

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

In the Matter of

Cable TV of
Greater San Juan
San Juan, Puerto Rico

CUID No. PR0001

Benchmark Filings To Support
Cable Programming Service Prices

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 1994; Released: December 20, 1994

By the Chief, Cable Services Bureau:

INTRODUCTION

1. Here we consider complaints about the prices Cable TV of Greater San Juan¹ ("Cable San Juan") charges for its cable programming service ("CPS") tiers in the City of San Juan, Puerto Rico (CUID No. PR0001). Rather than attempting to justify its prices through a benchmark or cost of service showing, Cable San Juan responded to the complaints by stating that it has no CPS tier in that system.

2. Under the Cable Television Consumer Protection and Competition Act of 1992,² and our rules implementing it, 47 C.F.R. Part 76, Subpart N, the Commission must review CPS prices upon the filing of a valid complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPS prices.³ Under our rules, an operator may attempt to justify its prices through either a benchmark showing or a cost-of-service showing.⁴ In either case, the operator has the burden of demonstrating that its CPS prices are not unreasonable.⁵

3. The Commission's original rate regulations took effect on September 1, 1993.⁶ The Commission subsequently revised its rate regulations effective May 15, 1994.⁷ Operators with valid CPS complaints filed against them prior to May 15, 1994 must demonstrate that their CPS prices were in compliance with the Commission's initial rules from the time the complaint was filed through May 14, 1994, and that their prices were in compliance with the revised rules from May 15, 1994 forward.⁸ Operators attempting to justify their prices for the period prior to May 15, 1994 through a benchmark showing must complete and file FCC Form 393.⁹ Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.¹⁰

PROCEDURAL MATTERS

4. On December 12, 1994, the Cable Services Bureau released an order resolving a letter of inquiry ("LOI") regarding Cable San Juan's system in the City of San Juan.¹¹ The order addressed the restructured service offerings implemented in this community beginning September 1, 1993, in which Cable San Juan eliminated its CPS tiers and offered instead only a basic service tier and three a la carte channels. The Bureau found that Cable San Juan's restructured service offerings do not constitute a clear evasion of our rate rules. Specifically, Cable San Juan did not avoid rate regulation of most of its previous CPS channels because it moved those channels into a rate-regulated basic tier. With regard to the other three channels, the order permits Cable San Juan to treat its a la carte package as a new product tier that may be priced at market levels under our recently adopted *Going Forward Order*.¹²

DISCUSSION

5. Except in certain limited circumstances,¹³ the Commission's authority to regulate cable service rates is limited to the rates charged for CPS tiers.¹⁴ As mentioned above, the Commission's jurisdiction to regulate CPS tiers is triggered by the filing of an FCC Form 329 complaint. Our recent LOI order found that the elimination of Cable San Juan's CPS tiers does not constitute a clear evasion of rate regulation and those channels not placed on the basic

¹ Cable TV of Greater San Juan is owned by Century-ML Cable Corporation, a subsidiary of a joint venture owned in equal parts by Century Communications Corp. and ML Media, L.P. We note that the provisions of the Communications Act of 1934, as amended, and its implementing regulations apply to cable television providers in Puerto Rico because it is a territory of the United States. See 47 U.S.C. §§ 152(a) and 153(g) (1993).

² Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(c), as amended, 47 U.S.C. § 543(c) (1993).

³ 47 C.F.R. § 76.956.

⁴ 47 C.F.R. § 76.956(b).

⁵ *Id.*

⁶ Order in MM Docket No. 92-266, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, FCC 93-372, 58 Fed. Reg. 41042 (Aug. 2, 1993).

⁷ See *Second Order on Reconsideration* at 4119; 47 C.F.R. § 76.922(b).

⁸ See *Second Order on Reconsideration* at 4190, paras. 150-152.

⁹ *Id.*

¹⁰ 47 C.F.R. § 76.922(b)(6); see also *Second Order on Reconsideration* at 4189, n.195.

¹¹ See DA 94-1425.

¹² See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking*, MM Docket Nos. 92-266 and 93-215, FCC 94-286 (released November 18, 1994) ("*Going Forward Order*").

¹³ Upon the denial or revocation of a franchising authority's certification, the Commission will regulate rates for basic service and associated equipment and installations for a system not subject to effective competition until the franchising authority has obtained certification or recertification. 47 U.S.C. § 543(a)(6); 47 C.F.R. § 76.913(a). In addition, a franchising authority unable to meet certification standards may petition the Commission to regulate rates for basic service and associated equipment and installations, if certain conditions are satisfied. 47 C.F.R. § 76.913(b).

¹⁴ See 47 U.S.C. § 543(c)(1).

service tier could be treated as a new product tier under the *Going Forward Order*. Therefore, we need not rule on the FCC Form 329 complaints filed against Cable San Juan in the City of San Juan, Puerto Rico because there was no CPS tier subject to rate regulation pursuant to Section 76.922 of our rules as of September 1, 1993. In addition, nothing in these complaints indicates that Cable San Juan's new product tier violates any of the conditions for establishing that tier outlined in the *Going Forward Order*.¹⁵

CONCLUSION

6. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the review of Cable San Juan's CPS rates is terminated and all FCC Form 329 complaints pending against Cable San Juan's CPS rates in the City of San Juan, Puerto Rico (CUID No. PR0001) are DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

¹⁵ We have excused one violation, i.e., migrating channels from rate-regulated tiers, in only those situations where, as here, the new product tier is established as an outgrowth of our change in our a la carte policy. See *Going Forward Order* at Para. 51.