

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

In the Matter of)	File No. EB-02-TC-086
)	
Jones Spacelink, Ltd.)	CUID No. IL1050 (Wheaton)
)	
Petition for Reconsideration)	

ORDER

Adopted: January 24, 2003

Released: January 27, 2003

By the Chief, Enforcement Bureau:

1. In this Order, we deny a petition for reconsideration ("Petition")¹ of a Cable Services Bureau Order, DA 95-2170 ("Prior Order").² The Prior Order granted a complaint filed against the cable programming services tier ("CPST") rates charged by the above-referenced operator ("Operator")³ from January 10, 1994 through May 14, 1994.⁴ The Cable Services Bureau found Operator's CPST rates to be unreasonable and ordered refunds. In this Order, we affirm the Prior Order and calculate Operator's refund liability.

2. Under the provisions of the Communications Act⁵ that were in effect at the time the referenced complaints were filed, the Commission had authority 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. The filing of a

¹ The Petition was originally filed as a consolidated application for review of three separate orders involving three separate communities. The issues concerning two of the communities were previously resolved. See *In the Matter of Jones Intercable, Inc.*, FCC 98-192, 13 FCC Rcd 15883 (1998). By letter dated January 21, 2003, Operator requested that the remaining issues, which concern only the community of Wheaton, IL, CUID No. IL1050, be adjudicated as a petition for reconsideration.

² *In the Matter of Jones Spacelink, Ltd.*, DA 95-2170, 10 FCC Rcd 11562 (CSB 1995). 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).

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

⁴ The refund liability period runs from January 10, 1994, the date the first valid complaint was filed with the Commission, through May 14, 1994. The Cable Services Bureau found Operator's CPST rates to be reasonable beginning May 15, 1994. See *In the Matter of Jones Growth Partners d/b/a Jones Intercable, Inc.*, DA 96-1533, 11 FCC Rcd 10656 (CSB 1996).

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).

complete and timely complaint triggered an obligation upon the cable operator to file a justification of its CPST rates.⁷ The Operator had the burden of demonstrating that the CPST rates complained about were reasonable.⁸ If the Commission found a rate to be unreasonable, it determined the correct rate and any refund liability.⁹

3. In its Petition, Operator does not challenge any of the substantive findings of the Prior Order. Rather, Operator argues that it is entitled to an increase in its CPST rates to account for external cost increases incurred during the period of time from the effective date of the 1992 Cable Act through the initial date of regulation. Our rules allow certain cable operators 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 . . .".¹⁰ Therefore, to the extent that Operator is entitled to take an adjustment for increases in external costs that Operator incurred during this period, it may do so pursuant to the Commission's rules. Operator attached a chart to its Petition that purported to show an external cost adjustment of \$0.37, for increases between September 1992 and January 1994. However, in its FCC Form 393, which was reviewed in the Prior Order, Operator used October 1993 as its initial date of regulation for purposes of calculating its FCC Form 393 CPST rate. Therefore, Operator is only entitled to an adjustment for changes in external costs for the period between September 1992 and October 1993. In order to determine the correct figure for the initial date of regulation of October 1993, we review Line B7 (Avg. Ext. per Sub. Per Tier on Beginning Date) of Operator's FCC Form 1200. Our review reveals that Operator's September 1992 external costs, as indicated on the attachment to its Petition, were higher than Operator's external costs as of the initial date of regulation, as reported on Line B7 of Operator's FCC Form 1200.¹¹ Therefore, there is no external cost increase for Operator to claim and it is therefore denied as factually unsubstantiated.¹²

4. Operator also argues that it should be permitted to offset its CPST overcharges with its purported basic service tier ("BST") undercharges. The Commission addressed the issue of inter-tier offsets in *Cencom Cable Income Partners* ("*Cencom*"),¹³ subsequent to the filing of this Petition. 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 Rulemaking]¹⁴ that

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 47 C.F.R. § 76.922(f)(4); *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).

¹¹ See Appendix B of *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Memorandum Opinion and Order*, 11 FCC Rcd 20206 (1996) for instructions for calculating the external costs adjustment.

¹² Operator was unable to provide any additional supporting documentation for its proposed increase in response to requests by Bureau staff.

¹³ See *In the Matter of Cencom Cable Income Partners II, L.P.*, 12 FCC Rcd 7948 (1997).

¹⁴ 8 FCC Rcd 5631 (1993).

cable operators should not balance low BST rates with CPST rates that exceed the maximum permitted rate for the tier."¹⁵ Operator offers no new arguments that would persuade us to deviate from this policy, which has been consistently applied in CPST rate cases.¹⁶ For the reasons discussed above, we conclude that Operator's Petition should be denied.

5. Operator filed four refund plans along with its Petition. Upon review of the refund plan calculated in accordance with the Prior Order, we find that Operator calculated too much refund liability.¹⁷ Therefore, we reject Operator's refund plan and calculate Operator's refund liability as follows: For the period from January 10, 1994 through May 14, 1994, we calculate an overcharge of \$0.70 per month per subscriber. Operator's actual CPST rate for this period was \$10.28 and its maximum permitted rate was \$9.58. Our total calculation, including franchise fees and interest on the overcharges through December 31, 2002, equals \$52,740.00. We order Operator to refund this amount, plus any additional interest accrued to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

6. Accordingly, IT IS ORDERED, pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, that the Petition for Reconsideration of *In the Matter of Jones Spacelink, Ltd.*, DA 95-2170, 10 FCC Rcd 11562 (CSB 1995) IS DENIED.

7. 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 \$52,740.00, plus any additional interest accruing between December 31, 2002 and the date of refund, within 60 days of the release of this Order.

8. 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.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁵ *Cencom* at ¶22 (footnote omitted).

¹⁶ See, e.g., *In the Matter of Suburban Cable TV Co., Inc.*, 17 FCC Rcd 13700 (EB 2002); *In the Matter of Cable One, Inc.*, 15 FCC Rcd 20359 (CSB 2000).

¹⁷ Operator calculated a total refund liability of \$87,292.25.