

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

In the Matter of)	File No. EB-02-TC-106
)	
Marcus Cable Associates, LP)	CUID No. TX0397 (Borger)
)	
Complaint Regarding)	
Cable Programming Services Tier Rates)	

ORDER

Adopted: June 14, 2002

Released: June 17, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider complaints filed 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 has already issued an Order, DA 95-303 ("Prior Order"),³ which resolved complaints filed against Operator's CPST rates in effect through May 14, 1994. In its Prior Order, the Cable Services Bureau stated that its 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 Upon review of Operator's refund plan filed in response to the Prior Order, the Cable Services Bureau calculated Operator's refund liability through July 14, 1994.⁵ In this Order, we address only the reasonableness of Operator's CPST rates for the above-referenced community, for the period beginning July 15, 1994.

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 *In the Matter of Sammons Communications, Inc.*, DA 95-303, 10 FCC Rcd 3816 (CSB 1995).

⁴ *Id.* at n. 1.

⁵ 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. The Cable Services Bureau included this time period in its refund plan calculation for DA 95-303. *See In the Matter of Marcus Cable Associates, LP*, DA 99-1906, 14 FCC Rcd 15865 (CSB 1999).

2. Under the provisions of the Communications Act⁶ 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 1992⁷ ("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.⁸ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁹ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁰

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹¹ 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.¹² 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.¹³ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁴

4. Upon review of Operator's FCC Form 1200, we accept Operator's calculated MPR of \$11.71. Because Operator's actual CPST rate of \$12.76, effective July 15, 1994 through March 31, 1995, exceeds its calculated MPR of \$11.71, we find Operator's actual CPST rate of \$12.76 to be unreasonable, effective July 15, 1994 through March 31, 1995. Upon review of Operator's FCC Form 1210, covering the period April 1, 1994 through March 31, 1995, we find Operator's actual CPST rate of \$12.76 to be reasonable, effective April 1, 1995.

5. 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 \$12.76, charged by Operator in the community referenced above, effective July 15, 1994 through March 31, 1995, IS UNREASONABLE.

6. 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 \$12.76, charged by Operator in the community referenced above, effective April 1, 1995, IS REASONABLE.

7. 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

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

⁹ *Id.*

¹⁰ See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

¹¹ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

the amount paid in excess of the maximum permitted CPST rate of \$11.71 per month (plus franchise fees), plus interest to the date of the refund, for the period July 15, 1994, through March 31, 1995.

8. 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.

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 complaints referenced herein against the CPST rates charged by Operator in the community referenced above ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau