

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

In the Matter of	)	CUID Nos.	CT0153 (Ashford)
	)		CT0154 (Brooklyn)
	)		CT0155 (Canterbury)
Charter Communications	)		CT0156 (Chaplin)
	)		CT0157 (Columbia)
	)		CT0158 (Coventry)
	)		CT0159 (Eastford)
	)		CT0160 (Hampton)
	)		CT0161 (Lebanon)
	)		CT0162 (Mansfield)
	)		CT0163 (Pomfret)
	)		CT0164 (Scotland)
	)		CT0165 (Thompson)
	)		CT0166 (Windham)
Petitions for Reconsideration	)		CT0167 (Willington)
	)		CT0168 (Woodstock)

ORDER ON RECONSIDERATION

Adopted: March 13, 2002

Released: March 20, 2002

By the Deputy Chief, Cable Services Bureau:

1. In this Order, we consider a petition for reconsideration ("Petition I") of our Order, DA 95-1007 ("First Order")¹ filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator")² on June 5, 1995.³ Our First Order resolved complaints against Operator's cable programming service tier ("CPST") rates in the above-referenced communities through May 14, 1994, and found Operator's CPST rates to be unreasonable. In this Order, we also consider a petition for reconsideration ("Petition II") of our Order, DA 97-882 ("Second Order")⁴ filed with the Commission by Operator on May 28, 1997. Our Second Order resolved complaints against Operator's CPST rates in the above-referenced communities beginning May 15, 1994, and found Operator's CPST rates to be unreasonable. In this Order we grant Operator's Petition I in part, grant Operator's Petition II in part and calculate Operator's refund liability.

¹ In the Matter of Cencom Cable N.E. Connecticut, Inc., DA 95-1007, 10 FCC Rcd 8162 (1995).

² The term "Operator" includes Operator's predecessors and successors in interest.

³ Operator originally filed its petition as an application for review. However, by letter dated March 5, 2002, Operator requested that we treat its application as a petition for reconsideration.

⁴ In the Matter of Charter Communications, DA 97-882, 13 FCC Rcd 1281 (1998).

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.⁵ The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),⁶ and our rules in effect at the time the complaints were filed, required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁷ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁸

3. Operators must use the FCC Form 393 to justify rates for the period prior to May 15, 1994. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁹ 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.¹⁰ Operators may justify their rates on an annual basis using the 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.¹¹ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹²

4. In its First Order, upon review of Operator's FCC Form 393, the Bureau determined that Operator had not correctly calculated the maximum permitted rate ("MPR") for its two CPSTs. After revising Operator's FCC Form 393, the Bureau concluded that Operator justified an MPR of \$9.19 for tier 2 and \$4.29 for tier 3 and found Operator's actual CPST rates of \$9.41 for tier 2 and \$4.39 for tier 3 to be unreasonable because they were not equal to or below Operator's revised MPRs.

5. In its Petition I, Operator raises a number of issues that have been addressed by the Commission in previous orders. Operator first argues that the Commission erred when imputing normalized taxes to its customer equipment costs prior to unbundling those costs from its service rates. We previously addressed this issue at length in *Suburban Cable TV, Inc.*¹³ Our discussion in that case is directly on point and need not be repeated here. We concluded that the benchmark rate methodology contemplates the unbundling of normalized taxes and it would be arbitrary and inconsistent for the Commission to build normalized taxes into the pricing of tier offerings and only unbundle actual taxes attributable to equipment costs. We conclude here, as we did in *Suburban Cable TV, Inc.*, that the Bureau did not err by imputing normalized taxes to Operator's customer equipment costs prior to unbundling those costs from Operator's service rates.

⁵ 47 U.S.C. §543(c) (1996).

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

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

⁸ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

⁹ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ In the Matter of Suburban Cable TV, Inc., DA 97-2032, 13 FCC Rcd 13111 (1997).

6. The remaining issues raised by Operator in its Petition I, concerning the adjustment of its inflation factor, offsetting of overcharges, sufficiency of our explanations of our calculations and allegations of retroactive ratemaking, were all thoroughly addressed by the Commission in *Cencom Cable Income Partners* ("Cencom").¹⁴ For all the reasons stated in that order, which we do not need to repeat here, we reject Operator's arguments concerning these issues. However, as in *Cencom*, we will allow Operator an inflation adjustment period of 13 months, the number of whole months from September 1992 to the date Operator was required to file its FCC Form 393, in accordance with the public notice issued May 2, 1995.¹⁵ Our adjustment results in revised MPRs of \$9.21 for tier 2 and \$4.30 for tier 3. Because Operator's actual CPST rates of \$9.41 for tier 2 and \$4.39 for tier 3, effective September 3, 1993 (the date the first complaint was filed with the Commission) through May 14, 1994, exceed Operator's revised MPRs, we find Operator's actual CPST rates of \$9.41 for tier 2 and \$4.39 for tier 3, effective September 3, 1993 through May 14, 1994, to be unreasonable.

7. In its Petition II, Operator raises several issues, only one of which is addressed herein. Operator argues that the total overcharge for the period under review in our Second Order is *de minimis*. We agree that the total overcharge is *de minimis* and it would not be in the public interest to order the payment of refunds for the period addressed in our Second Order. We will modify our Second Order to exclude any refund liability. Because our disposition of this issue disposes of Operator's refund liability for the period under review, we decline to address any other issues raised by Operator in its Petition II.

8. Finally, we calculate a refund plan for the refund liability period addressed in our First Order as follows: For the period from September 3, 1993 through May 14, 1994, we calculate an overcharge of \$0.20 per month per subscriber for tier 2 and \$0.09 per month per subscriber for tier 3. Our total calculation, including interest through March 31, 2002, equals \$75,435.34 for tier 2 and \$14,389.09 for tier 3. Our calculation does not include franchise fees. We will order Operator to refund this amount, plus any additional interest accrued to the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount, to its CPST subscribers within 60 days of the release of this Order.

9. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's petitions for reconsideration ARE GRANTED IN PART TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that In the Matter of Cencom Cable N.E. Connecticut, Inc., DA 95-1007, 10 FCC Rcd 8162 (1995), IS MODIFIED TO THE EXTENT INDICATED HEREIN.

11. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that In the Matter of Charter Communications, DA 97-882, 13 FCC Rcd 1281 (1997), IS MODIFIED TO THE EXTENT INDICATED HEREIN.

12. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rates of \$9.41 for tier 2 and \$4.39 for tier 3, charged by Operator in the

¹⁴ In the Matter of Cencom Cable Income Partners II, LP, 12 FCC Rcd 7948 (1997).

¹⁵ See Public Notice "Cable Services Bureau Announces Policy Regarding Inflation Adjustment on Form 393," DA 95-999 (1995).

franchise areas referenced above, effective September 3, 1993 through May 14, 1994, ARE UNREASONABLE.

13. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 and of the Commission's rules, 47 C.F.R. §§ 0.321 and 76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amounts of \$75,435.34 for tier 2 and \$14,389.09 for tier 3, plus interest accruing from March 31, 2002 to the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount within 60 days of the release of this Order.

14. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 and 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