

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

In the Matter of)	
)	
Falcon Cablevision)	CUID No. GA0051 (Dalton)
d/b/a Falcon First, Inc.)	
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: February 22, 2002

Released: February 27, 2002

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 98-942 ("Prior Order"),¹ filed with the Federal Communications Commission ("Commission") on June 19, 1998 by the above-referenced operator ("Operator"). Our Prior Order resolved a complaint against Operator's October 1, 1997 cable programming services tier ("CPST") rate increase. Operator also filed a refund plan ("Refund Plan I") in response to our Prior Order, and a refund plan ("Refund Plan II") incorporating the issue raised in Operator's Petition. In this Order, we deny Operator's Petition, approve Refund Plan I as amended herein and dismiss Refund Plan II as moot.

2. Under the Communications Act, 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.² The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),³ and our rules in effect at the time the complaint was filed, required the Commission to review CPST rates upon the filing of a valid complaint by a local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁴ and our rules implementing the legislation ("Interim Rules"),⁵ required that a complaint against the CPST rate be filed with the Commission by an 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

¹ *In the Matter of Falcon Cablevision, d/b/a Falcon First, Inc.*, DA 98-942, 13 FCC Rcd 13198 (1998).

² 47 U.S.C. §543(c) (1996).

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁴ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

CPST rates.⁶ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁷

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁸ Cable operators may justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.⁹ 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.¹⁰ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹¹

4. In its Petition, Operator argues that it is entitled to an external cost adjustment on the FCC Form 1240 it filed with the Commission.¹² Our rules allow certain cable operators, who initially calculated their CPST rates using the FCC Form 1200, to make an "adjustment for changes in external costs for the period between September 30, 1992, and the initial date of regulation or February 28, 1994, whichever is applicable"¹³ However, Operator filed its rate justification as an unregulated operator pursuant to the *Thirteenth Reconsideration Order*.¹⁴ In the *Thirteenth Reconsideration Order*, the Commission decided to end regulatory review of an operator's entire rate structure if no prior complaints had been filed against the operator's CPST rates. Therefore, Operator filed with the Commission as an unregulated operator using only an FCC Form 1240 to justify its current CPST rate increase, rather than filing an FCC Form 1200 and updating that form to justify the CPST rate complained about. Because Operator did not file an FCC Form 1200 with the Commission and use an FCC Form 1200 to calculate its starting rate on Line A1 of the FCC Form 1240, Operator is not entitled to an adjustment under Section 76.922(f)(4) of the Commission's rules.

5. Operator argues that the Commission should assume that the actual CPST rate that Operator entered as the starting rate on its FCC Form 1240 was correctly calculated using the FCC Form 1200 as a starting point. The purpose of ending regulatory review of an operator's entire rate structure was to reduce the regulatory burden on the operator. Operator took advantage of this methodology to avoid the burden of having the Commission review its entire rate structure beginning with its initial FCC Form 1200 rates. Had the Commission reviewed Operator's entire rate structure, Operator might have qualified for an

⁶ 47 C.F.R. §76.956.

⁷ 47 C.F.R. §76.957.

⁸ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See 47 C.F.R. § 76.922(f)(4); *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Memorandum Opinion and Order*, 11 FCC Rcd 20206 (1996); and *Time Warner Entertainment Co., LP v. FCC*, 144 F.3d 75 (D.C. Cir. 1998).

¹³ *Id.*

¹⁴ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration*, MM Docket No. 92-266, 11 FCC Rcd 388 (1996) ("*Thirteenth Reconsideration Order*").

external cost adjustment pursuant to our rules. On the other hand, Operator may have suffered an additional CPST rate reduction based on that review. Operator cannot pick and choose pieces of alternate rate methodologies. If Operator chooses the advantages of a particular methodology over another, it must also accept any concomitant consequences. Operator's argument that it should benefit from a rule, the purpose of which is to mediate a prior injustice, without having suffered that injustice, is without merit. Therefore, we will deny Operator's Petition.

6. Our review of Operator's Refund Plan I reveals that the Refund Plan I fulfills the requirements of the Prior Order, provided Operator calculates refund liability for the entire refund period, which ends September 30, 1998, and accrues interest up to the date of the refund.

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 Falcon Cablevision d/b/a Falcon First, Inc., DA 98-942, 13 FCC Rcd 13198 (1998) IS DENIED and Operator's Refund Plan II IS DISMISSED AS MOOT.

8. IT IS FURTHER ORDERED, pursuant to Section 79.962 of the Commission's rules 47 C.F.R. § 76.962, that Operator's Refund Plan I IS APPROVED AS MODIFIED HEREIN, and IT IS ORDERED, pursuant to Section 76.962 of the Commission's rules, 47 C.F.R. § 76.962, that Operator implement its refund plan within 60 days of the date of this Order.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. § 0.321 and § 76.962, that Operator file a certificate of compliance with the Chief, Cable Services Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau