

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

In the Matter of)	File No. EB-02-TC-035
)	
Charter Communications)	CUID No. IN0194 (New Albany)
)	
Complaint Regarding Cable Programming)	
Services Tier Rates and Refund Plan)	

ORDER

Adopted: May 6, 2002

Released: May 8, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider complaints against the rates charged by the above-referenced operator ("Operator")² for its cable programming services tier ("CPST") in the community referenced above. The Cable Services Bureau previously resolved complaints filed against Operator's CPST rates in effect through May 14, 1994 ("Prior Order").³ The Prior Order stated that the findings "do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations."⁴ In response to the Prior Order, Operator filed a refund plan on May 1, 1995. This Order addresses Operator's refund plan, as well as the reasonableness of Operator's CPST rates in effect beginning May 15, 1994.

2. Under the provisions of the Communications Act⁵ that were in effect at the time the referenced complaints were 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 1992⁶ ("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

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

³ *See In the Matter of Sammons Communications, Inc.*, DA 95-659 (CSB released April 4, 1995).

⁴ *Id.* at n. 1.

⁵ Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

⁶ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁷ The operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁸ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.⁹

Refund Plan

3. Our review of Operator's refund plan reveals that Operator improperly attempted to offset its CPST refund liability with undercharges for equipment used to receive the basic services tier ("BST"). The Commission has addressed the issue of inter-tier offsets in *Cencom*.¹⁰ In *Cencom*, the Commission determined that such inter-tier offsets are "inconsistent with the Commission's conclusion in the [Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92-266, Report and Order and Further Notice of Proposed Rulemaking¹¹] that cable operators should not balance low BST rates with CPST rates that exceed the maximum permitted rate for the tier."¹² Therefore, we will not accept Operator's refund plan.

4. We calculate Operator's refund liability as follows: For the period from February 28, 1994 through May 14, 1994, we calculate an overcharge of \$0.68 per month per subscriber. Our total calculation, including interest on the overcharges through April 30, 2002, equals \$27,390.00, excluding franchise fees. We will order Operator to refund this amount, plus any additional interest accrued to the date of refund, plus franchise fees and interest on the franchise fee principal amount, to its CPST subscribers within 60 days of the release of this Order.

CPST Rates Effective May 15, 1994

5. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹³ Cable 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 Upon review of Operator's FCC Form 1200, we accept Operator's calculated maximum permitted rate ("MPR") of \$10.64. Because Operator's actual CPST rate of \$11.55, effective May 15, 1994 through July 14, 1994, exceeds its calculated MPR of \$10.64, we find Operator's actual CPST rate of \$11.55, effective May 15, 1994 through July 14, 1994, to be unreasonable.¹⁵ Because Operator's actual CPST rate of \$11.38, effective July 15, 1994

⁷ See Section 76.956 of the Commission's Rules, 47 C.F.R. § 76.956.

⁸ *Id.*

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

¹⁰ See *In the Matter of Cencom Cable Income Partners II, LP*, 12 FCC Rcd 7948 (1997).

¹¹ 8 FCC Rcd 5631 (1993).

¹² *Cencom* at ¶ 22 (footnote omitted).

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

¹⁴ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

¹⁵ Operator did not elect to take advantage of the Commission's rules which provide for a refund liability deferral period, if timely requested by 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. Section 76.922(b)(6)(ii). If Operator did timely file such a request and can provide documentation in support thereof, we will take Operator's documentation into consideration in our review of Operator's refund plan.

through Sep 30, 1995, exceeds its calculated MPR of \$10.64, we find Operator's actual CPST rate of \$11.38, effective July 15, 1994 through Sep 30, 1995, to be unreasonable.

6. Upon review of Operator's FCC Form 1210, covering the period April 1, 1994 through September 30, 1995, we find Operator's actual CPST rate of \$11.38, effective October 1, 1995, to be reasonable.¹⁶

Ordering Clauses

7. 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.

8. IT IS FURTHER ORDERED, pursuant to Section 76.962 of the Commission's rules, 47 C.F.R. § 76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$27,390.00, plus interest accruing from April 30, 2002 to the date of refund, plus franchise fees and interest on the franchise fee principal amount, within 60 days of the release of this Order.

9. IT IS FURTHER ORDERED, pursuant to Section 76.962 of the Commission's rules, 47 C.F.R. § 76.962, that Operator shall 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.

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 \$11.55, charged by Operator in the community referenced above, effective May 15, 1994 through July 15, 1994, IS UNREASONABLE.

11. 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 \$11.38, charged by Operator in the community referenced above, effective July 15, 1994 through September 30, 1995, IS UNREASONABLE.

12. 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 \$11.38, charged by Operator in the community referenced above, effective October 1, 1995, IS REASONABLE.

13. 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 in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$10.64 per month (plus franchise fees), plus interest to the date of the refund, for the period May 15, 1994, through September 30, 1995.

14. 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.

¹⁶ These findings are based solely on the representations of Operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

15. 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