

⁷ *See In the Matter of Bresnan Communications Company*, DA 02-340 (CSB released February 15, 2002).

period beginning July 15, 1994.

2. Under the provisions of the Communications Act⁸ that were in effect at the time the referenced complaint was filed, 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 1992⁹ ("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.¹⁰ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.¹¹ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.¹²

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹³ Operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.¹⁴ Operators may justify their rates on an annual basis using an 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.¹⁵ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁶

4. Upon review of Operator's FCC Form 1200, we adjusted Line A1 (Channels per Tier as of 3/31/94) from 24 to 22, Line A6 (Monthly Charge per Tier as of 3/31/94) to \$10.96, and Line C1 (Channels per tier as of 3/31/94) and Line C2 (Number of Regulated Non-Broadcast Channels per Tier) to 22 for the CPST. All of these adjustments were made to conform Operator's FCC Form 1200 to the revised FCC Form 393 reviewed in the Prior Order. The adjustments reduced Operator's maximum permitted rate ("MPR") from \$10.74 to \$10.27. Upon review of Operator's FCC Form 1210 covering the period April 1, 1994 through June 30, 1994, the Cable Services Bureau adjusted Line A1 (Transition Rate per Tier) to conform to Operator's revised FCC Form 1200. This adjustment reduced Operator's FCC Form 1210 MPR from \$11.30 to \$10.46. Because Operator's actual CPST rate of \$11.44, effective July 1, 1994 through August 31, 1994, exceeds its revised MPR of \$10.46, we find Operator's actual CPST rate of \$11.44, effective July 1, 1994 through August 31, 1994, to be unreasonable. Because Operator's actual CPST rate of \$11.30, effective September 1, 1994 through December 31, 1994, exceeds its revised MPR of \$10.46, we find Operator's actual CPST rate of \$11.30, effective September 1, 1994 through December 31, 1994, to be

⁸ Communications Act, Section 623(c), as amended, 47 U.S.C. §543(c) (1996).

⁹ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

¹⁰ See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

¹¹ *Id.*

¹² See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

¹³ See Section 76.922 of the Commission's rules, 47 C.F.R. §76.922.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

unreasonable.

5. Upon review of Operator's FCC Form 1210 covering the period July 1, 1994 through December 31, 1994, we adjusted Operator's Line A1 to reflect the revised MPR of \$10.46 from its previous FCC Form 1210. This adjustment reduced Operator's MPR from \$11.51 to \$11.08. Because Operator's actual CPST rate of \$11.51, effective January 1, 1995 through March 31, 1995, exceeds its revised MPR of \$11.08, we find Operator's actual CPST rate of \$11.51, effective January 1, 1995 through March 31, 1995, to be unreasonable.

6. Upon review of Operator's FCC Form 1210 covering the period January 1, 1995 through March 31, 1995, we find Operator's actual CPST rate of \$11.63, effective April 1, 1995 to be reasonable.

7. Accordingly, IT IS ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.44, charged by Operator in the community referenced above, effective July 15, 1994 through August 31, 1994, IS UNREASONABLE

8. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.30, charged by Operator in the community referenced above, effective September 1, 1994 through December 31, 1994, IS UNREASONABLE.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.51, charged by Operator in the community referenced above, effective January 1, 1995 through March 31, 1995, IS UNREASONABLE.

10. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.63, charged by Operator in the community referenced above, effective April 1, 1995 IS REASONABLE.

11. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers that portion of the amount paid in excess of the maximum permitted CPST rate of \$10.46 per month (plus franchise fees), plus interest to the date of the refund, for the period July 15, 1994 through December 31, 1994.

12. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers that portion of the amount paid in excess of the maximum permitted CPST rate of \$11.08 per month (plus franchise fees), plus interest to the date of the refund, for the period January 1, 1995 through March 31, 1995.

13. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated periods, and shall within 30 days of the release of this Order, file a report with the Chief, Enforcement Bureau, stating the cumulative refund amount so 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.

14. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the complaints referenced herein against the rates charged by Operator in the community referenced above ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau