

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

In the Matter of

Plum Cable TV CUID No. PA1391 (Plum Borough)

Benchmark Filing to Justify Cable  
Programming Service Rate

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1995;

Released: May 9, 1995

By the Chief, Financial Analysis and Compliance Division,  
Cable Services Bureau:

1. Here we consider complaints about the price Plum Cable TV ("Operator") was charging for its cable programming service ("CPS") tier in the community referenced above. Operator has chosen to attempt to justify its price through a benchmark showing on FCC Form 393. This Order addresses the reasonableness of Operator's price only through May 14, 1994. At a later time we will issue a separate order addressing the reasonableness of the price after that date.<sup>1</sup>

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

3. The Commission's original rate regulations took effect on September 1, 1993.<sup>6</sup> The Commission subsequently revised its rate regulations effective May 15, 1994.<sup>7</sup> Operators with complete and timely 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.<sup>8</sup> 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.<sup>9</sup> Generally, to justify their prices for the period beginning May 15, 1994 through a benchmark showing, operators must use the FCC Form 1200 series.<sup>10</sup>

4. Operator asserts that its monthly CPS price is justified by its benchmark filing because this price is less than the maximum permitted charge. Upon review, we have found no apparent errors that would result in Operator's actual CPS price exceeding its maximum permitted CPS price.<sup>11</sup>

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the cable programming service price charged by Operator in the community referenced above ARE DENIED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

JoAnn Lucanik  
Chief, Financial Analysis and Compliance Division  
Cable Services Bureau

<sup>1</sup> The findings in this Order do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations. However, to the extent Operator has sought to take advantage of the refund deferral period under the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (*Second Order on Reconsideration*), the maximum permitted CPS price determined herein might also apply from May 15, 1994 until the date on which Operator implemented its CPS price under the new regulations. See para. 3, *infra*.

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

<sup>3</sup> 47 C.F.R. § 76.956.

<sup>4</sup> 47 C.F.R. § 76.956(b).

<sup>5</sup> *Id.*

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

<sup>7</sup> 47 C.F.R. § 76.922(b).

<sup>8</sup> See Second Order on Reconsideration, 9 FCC Rcd at 4190, paras. 150-152.

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. § 76.922(b)(6); see also Second Order on Reconsideration, 9 FCC Rcd at 4189 n.195.

<sup>11</sup> This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.